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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–66–AD; Amendment 39–13082; AD 2003–05–06]

RIN 2120–AA64

Airworthiness Directives; Robert E. Rust Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Robert E. Rust (R.E. Rust) Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes. This AD requires you to check the airplane logbook to determine whether certain modifications have been incorporated on the airplane and incorporate the modifications that have not already been accomplished. This AD is the result of the manufacturer performing a design study on the structural integrity of certain parts and reports of service failure of other parts installed on the affected airplanes. The actions specified by this AD are intended to prevent reduced structural integrity in the primary structure of the airplane, which could result in failure of the rudder torque tube, elevator fasteners, and the vertical fin rear spar, or jamming or damage to the elevator. Such failures could lead to loss of control of the airplane.

DATES: This AD becomes effective on April 25, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of April 25, 2003.

ADDRESSES: You may get the service information referenced in this AD from DeHavilland Support Limited, Duxford Airfield, Bldg. 213, Cambridgeshire, CB2 4QR, United Kingdom, telephone: +44 1223 830090, facsimile: +44 1223 830085, e-mail: *info@dhsupport.com.* You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–66–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Cindy Lorenzen, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia; telephone: (770) 703–6078; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The FAA has received reports that an unsafe condition may exist on certain R.E. Rust Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes. Failure reports of the rudder torque tube and elevator control fasteners on in-service airplanes and design studies by the manufacturer on the structural integrity of the glider towing attachment bolt and the vertical fin rear spar prompted us to issue this AD.

We have determined that failure of the rudder torque tube, the elevator control fasteners, the vertical fin rear spar, and the glider towing attachment bolt is caused by fatigue cracking and overload. As a result of the design studies, the manufacturer developed specific modifications to strengthen the affected areas of the airplane.

What Is the Potential Impact if FAA Took No Action?

These conditions, if not corrected, could result in failure of the rudder torque tube, elevator fasteners, and the vertical fin rear spar, or jamming or damage to the elevator. Such failures could lead to loss of control of the airplane.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to R.E. Rust Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on November 8, 2002 (67 FR 68052). The NPRM proposed to require you to check the airplane logbook to determine whether certain modifications have been incorporated on the airplane and incorporate the modifications that have not already been accomplished.

Was the Public Invited to Comment?

The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Change the Compliance Time for Incorporating Missing Modifications

What Is the Commenter's Concern?

The commenter states that parts required for each modification may not be available from the manufacturer within 90 days after the effective date of this AD. Therefore, the commenter suggests allowing more time to acquire parts by changing the compliance time from 90 days to 12 months after the effective date of this AD.

What Is FAA's Response to the Concern?

We do not concur. The commenter does not offer any solution to ensure the airworthiness of the airplanes until the parts become available. We cannot increase the compliance time unless other means to ensure the continued airworthiness of these airplanes are substantiated.

We will consider an alternative method of compliance if the alternative provides an equivalent level of safety as outlined in paragraph (e) of this AD.

We are not changing the final rule AD action based on this comment.

Comment Issue No. 2: Change the Estimated Number of Workhours Necessary to Incorporate Missing Modifications

What Is the Commenter's Concern?

The commenter states that the number of workhours necessary to incorporate certain modifications is incorrect. The commenter states that Modification H 225 will take 20 workhours instead of 40 workhours; Modification H 269 will take 12 workhours instead of 4 workhours; and Modification H 275 contains a typographical error in the

workhours, it should be 3 workhours instead of 43 workhours, the cost was calculated correctly using 3 workhours. The commenter suggests that we change the cost impact section to more accurately reflect the workhours necessary to incorporate the modification.

What Is FAA's Response to the Concern?

We concur with the commenter. The estimates given by the commenter are more accurate than the information we used.

We will change the final rule AD action to incorporate these changes.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 54 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish any necessary modifications that will be required based on the results of the logbook check. We have no way of determining the number of airplanes that may need such modification.

Modification	Labor cost	Parts cost	Total cost per airplane
H225	20 workhours × $60=$1,200	$1,470	$1,200 + $1,470=$2,670.
H 269	12 workhours × $60=$720	$203 each (2 per airplane)	$720 + $406 ($203 × 2)= $1,126.
H 275	3 workhours × $60=$180	$203 each (2 per airplane)	$180 + $406 ($203 × 2)=$586.
H 360	20 workhours × $60=$1,200	$1,150	$1,200 + $1,150=$2,350.

Compliance Time of This AD

What Is the Compliance Time of This AD?

The compliance time of this AD is ''within the next 90 days after the effective date of this AD.''

Why Is the Compliance Time Presented in Calendar Time Instead of Hours Time-in-Service (TIS)?

Failure of the rudder torque tube, the elevator control fasteners, the vertical fin rear spar, and the glider towing attachment bolt is only unsafe during airplane operation. However, this unsafe condition is not a result of the number of times the airplane is operated. The chance of this situation occurring is the same for an airplane with 50 hours time-in-service (TIS) as it would be for an airplane with 1,000 hours TIS.

For this reason, the FAA has determined that a compliance based on calendar time will be utilized in this AD in order to assure that the unsafe condition is addressed on all airplanes in a reasonable time period.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2003–05–06 Robert E. Rust: Amendment 39–13082; Docket No. 2000–CE–66–AD.

(a) *What airplanes are affected by this AD?* This AD affects R.E. Rust Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes, serial numbers C1–001 through C1–1014, that are type certificated in any category.

Note 1: We recommend all owners/operators of DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes, serial numbers C1–001 through C1–1014, with experimental airworthiness certificates comply with the actions required in this AD.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent reduced structural integrity in the primary structure of the airplane, which could result in failure of the rudder torque tube, elevator fasteners, and the vertical fin rear spar, or jamming or damage to the elevator. Such failures could lead to loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Check the airplane logbook: (i) For all affected airplanes: to determine if Modifications H 225, H 269, and H 360 are incorporated; and (ii) For only these airplanes that incorporate Modification H 197 (glider towing capabilities): to determine if Modification H 275 is incorporated.	Within the next 90 days after April 25, 2003 (the effective date of this AD).	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may check the airplane logbook.
(2) If, by checking the airplane logbook, you can positively determine that all the applicable modifications in paragraphs (d)(1)(i) and (d)(1)(ii) are incorporated, you must make an entry into the aircraft records that shows compliance with paragraphs (d)(1) and (d)(2) of this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).	Not applicable.	the owner/operator holding at least a private pilot certicate is authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may check the airplane logbook.
(3) If, by checking the airplane logbook, you determine that all the applicable modifications in paragraphs (d)(1)(i) and (d)(1)(ii) are not incorporated, or you cannot positively show that they are incorporated: (i) Incorporate each missing modification; and (ii) you must make an entry into the aircraft records that shows compliance with this portion of the AD in accordance with seciton 43.9 of the Federal Aviation Regulations (14 CFR 43.9).	Within the next 90 days after April 25, 2003 (the effective date of this AD), unless already accomplished.	British Aerospace Aerostructures Limited has issued BAe Aircraft Technical News Sheet CT (C1) No. 200, Issue 1, dated March 1, 1997.
(4) Do not incorporate Modification H 197 unless Modification H 275 has also been incorporated.	As of April 25, 2003 the (effective date of this AD).	British Aerospace Aerostructures Limited has issued BAe Aircraft Technical News Sheet CT (C1) No. 200, Issue 1, dated March 1, 1997.

Note 2: Although not required by this AD, FAA highly recommends you incorporate Modification H 282.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Atlanta Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 3: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Cindy Lorenzen, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia; telephone: (770) 703–6078; facsimile: (770) 703–6097.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with BAe Aircraft Technical News Sheet CT (C1) No 200, Issue 1, dated March 1, 1997. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from DeHavilland Support Limited, Duxford Airfield, Bldg. 213, Cambridgeshire, CB2 4QR, United Kingdom, telephone: +44 1223 830090, facsimile: +44 1223 830085, e-mail: info@dhsupport.com. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on April 25, 2003.

Issued in Kansas City, Missouri, on March 4, 2003.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–6040 Filed 3–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–63–AD; Amendment 39–13081; AD 2003–05–05]

RIN 2120–AA64

Airworthiness Directives; Robert E. Rust Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Robert E. Rust (R.E. Rust) Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes. This AD requires you to inspect the fuselage to determine if a steel fuselage center-section tie bar fitted with bushings in the end lug bolt holes is installed. If this bushed steel fuselage center-section tie bar is installed, this AD decreases the safe life limit. This AD is the result of reports that certain replacement steel fuselage center-section tie bars installed on the affected airplanes could fail before the originally published safe life limit. The actions specified by this AD are intended to prevent early failure of these bushed steel fuselage center-section tie bars, which could result in reduced structural

integrity of the wings. Such a condition could lead to loss of control of the airplane.

DATES: This AD becomes effective on April 25, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of April 25, 2003.

ADDRESSES: You may get the service information referenced in this AD from DeHavilland Support Limited, Duxford Airfield, Bldg. 213, Cambridgeshire, CB2 4QR, United Kingdom, telephone: +44 1223 830090, facsimile: +44 1223 830085, e-mail: *info@dhsupport.com*. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–63–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Cindy Lorenzen, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia; telephone: (770) 703–6078; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The FAA has received reports that an unsafe condition may exist on certain R.E. Rust Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes. After a review of several of these airplanes, we have determined that steel fuselage center-section tie bars, part number RD.C1.FS.107, are being installed as replacements parts. Some of these part numbers have been fitted with bushings in the end lugs to cover scored or oversized holes.

The use of bushings in the end of the lugs on these parts severely reduces the safe life limit. The original safe life limit established for the steel fuselage center-section tie bar was 30,000 fatigue hours.Fatigue hours are hours time-in-service multiplied by the role factor (operational use).

What Is the Potential Impact if FAA Took No Action?

This condition, if not corrected, could result in failure of the steel fuselage center-section tie bar. Such failure could lead to loss of control of the airplane.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain R.E. Rust Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on November 15, 2002 (67 FR 69149). The NPRM proposed to require you to check the airplane logbook to determine if a steel fuselage center-section tie bar, part number RD.C1.FS.107, is installed on the airplane. If this part number is installed, the NPRM proposed to require you to inspect the end lugs to determine if bushings are installed in the bolt holes. If bushings are present, the NPRM also proposed to reduce the safe life of that part from 30,000 fatigue hours to 16, 000 fatigue hours.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 54 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
12 workhours × $60 per hour = $720	No parts required	$720	$720 × 54 = $38,880.

We estimate the following costs to accomplish any necessary replacements that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per airplane
80 workhours × $60 per hour = $4,800	$2,250	$4,800 + $2,250 = $7,050.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy

of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2003–05–05 Robert E. Rust: Amendment 39–13081; Docket No. 2000–CE–63–AD.

(a) *What airplanes are affected by this AD?* This AD affects R.E. Rust Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes, serial numbers C1–001 through C1–1014, that are type certificated in any category.

Note 1: We recommend all owners/operators of DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes, serial numbers C1–001 through C1–1014, with experimental airworthiness certificates comply with the actions required in this AD.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent failure of the steel fuselage center-section tie bar prior to the originally published safe life, which could result in reduced structural integrity of the wings. Such a condition could lead to loss of control of the airplane. Steel fuselage center-section tie bars fitted with bushings in the end lug bolt holes have a reduced safe life of 16,000 fatigue hours.

(d) *What actions must I accomplish to address this problem*? To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Check the airplane logbook to determine if a steel fuselage center-section tie bar, part number (P/N) RD.C1.FS.107, is installed. Initial steel tie bar fitments were done under cover of Repair Drawings R.C1.FS.191 and RD.C1.FS.106. Later these drawings were included in Modification H.288 so fitment may be logged under either.	Upon accumulating 16,000 fatigue hours or within the next 100 hours time-in-service (TIS) after April 25, 2003 (the effective date of this AD), whichever occurs later.	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may check the airplane logbook. Calculate fatigue hours by multiplying the TIS by the role factor in accordance with British Aerospace Mandatory Technical News Sheet Series: Chipmunk (C1), No. 138, Issue: 5, dated August 1, 1985.
(2) If, by checking the airplane logbook, you can positively determine that a steel fuselage center-section tie bar, P/N RD.C1.FS.107, is not installed. (i) you must make an entry into the aircraft records that shows compliance with paragraphs (d)(1) and (d)(2) of this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9); and. (ii) continue to comply with the published life limits of the installed tie bar.	Not applicable	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may check the airplane logbook.
(3) If, by checking the airplane logbook, you determine that a steel fuselage center-section tie bar, P/N RD.C1.FS.107, is installed, or cannot positively show that one is not installed. (i) inspect the lug bolt holes to determine if bushings have been installed. (ii) if bushings have been installed, the safe life limit for that part is now 16,000 fatigue hours;. (iii) if bushing have not been installed, the safe life limit for that part remains at 30,000 fatigue hours; and. (iv) make an entry into the aircraft records that shows compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).	Prior to further flight after the logbook check required in paragraph (d)(1) of this AD.	In accordance with British Aerospace Mandatory Technical News Sheet Series: Chipmunk (C1), No. 175, Issue 1, dated August 1, 1985.
(4) The following are the safe life limit for steel fuselage center-section tie bars, P/N RD.C1.FS.107. (i) If fitted with bushings in the end lug bolt holes: 16,000 fatigue hours; and. (ii) If not fitted with bushings in the end lug bolt holes: 30,000 fatigue hours.	As of April 25, 2003 (the effective date of this AD).	Not applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Atlanta Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance

Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Cindy Lorenzen, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia; telephone: (770) 703–6078; facsimile: (770) 703–6097.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with British Aerospace Mandatory Technical News Sheet Series: Chipmunk (C1), No. 138, Issue: 5, dated August 1, 1985, and British Aerospace Mandatory Technical News Sheet Series: Chipmunk (C1), No. 175, Issue 1, dated August 1, 1985. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from DeHavilland Support Limited, Duxford Airfield, Bldg. 213, Cambridgeshire, CB2 4QR, United Kingdom, telephone: +44 1223 830090, facsimile: +44 1223 830085, e-mail: info@dhsupport.com. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on April 25, 2003.

Issued in Kansas City, Missouri, on March 4, 2003.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–6045 Filed 3–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–216–AD; Amendment 39–12912; AD 2002–21–06]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects information in an existing airworthiness directive (AD) that applies to all McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes. That AD currently requires revisions to the Airplane Flight Manual; installation of inspection aids on the wing upper surfaces; and, among other actions, installation of an overwing heater blanket system or primary upper wing ice detection system, and installation of a heater protection panel or an equipment protection device on certain overwing heater blanket systems. That AD also requires disabling the anti-ice systems for the upper wing surface on certain airplanes. This document corrects a reference to an incorrect paragraph. This correction is necessary to provide the correct paragraph reference.

DATES: Effective November 8, 2002.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of November 8, 2002 (67 FR 65298, October 24, 2002).

The incorporation by reference of certain publications, as listed in the regulations, was approved previously by the Director of the Federal Register as January 17, 1992 (57 FR 2014, January 17, 1992).

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of May 7, 2001 (66 FR 17499, April 2, 2001).

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Cheyenne Del Carmen, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5338; fax (562) 627–5210.

Other Information: Judy Golder, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4241, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *judy.golder@faa.gov.* Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION: On October 9, 2002, the Federal Aviation Administration (FAA) issued AD 2002–21–06, amendment 39–12912 (67 FR 65298, October 24, 2002), which applies to all McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes. That AD requires revisions to the Airplane Flight Manual; installation of inspection aids on the wing upper surfaces; and, among other actions, installation of an overwing heater blanket system or primary upper wing ice detection system, and installation of a heater protection panel or an equipment protection device on certain overwing heater blanket systems. That AD also requires disabling the anti-ice systems for the upper wing surface on certain airplanes. The actions required by that AD are intended to prevent ice ingestion into one or both engines and consequent loss of thrust from one or both engines; and damage to the upper wing skin surface and its structure, due to prolonged short-circuit electrical arcing of certain anti-ice systems.

On December 23, 2002, the FAA issued AD 2002–21–06 COR, amendment 39–12912 (68 FR 5, January 2, 2003), that corrected certain references that were transposed in two paragraphs.

Need for the Correction

After publication of that correction, the FAA received comments from two operators that point out the need for further correction. One commenter notes that, in the corrected AD, the statement at the beginning of the body advising that AD 2002–21–06 supersedes AD 2001–06–16 COR, amendment 39–12163, is missing. The commenter states that adding that statement would clarify that AD 2001–06–16 has been superseded. Both

commenters also note that in paragraph (l)(2)(i) of the originally corrected AD, having the heading of ''Alternate Methods of Compliance (AMOC),'' reference is made to installation of a non-skid, striped triangular symbol per option 5 of McDonnell Douglas Service Bulletin MD80–30–059, Revision 4 through Revision 7, as being approved as AMOCs with paragraphs (c) and (i)(2) of the originally corrected AD. The commenters point out that the correct reference should be ''with paragraphs (c) and (i)(4) of the AD.''

The FAA agrees with the commenters that clarification and correction are necessary and has determined a need for the issuance of a second correction of AD 2002–21–06. This correction adds the statement, which was inadvertently omitted, at the beginning of the AD advising that AD 2002–21–06 supersedes AD 2001–06–16 COR. This correction will also revise paragraph (l)(2)(i) of the AD to reference the correct paragraphs, *i.e.*, paragraphs (c) and (i)(4) of the AD.

Correction of Publication

This document corrects the errors and correctly adds the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The AD is reprinted in its entirety for the convenience of affected operators. The effective date of the AD remains November 8, 2002.

Since this action only adds clarifying information and corrects a typographical error in a paragraph reference, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public procedures are unnecessary.

List of Subjects in 14 CFR Part 39

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

Adoption of the Correction

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 [Corrected]

2. Section 39.13 is amended by correctly adding the following airworthiness directive (AD):

2002–21–06 McDonnell Douglas: Amendment 39–12912. Docket 2002–NM–216–AD. Supersedes AD 2001–06–16 COR, Amendment 39–12163.

Applicability: All Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the upper wing skin surface and its structure, due to prolonged short-circuit electrical arcing of the anti-ice system; accomplish the following:

Restatement of Requirements of AD 2001–06–16 COR

Airplane Flight Manual Revision

(a) Within 10 days after January 17, 1992 (the effective date of AD 92–03–02, amendment 39–8156), revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

''Ice on Wing Upper Surfaces

Caution

Ice shedding from the wing upper surface during takeoff can cause severe damage to one or both engines, leading to surge, vibration, and complete thrust loss. The formation of ice can occur on wing surfaces during exposure of the airplane to normal icing conditions. Clear ice can also occur on the wing upper surfaces when cold-soaked fuel is in the main wing fuel tanks, and the airplane is exposed to conditions of high humidity, rain, drizzle, or fog at ambient temperatures well above freezing. Often, the ice accumulation is clear and difficult to detect visually. The ice forms most frequently on the inboard, aft corner of the main wing tanks. [End of Cautionary Note].

The wing upper surfaces must be physically checked for ice when the airplane has been exposed to conditions conducive to ice formation. Takeoff may not be initiated unless the flight crew verifies that a visual check and a physical (hands-on) check of the wing upper surfaces have been accomplished, and that the wing is clear of ice accumulation when any of the following conditions occur:

(1) When the ambient temperature is less than 50 degrees F and high humidity or visible moisture (rain, drizzle, sleet, snow, fog, etc.) is present;

(2) When frost or ice is present on the lower surface of either wing;

(3) After completion of de-icing.

When inspection aids (*i.e.* tufts, decals, mount pads, painted symbols, and paint stripes) are installed in accordance with McDonnell Douglas MD–80 Service Bulletin 30–59, the physical check may be made by assuring that all installed tufts move freely.

Note: This limitation does not relieve the requirement that aircraft surfaces are free of frost, snow, and ice accumulation, as required by Federal Aviation Regulations Sections 91.527 and 121.629. [End of Note]''

AFM Configuration Deviation List Revision

(b) Within 10 days after January 17, 1992, revise the Configuration Deviation List (CDL) Appendix of the FAA-approved AFM to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

''30–80–01 Triangular Decal and Tuft Assemblies

Up to two (2) decals or tufts per side may be missing, provided:

(a) At least one decal and tuft on each side is located along the aft spar line; and

(b) The tufts are used for performing the physical check to determine that the upper wing is free of ice by observing that the tufts move freely.

Up to eight (8) decals and/or tufts may be missing, provided:

(a) Takeoff may not be initiated unless the flight crew verifies that a physical (hands-on) check is made of the upper wing in the location of the missing decals and/or tufts to assure that there is no ice on the wing when icing conditions exist;

or

(b) When the ambient temperature is more than 50 degrees F.''

Installation of Inspection Aids

(c) Within 30 days after January 17, 1992, install inspection aids (*i.e.*, tufts, decals, mount pads, painted symbols, and paint stripes) on the inboard side of the wings' upper surfaces, in accordance with McDonnell Douglas Service Bulletin 30–59, dated September 18, 1989; Revision 1, dated January 5, 1990; or Revision 2, dated August 15, 1990.

Repetitive Tests and One-Time Inspection

(d) For airplanes on which an overwing heater blanket system was installed without installation of a heater protection panel (HPP) or an equipment protection device (EPD) prior to May 7, 2001 (the effective date of 2001–06–16 COR, amendment 39–12163): Within 60 days after May 7, 2001, accomplish the actions specified in paragraph (d)(1) or (d)(2) of this AD, as applicable.

(1) For airplanes on which the overwing heater blanket system was installed in accordance with McDonnell Douglas Service

Bulletin MD80–30–071, Revision 02, dated February 6, 1996; or McDonnell Douglas Service Bulletin MD80–30–078, Revision 01, dated April 8, 1997: Accomplish paragraphs (d)(1)(i) and (d)(1)(ii) of this AD.

(i) Remove secondary access covers, and perform a one-time detailed visual inspection to detect discrepancies (mechanical damage or punctures in the upper skin of the blanket, prying damage on the panel, and fuel leakage) of the overwing heater blanket, in accordance with McDonnell Douglas Alert Service Bulletin MD80–30A087, dated September 22, 1997. And,

(ii) Accomplish paragraph (d)(1)(ii)(A) or (d)(1)(ii)(B) of this AD.

(A) Perform dielectric withstanding voltage and resistance tests in accordance with McDonnell Douglas Alert Service Bulletin MD80–30A087, dated September 22, 1997. Repeat the tests thereafter at intervals not to exceed 150 days, until installation of an HPP in accordance with paragraph (f)(1)(i) or (f)(1)(ii) of this AD, as applicable.

(B) Deactivate the overwing heater blanket system until accomplishment of dielectric withstanding voltage and resistance tests specified in paragraph (d)(1)(ii)(A). If the overwing heater blanket system is deactivated as provided by this paragraph, continue to accomplish the requirements of paragraphs (a), (b), and (c) of this AD.

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

(2) For airplanes on which the overwing heater blanket system was installed in accordance with TDG Aerospace, Inc., STC SA6042NM: Accomplish paragraphs (d)(2)(i) and (d)(2)(ii) of this AD.

(i) Remove secondary access covers, and perform a one-time detailed visual inspection to detect discrepancies (mechanical damage or punctures in the upper skin of the blanket, prying damage on the panel, and fuel leakage) of the overwing heater blanket, in accordance with McDonnell Douglas Alert Service Bulletin MD80–30A087, dated September 22, 1997. And,

(ii) Accomplish paragraph (d)(2)(ii)(A) or (d)(2)(ii)(B) of this AD.

(A) Perform dielectric withstanding voltage and resistance tests in accordance with McDonnell Douglas Alert Service Bulletin MD80–30A087, dated September 22, 1997. Repeat the tests thereafter at intervals not to exceed 150 days, until installation of an EPD in accordance with paragraph (f)(2)(i) of this AD.

(B) Deactivate overwing heater blanket system until accomplishment of dielectric withstanding voltage and resistance tests specified in paragraph (d)(2)(ii)(A). If the overwing heater blanket system is deactivated as provided by this paragraph, continue to accomplish the requirements of paragraphs (a), (b), and (c) of this AD.

Corrective Action

(e) If any discrepancy is detected during any inspection or test performed in accordance with paragraph (d) of this AD, prior to further flight, repair or replace the affected heater blanket, in accordance with McDonnell Douglas Alert Service Bulletin MD80–30A087, dated September 22, 1997; except as provided in paragraph (h) of this AD.

Note 3: McDonnell Douglas Alert Service Bulletin MD80–30A087, dated September 22, 1997, references TDG Aerospace Document E95–451, Revision B, dated January 31, 1996, as an additional source of service information for accomplishment of repair or replacement of the overwing heater blanket.

Installation of Overwing Heater Blanket or Primary Upper Wing Ice Detection System

(f) Within 3 years after May 7, 2001, do the requirements of either paragraph (f)(1) or (f)(2) of this AD.

(1) Do the actions specified in paragraph (f)(1)(i) or (f)(1)(ii) of this AD, as applicable.

(i) For airplanes listed in Group 1 in McDonnell Douglas Service Bulletin MD80–30–090, dated October 19, 1999: Install an overwing heater blanket system in accordance with McDonnell Douglas Service Bulletin MD80–30–071, Revision 02, dated February 6, 1996; and modify and reidentify the existing HPP in accordance with McDonnell Douglas Service Bulletin MD80–30–090. Modification of the existing HPP in accordance with this paragraph constitutes terminating action for the repetitive inspections required by (d)(1)(ii)(A) of this AD.

(ii) For airplanes listed in Group 2 in McDonnell Douglas Service Bulletin MD80–30–090, dated October 19, 1999: Install an overwing heater blanket system in accordance with McDonnell Douglas Service Bulletin MD80–30–078, Revision 01, dated April 8, 1997; and install an HPP and associated wiring in accordance with McDonnell Douglas Service Bulletin MD80–30–090. Installation of an HPP and associated wiring in accordance with this paragraph constitutes terminating action for the repetitive inspections required by (d)(1)(ii)(A) of this AD.

Note 4: For other airplanes, accomplishment of the requirements of paragraph (f)(1)(i) or (f)(1)(ii) of this AD may be acceptable per paragraph (i)(1) of this AD.

(2) Accomplish the actions specified in either paragraph (f)(2)(i), (f)(2)(ii), or (f)(2)(iii) of this AD.

(i) Install an overwing heater blanket system, and install an EPD that provides a circuit protection function to the overwing heater blanket, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Installation of an EPD in accordance with this paragraph constitutes terminating action for the repetitive inspections required by (d)(2)(ii)(A) of this AD.

Note 5: Installation of an overwing heater blanket system and installation of an EPD that provides a circuit protection function to the overwing heater blanket, in accordance with TDG Aerospace, Inc., SA6042NM, or TDG Master Drawing List (MDL) E93–104, Revision R, dated October 25, 2000; is an approved means of compliance with the requirements of paragraph (f)(2)(i) of this AD.

(ii) Install an overwing heater blanket system in accordance with a method approved by the Manager, Los Angeles ACO.

(iii) Install an FAA-approved primary upper wing ice detection system in accordance with a method approved by the Manager, Los Angeles ACO.

Note 6: Boeing (McDonnell Douglas) has received FAA approval of a primary upper wing ice detection system that is considered to be an alternative method of compliance (AMOC) with the requirements of paragraph (f)(2)(iii) of this AD. Information concerning such AMOCs may be obtained from the Los Angeles ACO.

AFM Revision

(g) Except as provided by paragraph (h) of this AD, prior to further flight after accomplishment of the installation required by paragraph (f)(1) or (f)(2) of this AD, revise the Limitations Section of the FAA-approved AFM to include the following. This may be accomplished by inserting a copy of this AD in the AFM. After accomplishment of the installation required by paragraph (f)(1) or (f)(2) of this AD and this AFM revision, the AFM revisions required by paragraphs (a) and (b) of this AD may be removed from the AFM, and the inspection aids required by paragraph (c) of this AD may be removed from the airplane.

''Ice on Wing Upper Surfaces

Caution

Ice shedding from the wing upper surface during takeoff can cause severe damage to one or both engines, leading to surge, vibration, and complete thrust loss. The formation of ice can occur on wing surfaces during exposure of the airplane to normal icing conditions. Clear ice can also occur on the wing upper surfaces when cold-soaked fuel is in the main wing fuel tanks, and the airplane is exposed to conditions of high humidity, rain, drizzle, or fog at ambient temperatures well above freezing. Often, the ice accumulation is clear and difficult to detect visually. The ice forms most frequently on the inboard, aft corner of the main wing tanks. [End of Cautionary Note]''.

MMEL Provision

(h) An airplane may be operated with an inoperative overwing heater blanket or primary upper wing ice detection system for 10 days per the Master Minimum Equipment List (MMEL), provided that the actions specified in paragraphs (h)(1), (h)(2), and (h)(3) of this AD are done before further flight.

(1) Revise the Limitations Section of the FAA-approved AFM to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

''Ice on Wing Upper Surfaces

Caution

The wing upper surfaces must be physically checked for ice when the airplane has been exposed to conditions conducive to

ice formation. Takeoff may not be initiated unless the flight crew verifies that a visual check and a physical (hands-on) check of the wing upper surfaces have been accomplished, and that the wing is clear of ice accumulation when any of the following conditions occur:

(1) When the ambient temperature is less than 50 degrees F and high humidity or visible moisture (rain, drizzle, sleet, snow, fog, etc.) is present;

(2) When frost or ice is present on the lower surface of either wing;

(3) After completion of de-icing.

When inspection aids (*i.e.* tufts, decals, mount pads, painted symbols, and paint stripes) are installed in accordance with McDonnell Douglas MD–80 Service Bulletin 30–59, the physical check may be made by assuring that all installed tufts move freely.

Note: This limitation does not relieve the requirement that aircraft surfaces are free of frost, snow, and ice accumulation, as required by Federal Aviation Regulations Sections 91.527 and 121.629. [End of Note]''.

(2) Revise the CDL Appendix of the FAA-approved AFM to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

''30–80–01 Triangular Decal and Tuft Assemblies

Up to two (2) decals or tufts per side may be missing, provided:

(a) At least one decal and tuft on each side is located along the aft spar line; and

(b) The tufts are used for performing the physical check to determine that the upper wing is free of ice by observing that the tufts move freely.

Up to eight (8) decals and/or tufts may be missing, provided:

(a) Takeoff may not be initiated unless the flight crew verifies that a physical (hands-on) check is made of the upper wing in the location of the missing decals and/or tufts to assure that there is no ice on the wing when icing conditions exist;

or

(b) When the ambient temperature is more than 50 degrees F.''

(3) Install inspection aids (*i.e.*, tufts, decals, mount pads, painted symbols, and paint stripes) on the inboard side of the wings' upper surfaces, in accordance with McDonnell Douglas Service Bulletin 30–59, dated September 18, 1989; Revision 1, dated January 5, 1990; or Revision 2, dated August 15, 1990.

New Requirements of This AD

Note 7: The Honeywell Anti-Ice System specified in paragraphs (i), (j), and (k) of this AD, is also known and specified as an overwing heater blanket system installed in accordance with AlliedSignal Supplemental Type Certificate (STC) STC SA6061NM.

For Airplanes Equipped With a Honeywell Anti-Ice System Installed per STC SA6061NM

(i) For airplanes equipped with a Honeywell Anti-Ice System installed per STC SA6061NM: Accomplish the actions specified in paragraphs (i)(1), (i)(2), (i)(3), and (i)(4) of this AD, at the times specified in those paragraphs.

(1) Within 72 hours after the effective date of this AD, disable the Honeywell Anti-Ice System installed per STC SA6061NM, per Honeywell Alert Service Bulletin 109XXXX–30–38, dated August 8, 2002.

(2) Within 72 hours after the effective date of this AD, revise the Limitations Section of the FAA-approved AFM to include the following (this may be accomplished by inserting a copy of this AD in the AFM):

''Ice on Wing Upper Surfaces

Caution

Ice shedding from the wing upper surface during takeoff can cause severe damage to one or both engines, leading to surge, vibration, and complete thrust loss. The formation of ice can occur on wing surfaces during exposure of the airplane to normal icing conditions. Clear ice can also occur on the wing upper surfaces when cold-soaked fuel is in the main wing fuel tanks, and the airplane is exposed to conditions of high humidity, rain, drizzle, or fog at ambient temperatures well above freezing. Often, the ice accumulation is clear and difficult to detect visually. The ice forms most frequently on the inboard, aft corner of the main wing tanks. [End of Cautionary Note].

The wing upper surfaces must be physically checked for ice when the airplane has been exposed to conditions conducive to ice formation. Takeoff may not be initiated unless the flight crew verifies that a visual check and a physical (hands-on) check of the wing upper surfaces have been accomplished, and that the wing is clear of ice accumulation when any of the following conditions occur:

(1) When the ambient temperature is less than 50 degrees F and high humidity or visible moisture (rain, drizzle, sleet, snow, fog, etc.) is present;

(2) When frost or ice is present on the lower surface of either wing;

(3) After completion of de-icing.

When inspection aids (*i.e.* tufts, decals, mount pads, painted symbols, and paint stripes) are installed in accordance with McDonnell Douglas MD–80 Service Bulletin 30–59, the physical check may be made by assuring that all installed tufts move freely.

Note: This limitation does not relieve the requirement that aircraft surfaces are free of frost, snow, and ice accumulation, as required by Federal Aviation Regulations Sections 91.527 and 121.629. [End of Note]''

AFM Configuration Deviation List Revision

(3) Within 72 hours after the effective date of this AD, revise the CDL Appendix of the FAA-approved AFM to include the following (this may be accomplished by inserting a copy of this AD in the AFM):

''30–80–01 Triangular Decal and Tuft Assemblies

Up to two (2) decals or tufts per side may be missing, provided:

(a) At least one decal and tuft on each side is located along the aft spar line; and

(b) The tufts are used for performing the physical check to determine that the upper wing is free of ice by observing that the tufts move freely.

Up to eight (8) decals and/or tufts may be missing, provided:

(a) Takeoff may not be initiated unless the flight crew verifies that a physical (hands-on) check is made of the upper wing in the location of the missing decals and/or tufts to assure that there is no ice on the wing when icing conditions exist;

or

(b) When the ambient temperature is more than 50 degrees F.''

Installation of Inspection Aids

(4) Within 30 days after the effective date of this AD, install inspection aids (*i.e.*, tufts, decals, mount pads, painted symbols, and paint stripes) on the inboard side of the wings' upper surfaces, in accordance with McDonnell Douglas Service Bulletin 30–59, dated September 18, 1989; Revision 1, dated January 5, 1990; or Revision 2, dated August 15, 1990.

Note 8: Operators should note that certain AMOCs have been approved as acceptable methods of compliance with paragraph (i)(4) of this AD. Information concerning such AMOCs may be obtained from the Manager, Los Angeles ACO.

Installation of Overwing Heater Blanket or Primary Upper Wing Ice Detection System

(j) For airplanes equipped with disabled Honeywell Anti-Ice Systems installed per STC SA6061NM: Within 3 years after May 7, 2001, accomplish the requirements of paragraph (j)(1), (j)(2), or (j)(3) of this AD.

(1) Install an overwing heater blanket system, and install an EPD that provides a circuit-protection function to the overwing heater blanket, in accordance with a method approved by the Manager, Los Angeles ACO, FAA.

Note 9: Installation of an overwing heater blanket system and installation of an EPD that provides a circuit-protection function to the overwing heater blanket, in accordance with TDG Aerospace, Inc., SA6042NM, or TDG Master Drawing List (MDL) E93–104, Revision R, dated October 25, 2000; is an approved means of compliance with the requirements of paragraph (j)(1) of this AD.

(2) Install an overwing heater blanket system in accordance with a method approved by the Manager, Los Angeles ACO.

(3) Install an FAA-approved primary upper wing ice detection system in accordance with a method approved by the Manager, Los Angeles ACO.

Note 10: Boeing (McDonnell Douglas) has received FAA approval of an acceptable primary upper wing ice detection system, which is considered to be an acceptable method of compliance with the requirements of paragraph (j)(3) of this AD when accomplished in accordance with a method approved by the Manager, Los Angeles ACO.

AFM Revision

(k)(1) For airplanes equipped with a disabled Honeywell Anti-Ice Systems installed per STC SA6061NM: Prior to further flight after accomplishment of the installation required by paragraph (j)(1),

(j)(2), or (j)(3) of this AD, revise the Limitations Section of the FAA-approved AFM to include the following (this may be accomplished by inserting a copy of this AD in the AFM):

''Ice on Wing Upper Surfaces

Caution

Ice shedding from the wing upper surface during takeoff can cause severe damage to one or both engines, leading to surge, vibration, and complete thrust loss. The formation of ice can occur on wing surfaces during exposure of the airplane to normal icing conditions. Clear ice can also occur on the wing upper surfaces when cold-soaked fuel is in the main wing fuel tanks, and the airplane is exposed to conditions of high humidity, rain, drizzle, or fog at ambient temperatures well above freezing. Often, the ice accumulation is clear and difficult to detect visually. The ice forms most frequently on the inboard, aft corner of the main wing tanks. [End of Cautionary Note]''.

(2) After accomplishment of the installation required by paragraph (j)(1) of this AD and this AFM revision, the AFM revisions and CDLs required by paragraphs (i)(2) and (i)(3) of this AD may be removed from the AFM, and the inspection aids required by paragraph (i)(4) of this AD may be removed from the airplane.

Alternative Methods of Compliance (AMOCs)

(l)(1) 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, Los Angeles ACO, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

(2) The following AMOCs were approved previously per AD 92–03–02, amendment 39–8156, and are approved as AMOCs with the indicated paragraphs of this AD:

(i) Installation of a non-skid, striped triangular symbol per Option 5 of McDonnell Douglas Service Bulletin MD80–30–059, Revision 4 though Revision 7, is approved as an AMOC with paragraphs (c) and (i)(4) of this AD; and

(ii) Revision of the Configuration Deviation List (CDL) Appendix of the AFM by inserting a copy of CDL Appendix, Section I, Page 2A, dated March 10, 1993, into the AFM, is approved as an AMOC with paragraphs (b) and (i)(3) of this AD.

Note 11: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

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

Incorporation by Reference

(n) Unless otherwise specified in this AD, the actions shall be done in accordance with the applicable service document identified in the following table:

Service document	Revision level	Date
Honeywell Alert Service Bulletin 109XXXX–30–38	Original	August 8, 2002
McDonnell Douglas Alert Service Bulletin MD80–30A087	Original	September 22, 1997
McDonnell Douglas Service Bulletin 30–59	Original	September 18, 1989
McDonnell Douglas Service Bulletin 30–59	1	January 5, 1990
McDonnell Douglas Service Bulletin 30–59	2	August 15, 1990
McDonnell Douglas Service Bulletin MD80–30–071	02	February 6, 1996
McDonnell Douglas Service Bulletin MD80–30–078	01	April 8, 1997
McDonnell Douglas Service Bulletin MD80–30–090	Original	October 19, 1999

(1) The incorporation by reference of Honeywell Alert Service Bulletin 109XXXX–30–38, dated August 8, 2002, was approved previously by the Director of the Federal Register as of November 8, 2002 (67 FR 65298, October 24, 2002).

(2) The incorporation by reference of McDonnell Douglas Service Bulletin 30–59, dated September 18, 1989; McDonnell Douglas Service Bulletin 30–59, Revision 1, dated January 5, 1990; and McDonnell Douglas Service Bulletin 30–59, Revision 2, dated August 15, 1990; was approved previously by the Director of the **Federal Register** as of January 17, 1992 (57 FR 2014, January 17, 1992).

(3) The incorporation by reference of the remaining service bulletins listed in Table 1 of this AD, was approved previously by the Director of the **Federal Register** as of May 7, 2001 (66 FR 17499, April 2, 2001).

(4) Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Effective Date

(o) The effective date of this amendment remains November 8, 2002.

Issued in Renton, Washington, on March 11, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–6257 Filed 3–17–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–21–AD; Amendment 39–13086; AD 2003–05–10]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF34–3A1, –3B, and –3B1 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), that is applicable to General Electric Company (GE) CF34–3A1, –3B, and –3B1 turbofan engines with scavenge screens part numbers (P/Ns) 4047T95P01 and 5054T86G02 installed in the B-sump oil scavenge system. That AD currently requires initial and repetitive visual inspections and cleaning of the B-sump scavenge screens. This amendment requires initial and repetitive visual inspections and cleaning of the B-sump scavenge screens until a screenless fitting is installed. This amendment is prompted by six reports of B-sump oil scavenge system failure causing engine in-flight shutdowns. The actions specified by this AD are intended to prevent B-sump scavenge screen blockage due to coking, which could result in ignition of B-sump oil in the secondary air system, fan drive shaft separation, and uncontained engine failure.

DATES: Effective April 2, 2003. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of April 2, 2003.

Comments for inclusion in the Rules Docket must be received on or before May 19, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–21–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.

The service information referenced in this AD may be obtained from GE Aircraft Engines, 1000 Western Avenue, Lynn, MA 01910; Attention: CF34 Product Support Engineering, Mail Zone: 34017; telephone (781) 594–6323; fax (781) 594–0600. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Barbara Caufield, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7146; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: On September 10, 2001, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 2001–19–02, Amendment 39–12441 (66 FR 48789, September 24, 2001), to require initial and repetitive visual inspections and cleaning of the B-sump scavenge screens. That action was prompted by five reports of B-sump oil scavenge system failure causing engine in-flight shutdowns. That condition, if not corrected, could result in ignition of B-sump oil in the secondary air system, fan drive shaft separation, and uncontained engine failure. Since that AD was issued, one additional CF34 in-flight shutdown event associated with B-sump oil release has occurred within the original inspection interval. That engine experienced a fan drive shaft separation, low pressure turbine (LPT) stage 3–4 joint separation, and LPT case forward flange separation, resulting in the release of the entire LPT from the engine. As a result of this latest event, this AD calls out more restrictive repetitive inspection intervals and terminating actions.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of GE Aircraft Engines (GE) Alert Service Bulletins (ASB) CF34–AL S/B 79–A0014, Revision 3, dated January 31, 2003; and ASB CF34–BJ S/B 79–A0015, Revision 3, dated January 31, 2003; that describe procedures for initial and repetitive visual inspections and cleaning of the B-sump scavenge screens. The FAA has also reviewed and approved GE ASB CF34–AL S/B 79–A0016 and ASB CF34–BJ S/B 79–A0017, both dated June 17, 2002, that describe the procedures for introducing the screenless B-sump scavenge fittings or for reworking to eliminate the screens from the existing scavenge screen fittings located at the forward and aft end of the lube and scavenge pump assembly thereby terminating the repetitive inspections.

Differences Between This AD and the Manufacturer's Service Information

GE ASB CF34–AL S/B 79–A0014, Revision 3, dated January 31, 2003, recommends, for engines with more than 4,000 hours time-since new (TSN) or more than 1,000 hours time-since-last-shop-visit (TSLSV), initial visual inspections and cleaning of the B-sump scavenge screens ''by the next A-check''. GE ASB CF34–BJ S/B 79–A0015, Revision 3, dated January 31, 2003, recommends, for engines with more than 4,000 hours TSN or more than 1,000 hours TSLSV, initial visual inspections and cleaning of the B-sump scavenge screens within 300 hours for the CF34–3A1 engine model or within 400 hours for the CF34–3B engine model. However, this AD requires initial visual inspections and cleaning of the B-sump scavenge screens within 500 hours after the effective date of this AD. The time intervals have been changed from those cited in the ASBs to provide consistency for all engine models and to eliminate the use of aircraft maintenance terminology. The times are approximately equivalent to the A-check intervals.

GE ASBs CF34–AL S/B 79–A0016, dated June 17, 2002; and CF34–BJ S/B 79–A0017, dated June 17, 2002; recommend, for engines with more than 4,000 hours TSN or more than 1,000 hours TSLSV, replacement of existing scavenge screens P/Ns 4047T95P01 and 5054T86G02, installed in the B-sump oil scavenge system, with screenless fittings ''by the next A-check''. However, this AD requires installation of screenless fittings, or fittings that have been reworked to remove the screens, in the B-sump oil scavenge system within 400 hours after the effective date of this AD. The installation requirement has been changed from that cited in the ASBs to eliminate the use of aircraft maintenance terminology. The time is approximately equivalent to the A-check interval.

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 GE CF34–3A1, –3B, and –3B1 turbofan engines of the same type design, this AD is being issued to prevent B-sump scavenge screen blockage due to coking, which could result in ignition of B-sump oil in the secondary air system, fan drive shaft separation, and uncontained engine failure. This AD requires:

- Initial visual inspection and cleaning of the scavenge screens, P/Ns 4047T95P01 and 5054T86G02, installed in the B-sump oil scavenge system.
- Repetitive visual inspection and cleaning of the scavenge screens, P/Ns 4047T95P01 and 5054T86G02, installed in the B-sump oil scavenge system, within 200 hours time-since-last inspection (TSLI) if no coking is found.
- Repetitive visual inspection and cleaning of the scavenge screens, P/Ns 4047T95P01 and 5054T86G02, installed in the B-sump scavenge system, within 100 hours TSLI if any coking is found.
- Replacement of existing scavenge screens, P/Ns 4047T95P01 and 5054T86G02, installed in the B-sump oil scavenge system, with screenless fittings within 400 hours after the effective date of this AD.

The actions must be done in accordance with the service bulletins described previously.

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 2001–NE–21–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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–12441 (66 FR 48789, September 24, 2001) and by adding a new airworthiness directive, Amendment 39–13086, to read as follows:

2003–05–10 General Electric Company: Amendment 39–13086. Docket No. 2001–NE–21–AD. Supersedes AD 2001–19–02, Amendment 39–12441.

Applicability: This airworthiness directive (AD) is applicable to General Electric Company (GE) CF34–3A1, –3B, and –3B1 turbofan engines with scavenge screens part numbers (P/Ns) 4047T95P01 and 5054T86G02 installed in the B-sump oil scavenge system. These engines are installed on, but not limited to, Bombardier Inc. (Canadair) Model CL–600–2A12, CL–600–2B16, and CL–600–2B19 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 (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 B-sump scavenge screen blockage due to coking, which could result in ignition of B-sump oil in the secondary air system, fan drive shaft separation, and uncontained engine failure, do the following:

Initial Inspection and Cleaning of B-sump Screens

(a) Perform an initial visual inspection and cleaning of scavenge screens, P/Ns 4047T95P01 and 5054T86G02, installed in the B-sump oil scavenge system, in accordance with Paragraphs 3A through 3B of the Accomplishment Instructions of GE Aircraft Engines (GE) Alert Service Bulletin (ASB) CF34–AL S/B 79–A0014, Revision 3, dated January 31, 2003; or ASB CF34–BJ S/B 79–A0015, Revision 3, dated January 31, 2003; and the following table:

INITIAL INSPECTION AND CLEANING SCHEDULE

Engine hours time-since-new (TSN) or time-since-last-shop-visit (TSLSV)	Inspect and clean
(1) Fewer than 4,000 hours TSN or fewer than 4,000 hours TSLSV if it can be confirmed that both the B-sump scavenge screens were cleaned and the B-sump and combustor frame (strut tubes) were removed from the engine and cleaned at that prior shop visit.	Before 4,000 hours TSN or TSLSV.
(2) Fewer than 1,000 hours TSLSV if it can NOT be confirmed that both the B-sump scavenge screens were cleaned and the B-sump and combustor frame (strut tubes) were removed from the engine and cleaned at that prior shop visit.	Before 1,000 hours TSLSV.
(3) 4,000 hours or greater TSN or 4,000 hours or greater TSLSV if it can be confirmed that both the B-sump scavenge screens were cleaned and the B-sump and combustor frame (strut tubes) were removed from the engine and cleaned at that prior shop visit, or 1,000 hours or greater TSLSV if it can NOT be confirmed that both the B-sump scavenge screens were cleaned and the B-sump and combustor frame (strut tubes) were removed from the engine and cleaned at that prior shop visit.	Within 500 hours time-in-service (TIS) after the effective date of this AD.

Repetitive Inspections and Cleaning

(b) Perform repetitive visual inspections and cleaning of scavenge screens, P/Ns 4047T95P01 and 5054T86G02, installed in the B-sump oil scavenge system, in accordance with Paragraphs 3A through 3B of the Accomplishment Instructions of GE ASB CF34–AL S/B 79–A0014, Revision 3, dated January 31, 2003; and ASB CF34–BJ S/

B 79–A0015, Revision 3, dated January 31, 2003; and the following:

(1) At intervals not to exceed 200 hours time-since-last-inspection (TSLI), if no coke is found in screens during initial or any prior inspections, or

(2) At intervals not to exceed 100 hours TSLI, if coke is found in screens during initial or any prior inspections.

Terminating Actions

(c) Within 400 hours TIS after the effective date of this AD, install new screenless fittings or fittings that have been reworked to remove the screens, in the B-sump oil scavenge system, in accordance with GE ASB CF34–AL S/B 79–A0016, dated June 17, 2002; or ASB CF34–BJ S/B 79–A0017, dated June 17, 2002. This constitutes terminating action to the inspections required in paragraph (b) of this AD.

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. 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 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

(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.

Documents That Have Been Incorporated by Reference

(f) The inspections, rework, or replacements must be done in accordance with the following GE Aircraft Engines (GEAE) Alert Service Bulletins (ASBs):

Document No.	Pages	Revision	Date
ASB CF34–AL S/B 79–A0014 Total pages: 10	All	3	January 31, 2003.
ASB CF34–BJ S/B 79–A0015 Total pages: 9	All	3	January 31, 2003.
ASB CF34–AL S/B 79–A0016 Total pages: 12	All	Original	June 17, 2002.
ASB CF34–BJ S/B 79–A0017 Total pages: 11	All	Original	June 17, 2002.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from GE Aircraft Engines, 1000 Western Avenue, Lynn, MA 01910; Attention: CF34 Product Support Engineering, Mail Zone: 34017; telephone (781) 594–6323; fax (781) 594–0600. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on April 2, 2003.

Issued in Burlington, Massachusetts, on March 6, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–6044 Filed 3–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–54–AD; Amendment 39–13087; AD 2003–05–11]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 407 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing emergency airworthiness directive (EAD), which was sent previously to all known U.S. owners and operators of Bell Helicopter Textron Canada (Bell) helicopters by individual letters. That EAD requires a visual check to ensure that the two swashplate drive link cup washers (cup washers) are installed correctly. If a cup washer is installed incorrectly, removing and replacing the swashplate outer ring, each cup washer, bearing and liner, and drive link where the cup washer was installed incorrectly are also required. This amendment requires the same actions as the existing EAD, but clarifies that only the visual check may be performed by the owner/operator. This amendment is prompted by two reported failures of the stud portion of the swashplate drive link. The actions specified by this AD are intended to detect an incorrectly installed cup washer, which could limit the travel of the swashplate outer ring and lead to failure of the stud portion of the swashplate drive link, and subsequent loss of control of the helicopter.

DATES: Effective April 2, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 2, 2003.

Comments for inclusion in the Rules Docket must be received on or before May 19, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–54–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.*

The applicable service information may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On November 13, 2002, the FAA issued EAD 2002–23–51 to require, before further flight, a visual check to ensure that the two cup washers are installed correctly. If either cup washer is installed incorrectly, removing and replacing the swashplate outer ring, each cup washer, bearing and liner, and drive link where the cup washer was installed incorrectly are also required. That action was prompted by two reported failures of the stud portion of the swashplate drive link. One or both cup washers may have been installed incorrectly. The requirements of that EAD are intended to detect an incorrectly installed cup washer, which could limit the travel of the swashplate outer ring and lead to failure of the stud portion of the swashplate drive link,

and subsequent loss of control of the helicopter.

Bell has issued Bell Helicopter Textron Alert Service Bulletin No. 407–02–55, dated October 29, 2002, which describes procedures for a one-time visual check of both cup washers to ensure that they are correctly installed. The check must be accomplished before each flight. Transport Canada classified this alert service bulletin as mandatory and issued AD No. CF–2002–46, dated November 6, 2002, to ensure the continued airworthiness of these helicopters in Canada.

This helicopter model is manufactured in Canada and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, 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.

Since the issuance of that EAD, the FAA determined that the paragraphs in the AD should be restructured to clarify that only the visual check may be performed by an owner/operator.

Since an unsafe condition has been identified that is likely to exist or develop on other Bell Model 407 helicopters of the same type design, this AD supersedes EAD 2002–23–51 to require the same actions as the existing EAD—a visual check of the two cup washers; if a cup washer is installed incorrectly, remove and replace the swashplate outer ring, part number (P/N) 406–010–411–117, each cup washer, P/N 406–010–412–101, bearing and liner, P/N 406–010–417–101, and drive link, P/N 406–010–426–101, where the cup washer was installed incorrectly. This AD reorganizes the intended requirements of the existing EAD. The actions must be accomplished in accordance with the service bulletin described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability and structural integrity of the helicopter. Therefore, the visual check and replacements, if necessary, are required before further flight and this AD must be issued immediately.

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.

The FAA estimates that 294 helicopters of U.S. registry will be affected by this AD, that it will take approximately 0.5 work hours per helicopter to accomplish the visual checks and 12 work hours per helicopter to replace certain parts, as necessary, and that the average labor rate is $60 per work hour. Required parts will cost approximately $17,549 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5,379,906.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD), Amendment 39–13087, to read as follows:

2003–05–11 Bell Helicopter Textron Canada: Amendment 39–13087. Docket No. 2002–SW–54–AD. Supersedes Emergency AD 2002–23–51, Docket No. 2002–SW–51–AD.

Applicability: Model 407 helicopters, serial numbers 53000 through 53538, certificated in any category.

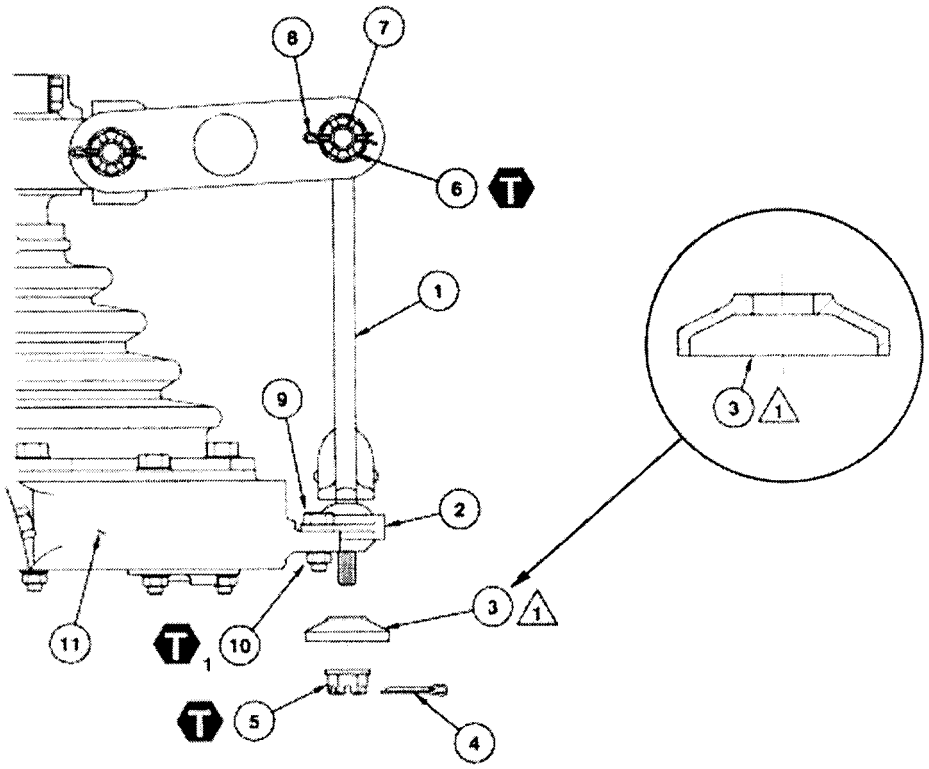
Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance 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: Required before further flight, unless accomplished previously.

To detect an incorrectly installed swashplate drive link cup washer (cup washer), which could limit the travel of the swashplate outer ring and lead to failure of the stud portion of the swashplate drive link, and subsequent loss of control of the helicopter, accomplish the following:

(a) Visually check both cup washers, part number (P/N) 406–010–412–101, for correct installation in accordance with Figure 1 of this AD. If both cup washers are installed correctly, no further action is required. This visual check may be performed by an owner/operator (pilot) holding at least a private pilot certificate, and must be entered into the aircraft records showing compliance with this paragraph in accordance with sections 43.11 and 91.417(a)(2)(v) of the Federal Aviation Regulations (14 CFR sections 43.11 and 91.417(a)(2)(v)). See the following Figure 1:

BILLING CODE 4910–13–P



LEGEND

1. Drive link (406-010-426-101)
2. Bearing and liner (406-010-417-101)
3. Cup washer (406-010-412-101)
4. Cotter pin (MS24655-155)
5. Nut (MS14144L5)
6. Nut (MS14144L5)
7. Bolt (NAS6605D61)
8. Cotter pin (MS24655-155)
9. Bolt (NAS6204-7)
10. Nut (MS21042L4)
11. Swashplate outer ring (406-010-411-117)

T 120 TO 160 IN-LB (13.6 TO 18.1 N-m)

T_1 75 TO 95 IN-LB (8.47 TO 10.7 N-m)

NOTES

1. Washer shown is correctly installed.
2. Washers under bolt head (9) and nut (10) are not shown for clarity.

Figure 1. Correct cup washer direction, installation of

(b) If a cup washer is installed incorrectly, remove and replace the swashplate outer ring, each cup washer, bearing and liner, and drive link where the cup washer was installed incorrectly. Replace these parts in accordance with Part II of the Accomplishment Instructions in Bell Helicopter Textron Alert Service Bulletin No. 407–02–55, dated October 29, 2002.

Note 2: In Part II, step 3.a. of the alert service bulletin, the swashplate is incorrectly referenced as item 10 of Figure 1. The reference should state item 11.

(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, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(d) Special flight permits will not be issued.

(e) The removals and replacements, if necessary, shall be done in accordance with the Accomplishment Instructions in Bell Helicopter Textron Alert Service Bulletin No. 407–02–55, dated October 29, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272. Copies may be inspected at FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on April 2, 2003.

Note 4: The subject of this AD is addressed in Transport Canada (Canada) AD No. CF–2002–46, dated November 6, 2002.

Issued in Fort Worth, Texas, on March 6, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–6136 Filed 3–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–53–AD; Amendment 39–13085; AD 2003–05–09]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Falcon 2000 and Mystere-Falcon 900 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Dassault Model Falcon 2000 and Mystere-Falcon 900 series airplanes. This action requires a one-time inspection to detect discrepant wires in the fire control panel for the engines and auxiliary power unit (APU), and corrective action if necessary. This action is necessary to ensure that the correct wires are installed in the fire control panel so that the flight crew can activate the fire extinguishers in the event of an engine or APU fire. This action is intended to address the identified unsafe condition.

DATES: Effective April 2, 2003.

Comments for inclusion in the Rules Docket must be received on or before April 17, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–53–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–53–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

Information related to this AD may be examined at the FAA, Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on all Dassault Model Falcon 2000 and Mystere-Falcon 900 series airplanes. Typically during routine maintenance, continuity checks are performed on the fire extinguishers and the fire control panel for the engines and auxiliary power unit (APU). Following these checks, the selector switches on the fire control panel are secured with copper snap wires that will readily break away, allowing the switch to activate the extinguishers. The DGAC advises that the maintenance manuals for these airplanes had incorrectly specified that the selector switches be secured with lock wires, rather than breakaway (snap) copper wires. Use of incorrect wires could result in the flight crew being unable to activate the fire extinguishers in the event of an engine or APU fire.

Explanation of Relevant Service Information

Dassault Maintenance Manual sections 26–201 (for Model Falcon 2000 series airplanes) and 26–203 (for Model Mystere-Falcon 900 series airplanes) provide instructions for checking the correct operation of the fire extinguisher control switches. The manufacturer has revised these sections of the maintenance manuals to, among other things, correctly identify the wires for installation on the fire control panel. The revisions are dated February 2003.

The DGAC issued French telegraphic airworthiness directive T2003–084(B), dated February 12, 2003, to ensure the continued airworthiness of these airplanes in France by mandating immediate checks for lock wires in the fire control panel and replacement of lock wires with snap wires.

FAA's Conclusions

These airplane models are manufactured in France and are 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, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, 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.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to ensure that the correct wires are installed in the fire control panel so that the flight crew can activate the fire extinguishers in the event of an engine or APU fire. This AD requires a one-time general visual inspection to detect discrepant (lock) wires, and replacement of lock wires with snap wires.

Differences Between This AD and the French Airworthiness Directive

The French airworthiness directive mandates that operators check for discrepant wires before the next flight. The FAA recognizes the unsafe condition presented by this situation but finds that an 8-day compliance time is adequate in consideration of the safety implications, the average utilization rate of the affected fleet, the practical aspects of scheduling an orderly inspection of the fleet, and the availability of required replacement parts. The FAA cannot justify the significant economic impact on

operators that would occur if airplanes were to be grounded by a required inspection before further flight. Therefore, in light of all of these factors, the FAA has determined that the 8-day compliance time represents an appropriate interval in which to inspect the wires in a timely manner within the fleet and still maintain an adequate level of safety.

The DGAC identifies ''MS20995CY15'' as one of the standards that identifies the correct wires for the fire control panel described in this AD. The FAA has learned that that document has been canceled and replaced by National Aerospace Standard NASM20995CY15, which is listed in paragraph (a) of this AD.

Determination of Rule's Effective Date

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 shall 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.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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 rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–53–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it 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:

2003–05–09 Dassault Aviation: Amendment 39–13085. Docket 2003–NM–53–AD.

Applicability: All Model Falcon 2000 and Mystere-Falcon 900 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To ensure that the correct wires are installed on the fire control panel so that the flight crew is able to activate the fire extinguishers in the event of a fire, accomplish the following:

Inspection

(a) Within 8 days after the effective date of this AD, perform a general visual inspection of the wires on the fire control panel to determine if they are identified in the norms specified in Norme française NF L 23–321, dated September 2000; or National Aerospace Standard NASM20995CY15, dated April 1998. Before further flight, replace lock wires with snap wires that are listed in either the NFL or NASM standard, as specified in Maintenance Manual section 26–201, dated February 2003 (for Model Falcon 2000 series airplanes); or section 26–203, dated February 2003 (for Model Mystere-Falcon 900 series airplanes).

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA. Operators shall submit their requests through

an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 4: The subject of this AD is addressed in French telegraphic airworthiness directive T2003–084(B), dated February 12, 2003.

Effective Date

(d) This amendment becomes effective on April 2, 2003.

Issued in Renton, Washington, on March 6, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–6261 Filed 3–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14243; Airspace Docket No. 03–ACE–3]

Revocation of Class E Airspace; Brookfield, MO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revokes Class E airspace at Brookfield, MO.

EFFECTIVE DATE: 0901 UTC, April 17, 2003.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on January 28, 2003 (68 FR 4097). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 17, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on March 3, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–6425 Filed 3–17–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 648

Docket No. 021122284–3056–03 ; I.D. 110602A]

RIN 0648–AQ30

Fisheries of the Northeastern United States; Scup Fishery; Gear Restricted Area (GRA) Exemption Program

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

ACTION: Final rule; technical amendment.

SUMMARY: NMFS announces the approval by the Office of Management and Budget (OMB) and effectiveness of a collection-of-information requirement for a GRA Exemption Program, whereby interested participants must contact NMFS to request authorization to participate in the program. This final rule also codifies the OMB control number. The intent of this final rule is to inform the public of the effectiveness of the collection-of-information requirements and publish its related OMB control number.

DATES: Effective March 18, 2003.

ADDRESSES: Any comments regarding burden-hour estimates for collection-of-information requirements contained in this final rule should be sent to Patricia Kurkul, Regional Director, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, Fishery Policy Analyst, (978) 281–9279, fax (978) 281–9135, e-mail *sarah.mclaughlin@noaa.gov*.

SUPPLEMENTARY INFORMATION: On January 2, 2003 (68 FR 60), NMFS published a final rule that promulgated a regulatory amendment, under the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP), codifying requirements of the GRA Exemption Program. Section 648.122(d) of that final rule contains a collection-of-information requirement for any vessel that is subject to the provisions of the Southern and Northern GRAs. Such vessel must telephone the NMFS Northeast Region Permits Office (at 978–281–9370) if any portion of a trip will be in a GRA, to request a Scup GRA Exemption Program Authorization. Delayed effectiveness of §§ 648.14(a)(122), 648.14(a)(127), 648.122(a), 648.122(b), and 648.122(d) was announced in the January 2, 2003, final rule, pending OMB approval of the program enrollment procedures. On February 6, 2003, OMB approved the collection-of-information requirement under OMB control number 0648–0469.

NOAA codifies its OMB control numbers for information collection at 15 CFR part 902. Part 902 collects and displays the control numbers assigned to information collection requirements of NOAA by OMB pursuant to the Paperwork Reduction Act (PRA). This final rule codifies OMB control number 0648–0469 for §§ 648.14(a)(122), 648.14(a)(127), 648.122(a), 648.122(b), and 648.122(d). Under NOAA Administrative Order 205–11, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere, NOAA has delegated to the AA the authority to sign material for publication in the **Federal Register**.

Classification

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

The Assistant Administrator for Fisheries, NOAA (AA) finds, pursuant to 5 U.S.C. 553(b)(B) that it is unnecessary to provide for prior notice and opportunity for public comment because this is a non-discretionary, non-substantive administrative provision, which merely announces an OMB control number. This rule codifies the approvals (i.e., control numbers) by OMB for collection of information requirements in §§ 648.14(a)(122),

648.14(a)(127), 648.122(a), 648.122(b), and 648.122(d). Accordingly, good cause exists to waive notice and comment. Furthermore, because this is a non-substantive rule, pursuant to 5 U.S.C. 553(d), this final rule is not subject to the 30–day delay in effectiveness.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

The public reporting burden for this collection of information is estimated to average approximately 2 minutes per vessel (twice a year). The estimated response time includes the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these reporting burden estimates or any other aspect of the collection-of-information, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 12, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR part 902, chapter IX is amended as follows:

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 350 *et seq.*

2. In § 902.1, the table in paragraph (b) under 50 CFR is amended by adding new entries for 648.14 and 648.122, in numerical order, to read as follows:

§ 902.1 OMB Control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b)* * *

CFR part or section where the information collection requirement is located				Current OMB control number (all numbers begin with 0648–)
*	*	*	*	*
50 CFR				
*	*	*	*	*
648.14				–0469
*	*	*	*	*
648.122				–0469
*	*	*	*	*

[FR Doc. 03–6471 Filed 3–17–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9049]

RIN 1545–BA50

Amendments to Rules for Determination of Basis of Partner's Interest; Special Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to special rules on determination of basis of a partner's interest under section 705. The final regulations are necessary to coordinate sections 705 and 1032.

DATES: *Effective Date:* These regulations are effective March 18, 2003.

Applicability Date: For dates of applicability, see § 1.705–2(e).

FOR FURTHER INFORMATION CONTACT: Barbara (MacMillan) Campbell or Rebekah A. Myers (202) 622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On March 29, 2002, the Treasury Department and the IRS published final regulations (TD 8986; 2002–16 I.R.B. 780) under section 705 of the Internal Revenue Code (Code) in the **Federal Register** (67 FR 15112). Those final regulations provide guidance on the coordination of sections 705 and 1032 in situations where a corporation acquires an interest in a partnership that holds stock in that corporation, a section 754 election is not in effect with respect to the partnership for the taxable year in which the corporation acquires the interest, and the partnership later sells or exchanges the stock. During the development of those final regulations, the Treasury Department and the IRS considered other issues related to the coordination of sections 705 and 1032. Accordingly, also on March 29, 2002, the Treasury Department and the IRS published proposed regulations (REG–167648–01; 2002–16 I.R.B. 790) to revise the final regulations contained in § 1.705–2 of 26 CFR part 1 in the **Federal Register** (67 FR 15132). No written comments were received in response to the notice of proposed rulemaking, and no public hearing was requested or held. The proposed regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

1. Overview of Proposed Regulations

The proposed regulations apply to situations where a corporation owns a direct or indirect interest in a partnership that owns stock in that corporation, the partnership distributes money or other property to another partner and that partner recognizes gain on the distribution during a year in which the partnership does not have an election under section 754 in effect, and the partnership subsequently sells or exchanges the stock. As stated in the preamble to the proposed regulations, in these situations it may be inconsistent with the intent of sections 705 and 1032 to increase the basis of the corporation's partnership interest by the full amount of any gain resulting from the partnership's sale or exchange of the stock which is not recognized by the corporation under section 1032.

Accordingly, the proposed regulations revise the purpose statement of § 1.705–2(a) to take into account situations involving such partnership distributions. The proposed regulations provide a specific rule implementing the revised purpose in single partnership cases. The proposed regulations also revise § 1.705–2(c) to clarify that the tiered partnerships rule applies to situations involving such partnership distributions.

In addition, the proposed regulations clarify that references in the regulations to stock of a corporate partner include any position in stock of a corporate partner to which section 1032 applies.

2. Revisions in Final Regulations

These final regulations follow the proposed regulations but extend the rules of the proposed regulations to situations where a corporation owns a direct or indirect interest in a

partnership that owns stock in that corporation, the partnership distributes money or other property to another partner and that partner recognizes loss on the distribution or the basis of the property distributed to that partner is adjusted during a year in which the partnership does not have an election under section 754 in effect, and the partnership subsequently sells or exchanges the stock. The revisions provide a more consistent approach, and better conform these final regulations to the final regulations issued on March 29, 2002 under section 705 (TD 8986; 2002–16 I.R.B. 780).

3. Effective Date

The final regulations apply with respect to sales or exchanges of stock occurring on or after March 18, 2003, except that paragraph (d) applies with respect to sales or exchanges of stock occurring on or after March 29, 2002.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of these regulations is Barbara (MacMillan) Campbell of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, personnel from other offices of the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income Taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.705–1 is amended by revising paragraph (a)(7) to read as follows:

§ 1.705–1 Determination of basis of partner's interest.

(a) * * *

(7) For basis adjustments necessary to coordinate sections 705 and 1032 in certain situations in which a partnership disposes of stock or any position in stock to which section 1032 applies of a corporation that holds a direct or indirect interest in the partnership, see § 1.705–2.

* * * * *

Par. 3. Section 1.705–2 is amended as follows:

1. Paragraph (a) is amended by adding a new sentence after the third sentence.

2. Paragraph (b)(2) is added.

3. Paragraph (c)(1) is amended by adding a sentence at the end of the paragraph.

4. Paragraph (d) is added.

5. Paragraph (e) is revised.

The additions and revision read as follows:

§ 1.705–2 Basis adjustments coordinating sections 705 and 1032.

(a) * * * Similarly, in situations where a section 754 election was not in effect for the year in which a partnership distributes money or other property to another partner and that partner recognizes gain or loss on the distribution or the basis of the property distributed to that partner is adjusted, the remaining partners' inside basis and outside basis may not be equal. * * *

* * * * *

(b) * * *

(2) *Required adjustments relating to distributions.* (i) This paragraph (b)(2) applies in situations where a corporation owns a direct or indirect interest in a partnership that owns stock in that corporation, the partnership distributes money or other property to another partner and that partner recognizes gain or loss on the distribution or the basis of the property distributed to that partner is adjusted during a year in which the partnership does not have an election under section 754 in effect, and the partnership subsequently sells or exchanges the stock. In these situations, the increase (or decrease) in the corporation's adjusted basis in its partnership interest resulting from the sale or exchange of the stock equals the amount of gain (or loss) that the corporate partner would have recognized (absent the application of section 1032) if, for the year in which the partnership made the distribution, a section 754 election had been in effect.

(ii) The provisions of this paragraph (b)(2) are illustrated by the following example:

Example. (i) A, B, and corporation C form partnership PRS. A and B each contribute $10,000 and C contributes $20,000 in exchange for a partnership interest. PRS has no liabilities. PRS purchases stock in corporation C for $10,000, which appreciates in value to $70,000. PRS distributes $25,000 to A in complete liquidation of A's interest in PRS in a year for which an election under section 754 is not in effect. PRS later sells the C stock for $70,000. PRS realizes a gain of $60,000 on the sale of the C stock. C's share of the gain is $40,000. Under section 1032, C does not recognize its share of the gain.

(ii) Normally, C would be entitled to a $40,000 increase in the basis of its PRS interest for its allocable share of PRS's gain from the sale of the C stock, but a special rule applies in this situation. If a section 754 election had been in effect for the year in which PRS made the distribution to A, PRS would have been entitled to adjust the basis of partnership property under section 734(b)(1)(A) by $15,000 (the amount of gain recognized by A with respect to the distribution to A under section 731(a)(1)). See § 1.734–1(b). Under § 1.755–1(c)(1)(ii), the basis adjustment under section 734(b) would have been allocated to the C stock, increasing its basis to $25,000 (where there is a distribution resulting in an adjustment under section 734(b)(1)(A) to the basis of undistributed partnership property, the adjustment is allocated only to capital gain property).

(iii) If a section 754 election had been in effect for the year in which PRS made the distribution to A, the amount of gain that PRS would have recognized upon PRS's disposition of C stock would be $45,000 ($70,000 minus $25,000 basis in the C stock), and the amount of gain C would have recognized upon PRS's disposition of the C stock (absent the application of section 1032) would be $30,000 (C's share of PRS's gain of $45,000 from the stock sale). Accordingly, upon PRS's sale of the C stock, the increase in the basis of C's interest in PRS is $30,000.

(c) * * * (1) * * * Similarly, if a corporation owns an indirect interest in its own stock through a chain of two or more partnerships, and a partnership in the chain distributes money or other property to another partner and that partner recognizes gain or loss on the distribution or the basis of the property distributed to that partner is adjusted during a year in which the partnership does not have an election under section 754 in effect, then upon any subsequent sale or exchange of the stock, the bases of the interests in the partnerships included in the chain shall be adjusted

in a manner that is consistent with the purpose of this section.

* * * * *

(d) *Positions in Stock.* For purposes of this section, stock includes any position in stock to which section 1032 applies.

(e) *Effective date.* This section applies to gain or loss allocated with respect to sales or exchanges of stock occurring after December 6, 1999, except that paragraph (d) of this section is applicable with respect to sales or exchanges of stock occurring on or after March 29, 2002, and the fourth sentence of paragraph (a), paragraph (b)(2), and the third sentence of paragraph (c)(1) of this section are applicable with respect to sales or exchanges of stock occurring on or after March 18, 2003.

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

Approved: March 6, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 03–6345 Filed 3–17–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9047]

RIN 1545–BA36 and 1545–AW92

Certain Transfers of Property to Regulated Investment Companies [RICs] and Real Estate Investment Trusts [REITs]

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that apply to certain transactions or events that result in a Regulated Investment Company [RIC] or a Real Estate Investment Trust [REIT] owning property that has a basis determined by reference to a C corporation's basis in the property. These regulations affect RICs, REITs, and C corporations and clarify the tax treatment of transfers of C corporation property to a RIC or REIT.

DATES: *Effective Date:* These regulations are effective March 18, 2003.

Applicability Dates: For dates of applicability, see §§ 1.337(d)–5(d), 1.337(d)–6(e) and 1.337(d)–7(f).

FOR FURTHER INFORMATION CONTACT: Jennifer D. Sledge, (202) 622–7750 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1672. This information is required to obtain a benefit, *i.e.*, to elect to recognize gain as if the C corporation had sold the property at fair market value or to elect section 1374 treatment.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

The estimated annual burden per respondent is 30 minutes.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:T:T:SP, Washington, DC 20224, and to the Office of Management and Budget, ATTN: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained as long as their contents might 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.

Background

This document contains amendments to 26 CFR part 1. On February 7, 2000, temporary regulations [TD 8872] (the 2000 temporary regulations) relating to certain transactions or events that result in a RIC or REIT owning property that has a basis determined by reference to a C corporation's basis in the property were published in the **Federal Register** (65 FR 5775). A notice of proposed rulemaking (REG–209135–88) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (65 FR 5805). The 2000 temporary regulations were intended to carry out the purposes of the repeal of the *General Utilities* doctrine as enacted in the Tax Reform Act of 1986 (the 1986 Act)(Public Law 99–514, 100 Stat. 2085), as amended by the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100–647, 102 Stat. 3342).

The 1986 Act amended sections 336 and 337 to require corporations to recognize gain or loss on the distribution of property in connection with complete liquidations other than certain subsidiary liquidations. Section 337(d) directs the Secretary to prescribe regulations as may be necessary to carry out the purposes of the *General Utilities* repeal, including rules to ''ensure that such purposes may not be circumvented * * * through the use of a regulated investment company, a real estate investment trust, or tax-exempt entity * * *.''

The 2000 temporary regulations also reflected the principles set forth in Notice 88–19 (1988–1 C.B. 486), in which the IRS announced its intention to promulgate regulations under the authority of section 337(d) with respect to transactions or events that result in a RIC or REIT owning property that has a basis determined by reference to a C corporation's basis (a carryover basis). Notice 88–19 provided that the regulations would apply with respect to the net built-in gain of C corporation assets that become assets of a RIC or REIT by the qualification of a C corporation as a RIC or REIT or by the transfer of assets of a C corporation to a RIC or REIT (a conversion transaction). The Notice further provided that, where the regulations apply, the C corporation would be treated, for all purposes, as if it had sold all of its assets at their respective fair market values and immediately liquidated. The Notice provided, however, that the regulations would not allow the recognition of a net loss and that immediate gain recognition could be avoided if the C corporation that qualified as a RIC or REIT or the transferee RIC or REIT, as the case may have been, elected to be subject to tax under section 1374 with respect to the C corporation property. Notice 88–19 also indicated that the regulations would apply retroactively to June 10, 1987.

A public hearing on the cross-referenced notice of proposed rulemaking was held on May 10, 2000. Written or electronic comments responding to the notice of proposed rulemaking were received. After consideration of these comments, Treasury and the IRS decided to issue two new sets of temporary regulations. On January 2, 2002, temporary regulations [TD 8975] (the 2002 temporary regulations) were published in the **Federal Register** (67 FR 8). The regulations under § 1.337(d)–6T apply to conversion transactions occurring on or after June 10, 1987 and before January 2, 2002, and the regulations under § 1.337(d)–7T apply to conversion transactions occurring on or after January 2, 2002. A notice of proposed

rulemaking (REG–142299–01 and REG–209135–88) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (67 FR 48).

The regulations under § 1.337(d)–6T provide that, if property of a C corporation that is not a RIC or REIT becomes the property of a RIC or REIT in a conversion transaction, then the C corporation is subject to deemed sale treatment, unless the RIC or REIT elects to be subject to section 1374 treatment. Thus, the C corporation generally recognizes gain and loss as if it sold the property converted to RIC or REIT property or transferred to the RIC or REIT (the converted property) to an unrelated party at fair market value immediately before the conversion transaction. If the C corporation recognizes net gain on the deemed sale, then the basis of the converted property in the hands of the RIC or REIT is adjusted to its fair market value immediately before the conversion transaction. The regulations under § 1.337(d)–6T do not permit a C corporation to recognize a net loss on the deemed sale. Where there is a net loss, the C corporation recognizes no gain or loss on the deemed sale, and the C corporation's basis in the converted property carries over to the RIC or REIT.

The regulations under § 1.337(d)–7T provide that, if property of a C corporation that is not a RIC or REIT becomes the property of a RIC or REIT in a conversion transaction, then the RIC or REIT will be subject to tax on the net built-in gain in the converted property under the rules of section 1374 and the regulations thereunder, unless the C corporation that qualifies as a RIC or REIT or transfers property to a RIC or REIT elects deemed sale treatment. In most other respects, the regulations under § 1.337(d)–7T follow the regulations under § 1.337(d)–6T.

No public hearing was requested or held on the 2002 temporary regulations. Written or electronic comments responding to the notice of proposed rulemaking were received. After consideration of all the comments, the proposed regulations are adopted as amended (the final regulations) by this Treasury decision, and the corresponding temporary regulations are removed. The revisions are discussed below.

Explanation and Summary of Comments

This preamble first discusses a change in the time for making the section 1374 election under § 1.337(d)–6. This preamble then discusses the clarification of the rules concerning the use of loss carryforwards, credits and credit carryforwards found in the regulations under both § 1.337(d)–6 and § 1.337(d)–7. Finally, this preamble discusses the clarification of certain issues related to the special rule for partnerships found in § 1.337(d)–7.

Time for Making Section 1374 Election Under § 1.337(d)–6

As explained above, the regulations under § 1.337(d)–6T provide that, if property of a C corporation that is not a RIC or REIT becomes the property of a RIC or REIT in a conversion transaction, then the C corporation is subject to deemed sale treatment, unless the RIC or REIT elects to be subject to section 1374 treatment. Under § 1.337(d)–6T(c)(4)(ii), the section 1374 election may be filed by the RIC or REIT with any Federal income tax return filed by the RIC or REIT on or before March 15, 2003, provided that the RIC or REIT has reported consistently with such election for all periods. Commentators expressed concern that, in the case of a conversion transaction occurring on January 1, 2002 (the last date of applicability of § 1.337(d)–6T), the time limit for making a section 1374 election could preclude a RIC or REIT from extending the due date of its Federal income tax return beyond March 15, 2003. In response to this comment, the final regulations under § 1.337(d)–6 extend the time for making the section 1374 election to September 15, 2003.

Use of Loss Carryforwards, Credits and Credit Carryforwards

Under the 2002 temporary regulations, recognized built-in gains and recognized built-in losses that have been taxed in accordance with these regulations are treated like other gains and losses of RICs and REITs that are not subject to tax under these regulations. Thus, they are included in computing investment company taxable income for purposes of section 852(b)(2), real estate investment trust taxable income for purposes of section 857(b)(2), net capital gain for purposes of sections 852(b)(3) and 857(b)(3), gross income derived from sources within any foreign country or possession of the United States for purposes of section 853, and the dividends paid deduction for purposes of sections 852(b)(2)(D), 852(b)(3)(A), 857(b)(2)(B), and 857(b)(3)(A).

In addition, consistent with section 1374, the 2002 temporary regulations generally allow RICs and REITs to use loss carryforwards and credits and credit carryforwards arising in taxable years for which the corporation that generated the attribute was a C corporation (and not a RIC or REIT) to reduce net recognized built-in gain and the tax thereon, subject to the limitations imposed by sections 1374(b)(2) and (b)(3) and §§ 1.1374–5 and 1.1374–6. The 2002 temporary regulations also provide an ordering rule for applying loss carryforwards, credits, and credit carryforwards to reduce net recognized built-in gain (and the tax thereon) and RIC or REIT taxable income (and the tax thereon). Under this ordering rule, loss carryforwards of a RIC or REIT must be used to reduce net recognized built-in gain for a taxable year to the greatest extent possible before such losses can be used to reduce investment company taxable income for purposes of section 852(b) or real estate investment trust taxable income for purposes of section 857(b). A similar rule applies to the use of credits and credit carryforwards.

A commentator asked whether the use of loss carryforwards, credits and credit carryforwards for purposes of section 1374 affected the use of loss carryforwards, credits and credit carryforwards for purposes of subchapter M. In response to this comment, the final regulations under §§ 1.337(d)–6 and 1.337(d)–7 clarify that the use of loss carryforwards, credits and credit carryforwards for purposes of the section 1374 tax does not change the extent to which such loss carryforwards, credits and credit carryforwards can be used for purposes of subchapter M.

Special Rule for Partnerships Under § 1.337(d)–7

Section § 1.337(d)–7T applies to property transferred by a partnership to a RIC or REIT to the extent of any C corporation partner's proportionate share of the transferred property (the partnership rule). The regulations state that, if the partnership elects deemed sale treatment with respect to such transfer, then any gain recognized by the partnership on the deemed sale must be specially allocated to the C corporation partner.

In response to comments, the regulations have been revised to clarify that the principles of section 704(b) and (c) apply in determining the C corporation partner's share of the transferred property. As revised, the regulations provide that the principles of these regulations apply to property transferred by a partnership to a RIC or REIT to the extent of any C corporation partner's distributive share of the gain or loss in the transferred property. The following sections highlight other specific comments received with respect to this rule.

Partnerships With Multiple Corporate Partners

A commentator expressed concern that the partnership rule does not specify whether the C corporation partner or the partnership is considered the transferor for purposes of making the deemed sale election. Further, the commentator asserted that in the case of a partnership with multiple corporate partners, each corporate partner should be allowed to make (or not make) a deemed sale election.

Treasury and the IRS believe that requiring each corporate partner to make a deemed sale election would be inconsistent with section 703(b) (which generally requires that elections be made at the partnership level) and would create unnecessary administrative complexity. Therefore, the final regulations under § 1.337(d)–7 retain the rule under section 703(b) that the deemed sale election is made at the partnership level.

Contribution of Loss Assets by Partnership

Under the partnership rule, if a partnership were to elect deemed sale treatment under § 1.337(d)–7T, any gain recognized by the partnership on the deemed sale is allocated to the C corporation partner. A commentator expressed concern that if the contribution by the partnership to a RIC or REIT includes multiple assets, the deemed sale may generate losses on certain assets and gain on others even though there is an overall net built-in gain. The commentator suggested that losses recognized by the partnership must also be allocated to the C corporation partner.

Under § 1.337(d)–7T, when a partnership elects deemed sale treatment, only net gains are recognized. If a net gain is recognized, the C corporation partner will receive the benefit of offsetting losses (as a result of the reduction in net gain). The final regulations under § 1.337(d)–7 have been modified to clarify that the gain allocated to the C corporation partner on a deemed sale transaction is the C corporation partner's distributive share of the net gain in the assets transferred to the RIC or REIT by the partnership.

Allocation of Gain or Loss on Subsequent Sale of RIC or REIT Stock

Under section 358, a partnership that elects deemed sale treatment under § 1.337(d)–7T(c) with respect to a conversion transaction increases its basis in the RIC or REIT stock by the net gain recognized on such transaction. A commentator suggested that the C corporation partner should be allowed to use this basis increase to offset any gain or loss recognized by the partnership on the eventual sale of the RIC or REIT stock.

Treasury and the IRS agree with this comment. Accordingly, the final regulations under § 1.337(d)–7 provide that any adjustment to the basis of the RIC or REIT stock held by the partnership as a result of electing deemed sale treatment will constitute an adjustment to the basis of that stock with respect to the C corporation partner only.

Partnerships With Tax-Exempt Partners

A commentator expressed concern that the partnership rule in § 1.337(d)–7T may have an unintended punitive effect when the C corporation partner is a tax-exempt entity. Tax-exempt entities that are partners in a partnership that holds debt financed property are subject to tax under the unrelated business income tax (UBIT) rules unless certain criteria are satisfied. One of these criteria (the fractions rule) requires that: (1) the tax-exempt partner's share of overall partnership income for any tax year is no greater than its smallest share of partnership loss in any tax year; and (2) each allocation with respect to the partnership has substantial economic effect within the meaning of section 704(b)(2). The commentator expressed concern that the special allocation of gain to the tax-exempt partner that is required by ''1.337(d)–7T when the partnership makes a deemed sale election may violate the fractions rule, tainting all income from the partnership for UBIT purposes.

In response to this comment, Treasury and the IRS have amended the regulations under section 514 to provide that allocations that are mandated by statute or regulation (other than subchapter K of chapter 1 of the Internal Revenue Code and the regulations thereunder) are not considered for purposes of determining qualification under the fractions rule. This rule applies to partnership allocations made in taxable years beginning on or after January 1, 2002.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, these final regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Jennifer D. Sledge of the Office of Associate Chief Counsel (Corporate). Other personnel from Treasury Department and the IRS participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entries for ''Section 1.337(d)–5T'', ''Section 1.337(d)–6T'', and ''Section 1.337(d)–7T'' and adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.337(d)–5 also issued under 26 U.S.C. 337.
Section 1.337(d)–6 also issued under 26 U.S.C. 337.
Section 1.337(d)–7 also issued under 26 U.S.C. 337. * * *

§ 1.337(d)–5T [Redesignated as § 1.337(d)–5]

Par. 2. Section 1.337(d)–5T is redesignated as § 1.337(d)–5 and the language ''(temporary)'' is removed from the end of the section heading.

Par. 3. Newly designated § 1.337(d)–5 is amended as follows:

1. In paragraph (b)(3), first sentence, the reference to ''§ 1.337(d)–5T(b)'' is removed and ''paragraph (b) of this section'' is added in its place.

2. In paragraph (d), third sentence, the references to ''§ 1.337(d)–5T(b)(1)'' and ''§ 1.337(d)–6T'' are removed and ''paragraph (b)(1) of this section'' and ''§ 1.337(d)–6'' are added in their places, respectively.

3. In paragraph (d), fourth sentence, the reference to ''§ 1.337(d)–6T'' is

removed and ''§ 1.337(d)–6'' is added in its place.

4. In paragraph (d), last sentence, the reference to ''§ 1.337(d)–7T'' is removed and ''§ 1.337(d)–7'' is added in its place.

Par. 4. Section 1.337(d)–6 is added to read as follows:

§ 1.337(d)–6 New transitional rules imposing tax on property owned by a C corporation that becomes property of a RIC or REIT.

(a) *General rule—(1) Property owned by a C corporation that becomes property of a RIC or REIT.* If property owned by a C corporation (as defined in paragraph (a)(2)(i) of this section) becomes the property of a RIC or REIT (the converted property) in a conversion transaction (as defined in paragraph (a)(2)(ii) of this section), then deemed sale treatment will apply as described in paragraph (b) of this section, unless the RIC or REIT elects section 1374 treatment with respect to the conversion transaction as provided in paragraph (c) of this section. See paragraph (d) of this section for exceptions to this paragraph (a).

(2) *Definitions—(i) C corporation.* For purposes of this section, the term *C corporation* has the meaning provided in section 1361(a)(2) except that the term does not include a RIC or REIT.

(ii) *Conversion transaction.* For purposes of this section, the term *conversion transaction* means the qualification of a C corporation as a RIC or REIT or the transfer of property owned by a C corporation to a RIC or REIT.

(b) *Deemed sale treatment*—(1) *In general.* If property owned by a C corporation becomes the property of a RIC or REIT in a conversion transaction, then the C corporation recognizes gain and loss as if it sold the converted property to an unrelated party at fair market value on the deemed sale date (as defined in paragraph (b)(3) of this section). This paragraph (b) does not apply if its application would result in the recognition of a net loss. For this purpose, *net loss* is the excess of aggregate losses over aggregate gains (including items of income), without regard to character.

(2) *Basis adjustment.* If a corporation recognizes a net gain under paragraph (b)(1) of this section, then the converted property has a basis in the hands of the RIC or REIT equal to the fair market value of such property on the deemed sale date.

(3) *Deemed sale date*—(i) *RIC or REIT qualifications.* If the conversion transaction is a qualification of a C corporation as a RIC or REIT, then the deemed sale date is the end of the last day of the C corporation's last taxable year before the first taxable year in which it qualifies to be taxed as a RIC or REIT.

(ii) *Other conversion transactions.* If the conversion transaction is a transfer of property owned by a C corporation to a RIC or REIT, then the deemed sale date is the end of the day before the day of the transfer.

(4) *Example.* The rules of this paragraph (b) are illustrated by the following example:

Example. Deemed sale treatment on merger into RIC. (i) X, a calendar-year taxpayer, has qualified as a RIC since January 1, 1991. On May 31, 1994, Y, a C corporation and calendar-year taxpayer, transfers all of its property to X in a transaction that qualifies as a reorganization under section 368(a)(1)(C). X does not elect section 1374 treatment under paragraph (c) of this section and chooses not to rely on § 1.337(d)–5. As a result of the transfer, Y is subject to deemed sale treatment under this paragraph (b) on its tax return for the short taxable year ending May 31, 1994. On May 31, 1994, Y's only assets are Capital Asset, which has a fair market value of $100,000 and a basis of $40,000 as of the end of May 30, 1994, and $50,000 cash. Y also has an unrestricted net operating loss carryforward of $12,000 and accumulated earnings and profits of $50,000. Y has no taxable income for the short taxable year ending May 31, 1994, other than gain recognized under this paragraph (b). In 1997, X sells Capital Asset for $110,000. Assume the applicable corporate tax rate is 35%.

(ii) Under this paragraph (b), Y is treated as if it sold the converted property (Capital Asset and $50,000 cash) at fair market value on May 30, 1994, recognizing $60,000 of gain ($150,000 amount realized—$90,000 basis). Y must report the gain on its tax return for the short taxable year ending May 31, 1994. Y may offset this gain with its $12,000 net operating loss carryforward and will pay tax of $16,800 (35% of $48,000).

(iii) Under section 381, X succeeds to Y's accumulated earnings and profits. Y's accumulated earnings and profits of $50,000 increase by $60,000 and decrease by $16,800 as a result of the deemed sale. Thus, the aggregate amount of subchapter C earnings and profits that must be distributed to satisfy section 852(a)(2)(B) is $93,200 ($50,000 + $60,000 − $16,800). X's basis in Capital Asset is $100,000. On X's sale of Capital Asset in 1997, X recognizes $10,000 of gain, which is taken into account in computing X's net capital gain for purposes of section 852(b)(3).

(c) *Election of section 1374 treatment*—(1) *In general*—(i) *Property owned by a C corporation that becomes property of a RIC or REIT.* Paragraph (b) of this section does not apply if the RIC or REIT that was formerly a C corporation or that acquired property from a C corporation makes the election described in paragraph (c)(4) of this section. A RIC or REIT that makes such an election will be subject to tax on the net built-in gain in the converted property under the rules of section 1374 and the regulations thereunder, as modified by this paragraph (c), as if the RIC or REIT were an S corporation.

(ii) *Property subject to the rules of section 1374 owned by a RIC, REIT, or S corporation that becomes property of a RIC or REIT.* If property subject to the rules of section 1374 owned by a RIC, a REIT, or an S corporation (the predecessor) becomes the property of a RIC or REIT (the successor) in a continuation transaction, the rules of section 1374 apply to the successor to the same extent that the predecessor was subject to the rules of section 1374 with respect to such property, and the 10-year recognition period of the successor with respect to such property is reduced by the portion of the 10-year recognition period of the predecessor that expired before the date of the continuation transaction. For this purpose, a continuation transaction means the qualification of the predecessor as a RIC or REIT or the transfer of property from the predecessor to the successor in a transaction in which the successor's basis in the transferred property is determined, in whole or in part, by reference to the predecessor's basis in that property.

(2) *Modification of section 1374 treatment*—(i) *Net recognized built-in gain for REITs*—(A) *Prelimitation amount.* The prelimitation amount determined as provided in § 1.1374–2(a)(1) is reduced by the portion of such amount, if any, that is subject to tax under section 857(b)(4), (5), (6), or (7). For this purpose, the amount of a REIT's recognized built-in gain that is subject to tax under section 857(b)(5) is computed as follows:

(*1*) Where the tax under section 857(b)(5) is computed by reference to section 857(b)(5)(A), the amount of a REIT's recognized built-in gain that is subject to tax under section 857(b)(5) is the tax imposed by section 857(b)(5) multiplied by a fraction the numerator of which is the amount of recognized built-in gain (without regard to recognized built-in loss and recognized built-in gain from prohibited transactions) that is not derived from sources referred to in section 856(c)(2) and the denominator of which is the gross income (without regard to gross income from prohibited transactions) of the REIT that is not derived from sources referred to in section 856(c)(2).

(*2*) Where the tax under section 857(b)(5) is computed by reference to section 857(b)(5)(B), the amount of a REIT's recognized built-in gain that is subject to tax under section 857(b)(5) is

the tax imposed by section 857(b)(5) multiplied by a fraction the numerator of which is the amount of recognized built-in gain (without regard to recognized built-in loss and recognized built-in gain from prohibited transactions) that is not derived from sources referred to in section 856(c)(3) and the denominator of which is the gross income (without regard to gross income from prohibited transactions) of the REIT that is not derived from sources referred to in section 856(c)(3).

(B) *Taxable income limitation.* The taxable income limitation determined as provided in § 1.1374–2(a)(2) is reduced by an amount equal to the tax imposed under sections 857(b)(5), (6), and (7).

(ii) *Loss carryforwards, credits and credit carryforwards*—(A) *Loss carryforwards.* Consistent with paragraph (c)(1)(i) of this section, net operating loss carryforwards and capital loss carryforwards arising in taxable years for which the corporation that generated the loss was not subject to subchapter M of chapter 1 of the Internal Revenue Code are allowed as a deduction against net recognized built-in gain to the extent allowed under section 1374 and the regulations thereunder. Such loss carryforwards must be used as a deduction against net recognized built-in gain for a taxable year to the greatest extent possible before such losses can be used to reduce other investment company taxable income for purposes of section 852(b) or other real estate investment trust taxable income for purposes of section 857(b) for that taxable year.

(B) *Credits and credit carryforwards.* Consistent with paragraph (c)(1)(i) of this section, minimum tax credits and business credit carryforwards arising in taxable years for which the corporation that generated the credit was not subject to subchapter M of chapter 1 of the Internal Revenue Code are allowed to reduce the tax imposed on net recognized built-in gain under this paragraph (c) to the extent allowed under section 1374 and the regulations thereunder. Such credits and credit carryforwards must be used to reduce the tax imposed under this paragraph (c) on net recognized built-in gain for a taxable year to the greatest extent possible before such credits and credit carryforwards can be used to reduce the tax, if any, on other investment company taxable income for purposes of section 852(b) or on other real estate investment trust taxable income for purposes of section 857(b) for that taxable year.

(iii) *10-year recognition period.* In the case of a conversion transaction that is a qualification of a C corporation as a RIC or REIT, the 10-year recognition period described in section 1374(d)(7) begins on the first day of the RIC's or REIT's first taxable year. In the case of other conversion transactions, the 10-year recognition period begins on the day the property is acquired by the RIC or REIT.

(3) *Coordination with subchapter M rules*—(i) *Recognized built-in gains and losses subject to subchapter M.* Recognized built-in gains and losses of a RIC or REIT are included in computing investment company taxable income for purposes of section 852(b)(2), real estate investment trust taxable income for purposes of section 857(b)(2), capital gains for purposes of sections 852(b)(3) and 857(b)(3), gross income derived from sources within any foreign country or possession of the United States for purposes of section 853, and the dividends paid deduction for purposes of sections 852(b)(2)(D), 852(b)(3)(A), 857(b)(2)(B), and 857(b)(3)(A). In computing such income and deduction items, capital loss carryforwards and net operating loss carryforwards that are used by the RIC or REIT to reduce recognized built-in gains are allowed as a deduction, but only to the extent that they are otherwise allowable as a deduction against such income under the Internal Revenue Code (including section 852(b)(2)(B)).

(ii) *Treatment of tax imposed.* The amount of tax imposed under this paragraph (c) on net recognized built-in gain for a taxable year is treated as a loss sustained by the RIC or the REIT during such taxable year. The character of the loss is determined by allocating the tax proportionately (based on recognized built-in gain) among the items of recognized built-in gain included in net recognized built-in gain. With respect to RICs, the tax imposed under this paragraph (c) on net recognized built-in gain is treated as attributable to the portion of the RIC's taxable year occurring after October 31.

(4) *Making the section 1374 election*—(i) *In general.* A RIC or REIT makes a section 1374 election with the following statement: ''[Insert name and employer identification number of electing RIC or REIT] elects under § 1.337–6(c) to be subject to the rules of section 1374 and the regulations thereunder with respect to its property that formerly was held by a C corporation, [insert name and employer identification number of the C corporation, if different from name and employer identification number of the RIC or REIT].'' However, a RIC or REIT need not file an election under this paragraph (c), but will be deemed to have made such an election if it can demonstrate that it informed the Internal Revenue Service prior to January 2, 2002 of its intent to make a section 1374 election. An election under this paragraph (c) is irrevocable.

(ii) *Time for making the election.* An election under this paragraph (c) may be filed by the RIC or REIT with any Federal income tax return filed by the RIC or REIT on or before September 15, 2003, provided that the RIC or REIT has reported consistently with such election for all periods.

(5) *Example.* The rules of this paragraph (c) are illustrated by the following example:

Example. Section 1374 treatment on REIT election. (i) X, a C corporation that is a calendar-year taxpayer, elects to be taxed as a REIT on its 1994 tax return, which it files on March 15, 1995. As a result, X is a REIT for its 1994 taxable year and would be subject to deemed sale treatment under paragraph (b) of this section but for X's timely election of section 1374 treatment under this paragraph (c). X chooses not to rely on § 1.337(d)–5. As of the beginning of the 1994 taxable year, X's property consisted of Real Property, which is not section 1221(a)(1) property and which had a fair market value of $100,000 and an adjusted basis of $80,000, and $25,000 cash. X also had accumulated earnings and profits of $25,000, unrestricted capital loss carryforwards of $3,000, and unrestricted business credit carryforwards of $2,000. On July 1, 1997, X sells Real Property for $110,000. For its 1997 taxable year, X has no other income or deduction items. Assume the highest corporate tax rate is 35%.

(ii) Upon its election to be taxed as a REIT, X retains its $80,000 basis in Real Property and its $25,000 accumulated earnings and profits. X retains its $3,000 of capital loss carryforwards and its $2,000 of business credit carryforwards. To satisfy section 857(a)(2)(B), X must distribute $25,000, an amount equal to its earnings and profits accumulated in non-REIT years, to its shareholders by the end of its 1994 taxable year.

(iii) Upon X's sale of Real Property in 1997, X recognizes gain of $30,000 ($110,000—$80,000). X's recognized built-in gain for purposes of applying section 1374 is $20,000 ($100,000 fair market value as of the beginning of X's first taxable year as a REIT—$80,000 basis). Because X's $30,000 of net income for the 1997 taxable year exceeds the net recognized built-in gain of $20,000, the taxable income limitation does not apply. X, therefore, has $20,000 net recognized built-in gain for the year. Assuming that X has not used its $3,000 of capital loss carryforwards in a prior taxable year and that their use is allowed under section 1374(b)(2) and § 1.1374–5, X is allowed a $3,000 deduction against the $20,000 net recognized built-in gain. X would owe tax of $5,950 (35% of $17,000) on its net recognized built-in gain, except that X may use its $2,000 of business credit carryforwards to reduce this tax, assuming that X has not used the credit carryforwards in a prior taxable year and that their use is allowed under section 1374(b)(3)

and § 1.1374–6. Thus, X owes tax of $3,950 under this paragraph (c).

(iv) For purposes of subchapter M of chapter 1 of the Internal Revenue Code, X's earnings and profits for the year increase by $26,050 ($30,000 capital gain on the sale of Real Property—$3,950 tax under this paragraph (c)). For purposes of section 857(b)(2) and (b)(3), X's net capital gain for the year is $23,050 ($30,000 capital gain reduced by $3,000 capital loss carryforward and further reduced by $3,950 tax).

(d) *Exceptions*—(1) *Gain otherwise recognized.* Paragraph (a) of this section does not apply to any conversion transaction to the extent that gain or loss otherwise is recognized on such conversion transaction. See, for example, sections 336, 351(b), 351(e), 356, 357(c), 367, 368(a)(2)(F), and 1001.

(2) *Re-election of RIC or REIT status*—(i) *Generally.* Except as provided in paragraphs (d)(2)(ii) and (iii) of this section, paragraph (a)(1) of this section does not apply to any corporation that—

(A) Immediately prior to qualifying to be taxed as a RIC or REIT was subject to tax as a C corporation for a period not exceeding two taxable years; and

(B) Immediately prior to being subject to tax as a C corporation was subject to tax as a RIC or REIT for a period of at least one taxable year.

(ii) *Property acquired from another corporation while a C corporation.* The exception described in paragraph (d)(2)(i) of this section does not apply to property acquired by the corporation while it was subject to tax as a C corporation from any person in a transaction that results in the acquirer's basis in the property being determined by reference to a C corporation's basis in the property.

(iii) *RICs and REITs previously subject to section 1374 treatment.* If the RIC or REIT had property subject to paragraph (c) of this section before the RIC or REIT became subject to tax as a C corporation as described in paragraph (d)(2)(i) of this section, then paragraph (c) of this section applies to the RIC or REIT upon its requalification as a RIC or REIT, except that the 10-year recognition period with respect to such property is reduced by the portion of the 10-year recognition period that expired before the RIC or REIT became subject to tax as a C corporation and by the period of time that the corporation was subject to tax as a C corporation.

(e) *Effective date.* This section applies to conversion transactions that occur on or after June 10, 1987, and before January 2, 2002. In lieu of applying this section, taxpayers generally may apply § 1.337(d)–5 to determine the tax consequences (for all taxable years) of any conversion transaction that occurs on or after June 10, 1987 and before January 2, 2002, except that RICs and REITs that are subject to section 1374 treatment with respect to a conversion transaction may not rely on § 1.337(d)–5(b)(1), but must apply paragraphs (c)(1)(i), (c)(2)(i), (c)(2)(ii), and (c)(3) of this section, with respect to built-in gains and losses recognized in taxable years beginning on or after January 2, 2002. Taxpayers are not prevented from relying on § 1.337(d)–5 merely because they elect section 1374 treatment in the manner described in paragraph (c)(4) of this section instead of in the manner described in § 1.337(d)–5(b)(3) and (c). For conversion transactions that occur on or after January 2, 2002, *see* § 1.337(d)–7.

§ 1.337(d)–6T [Removed]

Par. 5. Section 1.337(d)–6T is removed.

Par. 6. Section 1.337(d)–7 is added to read as follows:

§ 1.337(d)–7 Tax on property owned by a C corporation that becomes property of a RIC or REIT.

(a) *General rule—(1) Property owned by a C corporation that becomes property of a RIC or REIT.* If property owned by a C corporation (as defined in paragraph (a)(2)(i) of this section) becomes the property of a RIC or REIT (the converted property) in a conversion transaction (as defined in paragraph (a)(2)(ii) of this section), then section 1374 treatment will apply as described in paragraph (b) of this section, unless the C corporation elects deemed sale treatment with respect to the conversion transaction as provided in paragraph (c) of this section. See paragraph (d) of this section for exceptions to this paragraph (a).

(2) *Definitions*—(i) *C corporation.* For purposes of this section, the term *C corporation* has the meaning provided in section 1361(a)(2) except that the term does not include a RIC or REIT.

(ii) *Conversion transaction.* For purposes of this section, the term *conversion transaction* means the qualification of a C corporation as a RIC or REIT or the transfer of property owned by a C corporation to a RIC or REIT.

(b) *Section 1374 treatment*—(1) *In general*—(i) *Property owned by a C corporation that becomes property of a RIC or REIT.* If property owned by a C corporation becomes the property of a RIC or REIT in a conversion transaction, then the RIC or REIT will be subject to tax on the net built-in gain in the converted property under the rules of section 1374 and the regulations thereunder, as modified by this paragraph (b), as if the RIC or REIT were an S corporation.

(ii) *Property subject to the rules of section 1374 owned by a RIC, REIT, or S corporation that becomes property of a RIC or REIT.* If property subject to the rules of section 1374 owned by a RIC, a REIT, or an S corporation (the predecessor) becomes the property of a RIC or REIT (the successor) in a continuation transaction, the rules of section 1374 apply to the successor to the same extent that the predecessor was subject to the rules of section 1374 with respect to such property, and the 10-year recognition period of the successor with respect to such property is reduced by the portion of the 10-year recognition period of the predecessor that expired before the date of the continuation transaction. For this purpose, a continuation transaction means the qualification of the predecessor as a RIC or REIT or the transfer of property from the predecessor to the successor in a transaction in which the successor's basis in the transferred property is determined, in whole or in part, by reference to the predecessor's basis in that property.

(2) *Modification of section 1374 treatment*—(i) *Net recognized built-in gain for REITs*—(A) *Prelimitation amount.* The prelimitation amount determined as provided in § 1.1374–2(a)(1) is reduced by the portion of such amount, if any, that is subject to tax under section 857(b)(4), (5), (6), or (7). For this purpose, the amount of a REIT's recognized built-in gain that is subject to tax under section 857(b)(5) is computed as follows:

(*1*) Where the tax under section 857(b)(5) is computed by reference to section 857(b)(5)(A), the amount of a REIT's recognized built-in gain that is subject to tax under section 857(b)(5) is the tax imposed by section 857(b)(5) multiplied by a fraction the numerator of which is the amount of recognized built-in gain (without regard to recognized built-in loss and recognized built-in gain from prohibited transactions) that is not derived from sources referred to in section 856(c)(2) and the denominator of which is the gross income (without regard to gross income from prohibited transactions) of the REIT that is not derived from sources referred to in section 856(c)(2).

(*2*) Where the tax under section 857(b)(5) is computed by reference to section 857(b)(5)(B), the amount of a REIT's recognized built-in gain that is subject to tax under section 857(b)(5) is the tax imposed by section 857(b)(5) multiplied by a fraction the numerator of which is the amount of recognized

built-in gain (without regard to recognized built-in loss and recognized built-in gain from prohibited transactions) that is not derived from sources referred to in section 856(c)(3) and the denominator of which is the gross income (without regard to gross income from prohibited transactions) of the REIT that is not derived from sources referred to in section 856(c)(3).

(B) *Taxable income limitation.* The taxable income limitation determined as provided in § 1.1374–2(a)(2) is reduced by an amount equal to the tax imposed under section 857(b)(5), (6), and (7).

(ii) *Loss carryforwards, credits and credit carryforwards* —(A) *Loss carryforwards.* Consistent with paragraph (b)(1)(i) of this section, net operating loss carryforwards and capital loss carryforwards arising in taxable years for which the corporation that generated the loss was not subject to subchapter M of chapter 1 of the Internal Revenue Code are allowed as a deduction against net recognized built-in gain to the extent allowed under section 1374 and the regulations thereunder. Such loss carryforwards must be used as a deduction against net recognized built-in gain for a taxable year to the greatest extent possible before such losses can be used to reduce other investment company taxable income for purposes of section 852(b) or other real estate investment trust taxable income for purposes of section 857(b) for that taxable year.

(B) *Credits and credit carryforwards.* Consistent with paragraph (b)(1)(i) of this section, minimum tax credits and business credit carryforwards arising in taxable years for which the corporation that generated the credit was not subject to subchapter M of chapter 1 of the Internal Revenue Code are allowed to reduce the tax imposed on net recognized built-in gain under this paragraph (b) to the extent allowed under section 1374 and the regulations thereunder. Such credits and credit carryforwards must be used to reduce the tax imposed under this paragraph (b) on net recognized built-in gain for a taxable year to the greatest extent possible before such credits and credit carryforwards can be used to reduce the tax, if any, on other investment company taxable income for purposes of section 852(b) or on other real estate investment trust taxable income for purposes of section 857(b) for that taxable year.

(iii) *10-year recognition period.* In the case of a conversion transaction that is a qualification of a C corporation as a RIC or REIT, the 10-year recognition period described in section 1374(d)(7) begins on the first day of the RIC's or REIT's first taxable year. In the case of other conversion transactions, the 10-year recognition period begins on the day the property is acquired by the RIC or REIT.

(3) *Coordination with subchapter M rules*—(i) *Recognized built-in gains and losses subject to subchapter M.* Recognized built-in gains and losses of a RIC or REIT are included in computing investment company taxable income for purposes of section 852(b)(2), real estate investment trust taxable income for purposes of section 857(b)(2), capital gains for purposes of sections 852(b)(3) and 857(b)(3), gross income derived from sources within any foreign country or possession of the United States for purposes of section 853, and the dividends paid deduction for purposes of sections 852(b)(2)(D), 852(b)(3)(A), 857(b)(2)(B), and 857(b)(3)(A). In computing such income and deduction items, capital loss carryforwards and net operating loss carryforwards that are used by the RIC or REIT to reduce recognized built-in gains are allowed as a deduction, but only to the extent that they are otherwise allowable as a deduction against such income under the Internal Revenue Code (including section 852(b)(2)(B)).

(ii) *Treatment of tax imposed.* The amount of tax imposed under this paragraph (b) on net recognized built-in gain for a taxable year is treated as a loss sustained by the RIC or the REIT during such taxable year. The character of the loss is determined by allocating the tax proportionately (based on recognized built-in gain) among the items of recognized built-in gain included in net recognized built-in gain. With respect to RICs, the tax imposed under this paragraph (b) on net recognized built-in gain is treated as attributable to the portion of the RIC's taxable year occurring after October 31.

(4) *Example.* The rules of this paragraph (b) are illustrated by the following example:

Example. Section 1374 treatment on REIT election. (i) X, a C corporation that is a calendar-year taxpayer, elects to be taxed as a REIT on its 2004 tax return, which it files on March 15, 2005. As a result, X is a REIT for its 2004 taxable year and is subject to section 1374 treatment under this paragraph (b). X does not elect deemed sale treatment under paragraph (c) of this section. As of the beginning of the 2004 taxable year, X's property consisted of Real Property, which is not section 1221(a)(1) property and which had a fair market value of $100,000 and an adjusted basis of $80,000, and $25,000 cash. X also had accumulated earnings and profits of $25,000, unrestricted capital loss carryforwards of $3,000, and unrestricted business credit carryforwards of $2,000. On July 1, 2007, X sells Real Property for $110,000. For its 2007 taxable year, X has no other income or deduction items. Assume the highest corporate tax rate is 35%.

(ii) Upon its election to be taxed as a REIT, X retains its $80,000 basis in Real Property and its $25,000 accumulated earnings and profits. X retains its $3,000 of capital loss carryforwards and its $2,000 of business credit carryforwards. To satisfy section 857(a)(2)(B), X must distribute $25,000, an amount equal to its earnings and profits accumulated in non-REIT years, to its shareholders by the end of its 2004 taxable year.

(iii) Upon X's sale of Real Property in 2007, X recognizes gain of $30,000 ($110,000—$80,000). X's recognized built-in gain for purposes of applying section 1374 is $20,000 ($100,000 fair market value as of the beginning of X's first taxable year as a REIT—$80,000 basis). Because X's $30,000 of net income for the 2007 taxable year exceeds the net recognized built-in gain of $20,000, the taxable income limitation does not apply. X, therefore, has $20,000 net recognized built-in gain for the year. Assuming that X has not used its $3,000 of capital loss carryforwards in a prior taxable year and that their use is allowed under section 1374(b)(2) and § 1.1374–5, X is allowed a $3,000 deduction against the $20,000 net recognized built-in gain. X would owe tax of $5,950 (35% of $17,000) on its net recognized built-in gain, except that X may use its $2,000 of business credit carryforwards to reduce the tax, assuming that X has not used the credit carryforwards in a prior taxable year and that their use is allowed under section 1374(b)(3) and § 1.1374–6. Thus, X owes tax of $3,950 under this paragraph (b).

(iv) For purposes of subchapter M of chapter 1 of the Internal Revenue Code, X's earnings and profits for the year increase by $26,050 ($30,000 capital gain on the sale of Real Property—$3,950 tax under this paragraph (b)). For purposes of section 857(b)(2) and (b)(3), X's net capital gain for the year is $23,050 ($30,000 capital gain reduced by $3,000 capital loss carryforward and further reduced by $3,950 tax).

(c) *Election of deemed sale treatment*—(1) *In general.* Paragraph (b) of this section does not apply if the C corporation that qualifies as a RIC or REIT or transfers property to a RIC or REIT makes the election described in paragraph (c)(5) of this section. A C corporation that makes such an election recognizes gain and loss as if it sold the converted property to an unrelated party at fair market value on the deemed sale date (as defined in paragraph (c)(3) of this section). See paragraph (c)(4) of this section concerning limitations on the use of loss in computing gain. This paragraph (c) does not apply if its application would result in the recognition of a net loss. For this purpose, *net loss* is the excess of aggregate losses over aggregate gains (including items of income), without regard to character.

(2) *Basis adjustment.* If a corporation recognizes a net gain under paragraph (c)(1) of this section, then the converted property has a basis in the hands of the RIC or REIT equal to the fair market value of such property on the deemed sale date.

(3) *Deemed sale date*—(i) *RIC or REIT qualifications.* If the conversion transaction is a qualification of a C corporation as a RIC or REIT, then the deemed sale date is the end of the last day of the C corporation's last taxable year before the first taxable year in which it qualifies to be taxed as a RIC or REIT.

(ii) *Other conversion transactions.* If the conversion transaction is a transfer of property owned by a C corporation to a RIC or REIT, then the deemed sale date is the end of the day before the day of the transfer.

(4) *Anti-stuffing rule.* A C corporation must disregard converted property in computing gain or loss recognized on the conversion transaction under this paragraph (c), if—

(i) The converted property was acquired by the C corporation in a transaction to which section 351 applied or as a contribution to capital;

(ii) Such converted property had an adjusted basis immediately after its acquisition by the C corporation in excess of its fair market value on the date of acquisition; and

(iii) The acquisition of such converted property by the C corporation was part of a plan a principal purpose of which was to reduce gain recognized by the C corporation in connection with the conversion transaction. For purposes of this paragraph (c)(4), the principles of section 336(d)(2) apply.

(5) *Making the deemed sale election.* A C corporation (or a partnership to which the principles of this section apply under paragraph (e) of this section) makes the deemed sale election with the following statement: ''[Insert name and employer identification number of electing corporation or partnership] elects deemed sale treatment under § 1.337(d)-7(c) with respect to its property that was converted to property of, or transferred to, a RIC or REIT, [insert name and employer identification number of the RIC or REIT, if different from the name and employer identification number of the C corporation or partnership].'' This statement must be attached to the Federal income tax return of the C corporation or partnership for the taxable year in which the deemed sale occurs. An election under this paragraph (c) is irrevocable.

(6) *Examples.* The rules of this paragraph (c) are illustrated by the following examples:

Example 1. Deemed sale treatment on merger into RIC. (i) X, a calendar-year taxpayer, has qualified as a RIC since January 1, 2001. On May 31, 2004, Y, a C corporation and calendar-year taxpayer, transfers all of its property to X in a transaction that qualifies as a reorganization under section 368(a)(1)(C). As a result of the transfer, Y would be subject to section 1374 treatment under paragraph (b) of this section but for its timely election of deemed sale treatment under this paragraph (c). As a result of such election, Y is subject to deemed sale treatment on its tax return for the short taxable year ending May 31, 2004. On May 31, 2004, Y's only assets are Capital Asset, which has a fair market value of $100,000 and a basis of $40,000 as of the end of May 30, 2004, and $50,000 cash. Y also has an unrestricted net operating loss carryforward of $12,000 and accumulated earnings and profits of $50,000. Y has no taxable income for the short taxable year ending May 31, 2004, other than gain recognized under this paragraph (c). In 2007, X sells Capital Asset for $110,000. Assume the applicable corporate tax rate is 35%.

(ii) Under this paragraph (c), Y is treated as if it sold the converted property (Capital Asset and $50,000 cash) at fair market value on May 30, 2004, recognizing $60,000 of gain ($150,000 amount realized—$90,000 basis). Y must report the gain on its tax return for the short taxable year ending May 31, 2004. Y may offset this gain with its $12,000 net operating loss carryforward and will pay tax of $16,800 (35% of $48,000).

(iii) Under section 381, X succeeds to Y's accumulated earnings and profits. Y's accumulated earnings and profits of $50,000 increase by $60,000 and decrease by $16,800 as a result of the deemed sale. Thus, the aggregate amount of subchapter C earnings and profits that must be distributed to satisfy section 852(a)(2)(B) is $93,200 ($50,000 + $60,000 − $16,800). X's basis in Capital Asset is $100,000. On X's sale of Capital Asset in 2007, X recognizes $10,000 of gain which is taken into account in computing X's net capital gain for purposes of section 852(b)(3).

Example 2. Loss limitation. (i) Assume the facts are the same as those described in *Example 1,* but that, prior to the reorganization, a shareholder of Y contributed to Y a capital asset, Capital Asset 2, which has a fair market value of $10,000 and a basis of $20,000, in a section 351 transaction.

(ii) Assuming that Y's acquisition of Capital Asset 2 was made pursuant to a plan a principal purpose of which was to reduce the amount of gain that Y would recognize in connection with the conversion transaction, Capital Asset 2 would be disregarded in computing the amount of Y's net gain on the conversion transaction.

(d) *Exceptions*—(1) *Gain otherwise recognized.* Paragraph (a) of this section does not apply to any conversion transaction to the extent that gain or loss otherwise is recognized on such conversion transaction. See, for example, sections 336, 351(b), 351(e), 356, 357(c), 367, 368(a)(2)(F), and 1001.

(2) *Re-election of RIC or REIT status*—(i) *Generally.* Except as provided in paragraphs (d)(2)(ii) and (iii) of this section, paragraph (a)(1) of this section does not apply to any corporation that—

(A) Immediately prior to qualifying to be taxed as a RIC or REIT was subject to tax as a C corporation for a period not exceeding two taxable years; and

(B) Immediately prior to being subject to tax as a C corporation was subject to tax as a RIC or REIT for a period of at least one taxable year.

(ii) *Property acquired from another corporation while a C corporation.* The exception described in paragraph (d)(2)(i) of this section does not apply to property acquired by the corporation while it was subject to tax as a C corporation from any person in a transaction that results in the acquirer's basis in the property being determined by reference to a C corporation's basis in the property.

(iii) *RICs and REITs previously subject to section 1374 treatment.* If the RIC or REIT had property subject to paragraph (b) of this section before the RIC or REIT became subject to tax as a C corporation as described in paragraph (d)(2)(i) of this section, then paragraph (b) of this section applies to the RIC or REIT upon its requalification as a RIC or REIT, except that the 10-year recognition period with respect to such property is reduced by the portion of the 10-year recognition period that expired before the RIC or REIT became subject to tax as a C corporation and by the period of time that the corporation was subject to tax as a C corporation.

(e) *Special rule for partnerships.* The principles of this section apply to property transferred by a partnership to a RIC or REIT to the extent of any C corporation partner's distributive share of the gain or loss in the transferred property. If the partnership were to elect deemed sale treatment under paragraph (c) of this section in lieu of section 1374 treatment under paragraph (b) of this section with respect to such transfer, then any net gain recognized by the partnership on the deemed sale must be allocated to the C corporation partner, but does not increase the capital account of any partner. Any adjustment to the partnership's basis in the RIC or REIT stock as a result of deemed sale treatment under paragraph (c) of this section shall constitute an adjustment to the basis of that stock with respect to the C corporation partner only. The principles of section 743 apply to such basis adjustment.

(f) *Effective date.* This section applies to conversion transactions that occur on or after January 2, 2002. For conversion transactions that occurred on or after June 10, 1987, and before January 2, 2002, see §§ 1.337(d)–5 and 1.337(d)–6.

§ 1.337(d)–7T [Removed]

Par. 7. Section 1.337(d)–7T is removed.

Par. 8. In § 1.514(c)–2, paragraph (e)(1)(v) is added to read as follows:

§ 1.514(c)–2 Permitted allocations under section 514(c)(9)(E).

* * * * *

(e) * * *

(1) * * *

(v) Allocations made in taxable years beginning on or after January 1, 2002, that are mandated by statute or regulation other than subchapter K of chapter 1 of the Internal Revenue Code and the regulations thereunder.

PART 602—[AMENDED]

Par. 9. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 10. In § 602.101, paragraph (b) is amended by removing the entries for ''1.337(d)–5T'', ''1.337(d)–6T'', and ''1.337–7T'' and adding entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified or described	Current OMB control No.
* * * * *	
1.337(d)–5	1545–1672
1.337(d)–6	1545–1672
1.337(d)–7	1545–1672
* * * * *	

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

Approved: March 7, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 03–6221 Filed 3–13–03; 1:16 pm]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 175–1175a; FRL–7467–8]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is announcing it is approving a revision to the Missouri State Implementation Plan (SIP). This revision pertains to the revision of a Missouri air program rule which controls volatile organic compound emissions in the Kansas City area. The effect of this approval is to ensure Federal enforceability of the State air program rules and to maintain consistency between the State-adopted rules and the approved SIP.

DATES: This direct final rule will be effective May 19, 2003, unless EPA receives adverse comments by April 17, 2003. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal approval process for a SIP?
What does Federal approval of a State regulation mean to me?
What is being addressed in this document?
Have the requirements for approval of a SIP revision been met?
What action is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires States to develop air pollution regulations and control strategies to ensure that State air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each State must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing State regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for State regulations to be incorporated into the Federally-enforceable SIP, States must formally adopt the regulations and control strategies consistent with State and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a State-authorized rulemaking body.

Once a State rule, regulation, or control strategy is adopted, the State submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the State submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All State regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual State regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given State regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the State regulation before and after it is incorporated into the Federally-approved SIP is primarily a State responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action

against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

Missouri has submitted revisions to rule 10 CSR 10–2.260, Petroleum Liquid Storage, Loading and Transfer, which limits emissions of volatile organic compounds in the Kansas City, Missouri, area.

Shortly after this rule was revised by the State in 2001, it was determined that two of the tank size provisions were incorrect. The tank sizes and thus the filling mechanisms and emissions venting controls in subsections (5)(A) and (5)(B) had been switched. The large tanks should have the sophisticated poppeted filling mechanisms and Stage I vapor recovery equipment rather than the simple controls used on small tanks. This revision makes that correction. Also, subsection (5)(B) was revised for clarity in the first sentence to read, ''in addition to the requirements of subsection (5)(A).'' This addition clarifies that large tanks must meet the requirements for smaller tanks as well as the more stringent requirements. Finally, a definition for ''Stage I Vapor Recovery'' was added to section (1) Definitions, for rule clarity.

The State submittal met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

We are approving as an amendment to the Missouri SIP State rule 10 CSR 10–2.260, which became effective on November 30, 2002.

We are processing this action as a final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. 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 CAA. 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 CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 19, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: March 3, 2003.

James B. Gulliford,

Regional Administrator, Region 7.

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

PART 52—[AMENDED]

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

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

Subpart AA—Missouri

2. In § 52.1320(c) the table for Chapter 2 is amended by revising the entry for 10–2.260.

The revision reads as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA–APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources Chapter 2—Air Quality Standards and Air Pollution Control Regulations for the Kansas City Metropolitan Area				
*	*	*	*	*
10–2.260	Control of Petroleum Liquid Storage, Loading, and Transfer.	11/30/02	3/18/03 and FR citation.	
*	*	*	*	*

* * * * *

[FR Doc. 03–6307 Filed 3–17–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 171–1171a; FRL–7468–1]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is announcing it is approving a revision to the Missouri State Implementation Plan (SIP) which pertains to the rescission of two outdated opacity rules for the Kansas City and St. Louis areas and the revision of the state-wide opacity rule. Approval of this revision will simplify the SIP, ensure consistency between the state and federally-approved rules, and ensure Federal enforceability of the revised state rule.

DATES: This direct final rule will be effective May 19, 2003, unless EPA receives adverse comments by April 17, 2003. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

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What action is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the

regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

In an ongoing effort to simplify and consolidate its air program rules, and SIP, the Missouri Department of Natural Resources (MDNR) adopted a state-wide rule pertaining to visible air contaminants in 1999. This rule was approved in the SIP on October 26, 2000 (65 FR 64145).

With the adoption of this state-wide rule, there was no longer any need to retain similar rules which applied to the Kansas City and St. Louis areas. Consequently, the MDNR has requested that rules 10 CSR 10–2.080 Emission of Visible Air Contaminants From Internal Combustion Engines, applicable to the Kansas City metropolitan area, and 10 CSR 10–5.180 Emission of Visible Air Contaminants From Internal Combustion Engines, applicable to the St. Louis metropolitan area, be rescinded from the Missouri SIP.

Since rule 10 CSR 10–6.220 contained a reference to these two rules in subsection (1)(A), it has been revised to delete these references, and language was added to maintain the applicability and exemptions that were provided for in the rescinded rules. Finally, one minor clerical correction was made to subsection (1)(F). These revisions were state effective on November 30, 2002.

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

We are approving as an amendment to the Missouri SIP the rescission of state rules 10 CSR 10–2.080 and 10 CSR 10–5.180, and a revision to rule 10 CSR 10–6.220.

We are processing this action as a final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. 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 CAA. 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 CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 19, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects 40 CFR Part 52

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

Dated: March 3, 2003.

James B. Gulliford,

Regional Administrator, Region 7.

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

PART 52—[AMENDED]

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

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

Subpart AA—Missouri

2. In § 52.1320(c) the tables for Chapters 2, 5, and 6 are amended by:

a. In Chapter 2 removing the entry for 10–2.080,

b. In Chapter 5 removing the entry for 10–5.180, and

c. In Chapter 6 revising the entry for 10–6.220.

The revision reads as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
*	*	*	*	*
10–6.220	Restriction of Emission of Visible Air Contaminants.	11/30/02	3/18/03 and FR citation	
*	*	*	*	*

* * * * *

[FR Doc. 03–6309 Filed 3–17–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 176–1176a; FRL–7468–4]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is announcing it is approving a revision to the Missouri State Implementation Plan (SIP) which pertains to updating the state's Air Quality Index (AQI) rule to make it consistent with the Federal rule. The AQI is used by states for daily air quality reporting to the general public. Approval of this revision will ensure consistency between the state and Federally-approved rules, and ensure Federal enforceability of the revised state rule.

DATES: This direct final rule will be effective May 19, 2003, unless EPA receives adverse comments by April 17, 2003. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What Is a SIP?
What is the Federal approval process for a SIP?
What does Federal approval of a state regulation mean to me?
What is being addressed in this document?
Have the requirements for approval of a SIP revision been met?
What action is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not

reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

On August 4, 1999 (64 FR 42530), EPA published a final rule which revised the Air Quality Index (AQI) used by states for daily air quality reporting to the general public. These requirements are promulgated in the Code of Federal Regulations at Part 58—Ambient Air Quality Surveillance, section 58.50 and Appendix G.

The AQI (formerly called the Pollution Standards Index) is a tool that simplifies the reporting of air quality to the general public. The AQI incorporates into a single index concentrations of five criteria pollutants: ozone, particulate matter, carbon monoxide, sulfur dioxide, and nitrogen dioxide. The scale of the index is divided into general categories that are associated with health messages. The scale is also color coded. It is usually the color that is reported during public messages. For example, green equates to ''good'' air quality, and ''maroon'' equates to ''hazardous'' air quality.

In order to keep the state rules up to date, and consistent with the federal rules, the state revised its existing rule which contains the AQI information, 10 CSR 10–6.130 Controlling Emissions During Episodes of High Air Pollution Potential, to adopt by reference these new provisions. This state action was effective November 30, 2002.

The state also revised the rule to incorporate its updated rule format by changing rule section headings to read: (1) Applicability; (2) Definitions; (3) General Provisions; (4) Reporting and Record Keeping; and (5) Test Methods. A few other minor clarifications and corrections were made.

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

We are approving as an amendment to the Missouri SIP revisions to rule 10 CSR 10–6.130 Controlling Emissions During Episodes of High Air Pollution Potential.

We are processing this action as a final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. 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 CAA. 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 CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 19, 2003.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a

petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects 40 CFR Part 52

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

Dated: March 3, 2003.

James B. Gulliford,

Regional Administrator, Region 7.

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

PART 52—[AMENDED]

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

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

Subpart AA—Missouri

2. In § 52.1320(c) the table for Chapter 6 is amended by revising the entry for 10–6.130 to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
*	*	*	*	*
10–6.130	Controlling Emissions During Episodes of High Air Pollution Potential	11/30/02	3/18/03 and FR citation	
*	*	*	*	*

* * * * *

[FR Doc. 03–6311 Filed 3–17–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 174–1174a; FRL–7467–4]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is announcing it is approving a revision to the Missouri State Implementation Plan (SIP). This revision pertains to two Missouri rules, applicable to the Springfield-Greene County area and out-state area, which control particulate matter emissions from fuel burning equipment used for indirect heating. The effect of this approval is to ensure Federal enforceability of the state air program rules and to maintain consistency between the state-adopted rules and the approved SIP.

DATES: This direct final rule will be effective May 19, 2003, unless EPA receives adverse comments by April 17, 2003. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal approval process for a SIP?
What does Federal approval of a state regulation mean to me?
What is being addressed in this document?
What action is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process

generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

The Missouri Department of Natural Resources (MDNR) has four similar SIP-approved rules which pertain to the control of particulate matter from fuel burning equipment used for indirect heating. These rules are specific to various areas of the state (Kansas City, St. Louis, Springfield-Greene County, and the out-state area) but are otherwise similar in their requirements. In order to make these rules consistent and to make minor corrections and clarifications, the state has revised the rules applicable to the Springfield-Greene County area and the out-state area.

Specifically, rule 10 CSR 10–3.060, Maximum Allowable Emissions of Particulate Matter from Fuel Burning Equipment Used for Indirect Heating, applicable to the out-state area, was revised to add a clarifying statement for the calculation of Q (the installation's total heat input), the word ''Installation'' was replaced with the words ''Indirect Heating Sources,'' an exemption in section (7) was deleted, since it was no longer applicable, and there were a few other minor clarifications.

Rule 10 CSR 10–4.040, Maximum Allowable Emission of Particulate Matter from Fuel Burning Equipment Used for Indirect Heating, applicable to the Springfield-Greene County area, was revised to separate out the emission limitation requirements for new and existing sources to make this section consistent with the other rules, a clarifying statement for the calculation of Q (the installation's total heat input) was added, the word ''Installation'' was replaced with the words ''Indirect Heating Sources,'' and there were a few other minor clarifications. Additionally, we determined that the test method in section (1)(D) of the rule had been updated in an earlier version of the rule but had not been updated in the SIP. We are correcting this omission and will approve this rule section in this action since it references a more current method.

Additional detail and explanation regarding the revisions to these rules is contained in the Technical Support Document for this action which is available from the EPA contact above.

The state submittal met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action is EPA Taking?

We are approving as an amendment to the Missouri SIP state rules 10 CSR 10–3.060 and 10 CSR 10–4.040, which became effective in the state on November 30, 2002.

We are processing this action as a final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 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 CAA. 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 CAA. 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 CAA. Thus, the requirements of

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 19, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects 40 CFR Part 52

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

Dated: March 3, 2003.

James B. Gulliford,

Regional Administrator, Region 7.

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

PART 52—[AMENDED]

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

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

Subpart AA—Missouri

2. In § 52.1320(c) the tables for Chapters 3 and 4 are amended by:

a. In Chapter 3 revising the entry for 10–3.060 and

b. In Chapter 4 revising the entry for 10–4.040.

The revisions read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 3—Air Pollution Control Regulations for the Outstate Missouri Area				
*	*	*	*	*
10–3.060	Maximum Allowable Emission of Particulate Matter From Fuel Burning Equipment Used for Indirect Heating.	11/30/02	[3/18/03 *and FR cite*]	
Chapter 4—Air Quality Standards and Air Pollution Control Regulations for Springfield-Greene County Area				
10–4.040	Maximum Allowable Emission of Particulate Matter From Fuel Burning Equipment Used for Indirect Heating.	11/30/02	[3/18/03 *and FR cite*]	
*	*	*	*	*

* * * * *

[FR Doc. 03–6305 Filed 3–17–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[Docket No. OST 1999–6189]

RIN 9991–AA33

Organization and Delegation of Powers and Duties; Delegations to Assistant Secretary for Budget and Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation is delegating to the Assistant Secretary for Budget and Programs the authority to conduct an annual review of the Department of Transportation's civil penalty provisions and coordinate the Department's compliance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

DATES: This rule is effective March 18, 2003.

ADDRESSES: The docket for this rulemaking is maintained by the Docket Management Facility, (OST 1999–6189),

U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC, 20590–0001.

FOR FURTHER INFORMATION CONTACT: Linda C. Lasley, Attorney-Advisor, Office of the Assistant General Counsel for Regulation and Enforcement, (202) 366–4723.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, 110 Stat. 1321) (the Act), requires Federal agencies to review each civil penalty provision within their respective jurisdictions at least once every four years and determine whether adjustments to any penalty provisions are required due to inflation. If an adjustment is required, the agency must issue a rulemaking adjusting its civil penalties provision accordingly. The Department of Transportation (Department), in meeting this statutory requirement in the past, has allowed each of its Operating Administration to review and adjust its own civil penalty provisions. This final rule delegates the responsibility of reviewing annually each civil penalty provision throughout the Department to the Assistant Secretary for Budget and Programs (Assistant Secretary). The Assistant Secretary will be responsible for determining which civil penalty provisions are required to be adjusted and for calculating the necessary adjustment. Further, the Assistant Secretary will coordinate with each Operating Administration to ensure that any necessary and appropriate rulemaking is published in the **Federal Register**.

This delegation is designed to centralize the Department's efforts at complying with the statutory mandates of the Act to ensure a timelier, efficient, and consistent review of the Department's various civil penalty provisions.

Because this final rule is ministerial in nature and relates only to Departmental management, organization, procedure, and practice, the Office of the Secretary of Transportation (OST) has determined that notice and comment are unnecessary and that the rule is exempt from prior notice and comment requirements under 5 U.S.C. 553(b)(3)(A). These changes will not have substantive impact, and OST does not expect to receive substantive comment on the rule. Therefore, OST finds that there is good cause under 5 U.S.C. 553(d)(3) to make this rule effective less than 30 days after publication in the **Federal Register**.

Regulatory Evaluation

Regulatory Assessment

This rulemaking is a non-significant regulatory action under section 3(f) of Executive Order 12866 and has not been reviewed by the Office of Management and Budget under that Order. This rule is also not significant under the regulatory policies and procedures of the Department of Transportation, 44 FR 11034.

This rule does not impose unfunded mandates or requirements that will have any impact on the quality of the human environment.

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 Assessment

This proposed rule has been reviewed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it is determined that this action does not have a substantial direct effect on the States, or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule will not limit the policymaking discretion of the States nor preempt any State law or regulation.

List of Subjects in 49 CFR Part 1

Authority delegations (government agencies), Organization and functions (government agencies).

In consideration of the foregoing, part 1 of title 49, Code of Federal Regulations, is amended to read as follows:

PART 1—[AMENDED]

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

Authority: 49 U.S.C. 322; 46 U.S.C. 2104(a); 28 U.S.C. 2672; 31 U.S.C. 3711(a)(2); Pub. L. 101–552, 104 Stat. 2736; Pub L. 106–159, 113 Stat. 1748; Pub. L. 107–71, 115 Stat. 597.

2. In § 1.58, add a new paragraph (i) to read as follows:

§ 1.58 Delegations to Assistant Secretary for Budget and Programs.

* * * * *

(i) In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, 110 Stat. 1321), review, on an annual basis, each of the Department's civil penalty provisions, determine whether adjustment is required, calculate the necessary adjustment, and coordinate with the relevant Operating Administration to ensure that the requisite regulation making the adjustment is issued.

* * * * *

Issued on February 20, 2003.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 03–6473 Filed 3–17–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG96

Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for Two Larkspurs From Coastal Northern California

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 *Delphinium bakeri* (Baker's larkspur) and *Delphinium luteum* (yellow larkspur). We are designating 2 units totaling approximately 740 hectares (ha) (1,828 acres (ac)) for *D. bakeri,* and 4 units totaling approximately 1,022 ha (2,525 ac) for *D. luteum,* in Marin and Sonoma counties, California. The total critical habitat for both plants is approximately 1,762 ha (4,353 ac) in 6 units. 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 this proposal, including data on economic and other impacts of the designation.

DATES: This rule becomes effective on April 17, 2003.

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 Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Glen Tarr or Susan Moore, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, at the above address (telephone 916/414–6600; facsimile 916/414–6710).

SUPPLEMENTARY INFORMATION:

Background

Delphinium bakeri is a perennial herb in the buttercup family (Ranunculaceae). Ewan (1942) described *Delphinium bakeri* based on type material collected by Milo Baker in 1939 from ''Coleman Valley, Sonoma Co., California.'' In the most recent treatment, Warnock (1997) retained the taxon as a full species. It grows from a thickened, tuber-like, fleshy cluster of roots. The stems are hollow, erect, and grow to 65 centimeters (cm) (26 inches (in)) tall. Shallowly five-parted leaves occur primarily along the upper third of the stem and are green (as opposed to withering) at the time the plant flowers. The flowers are irregularly shaped. The five sepals (members of the outermost set of flower parts) are conspicuous, bright dark blue or purplish, with the rear sepal elongated into a spur (hollow, often cone-shaped, projection). The inconspicuous petals occur in two pairs. The lower pair is oblong and blue-purple; the upper pair is oblique (having unequal sides or an asymmetric base) and white. Seeds are produced in several dry, many-seeded fruits, which split open at maturity on only one side (*i.e.*, follicles). *D. bakeri* flowers from April through May (Warnock 1993). *D. bakeri* can be differentiated from other members of the genus by its crenate leaf margins (margins notched or scalloped so as to form rounded teeth), leaves that are not withering at time of flowering, and flowers that are loosely arranged (California Native Plant Society (CNPS) 1977).

Delphinium bakeri has only been known from three locations: Coleman Valley in southern Sonoma County, near the town of Tomales in northern Marin County, and approximately 10 km (6 mi) east of Tomales Bay in northern Marin County (California Natural Diversity Database (CNDDB) 2001). *D. bakeri* is thought to have been extirpated from Coleman Valley sometime prior to 1986, and from the site near Tomales, where the species has not been relocated since 1925 (CNDDB 2001). At the only known extant (currently existing, not extirpated or destroyed) population, approximately 10 km (6 mi) east of Tomales Bay, the number of individuals has varied from 0 to 67 individuals over the last 20 years (CNDDB 2001).

Delphinium bakeri occurs on decomposed shale. The sites where it is found range from 90 to 205 meters (m) (295 to 672 feet (ft)) in elevation (CNDDB 2001). The collection from the type locality (the location where the species was first described) in Coleman Valley was described by Joseph Ewan as growing ''along fence rows and in heavy low brush'' (Ewan 1942). Two species listed as growing with *D. bakeri* at the type locality were *Potentilla elata* (now known as *Horkelia californica* ssp. *dissita* (California honeydew)) and *Ranunculus orthorynchus* (straightbeak buttercup) (Ewan 1942). No information is reported for the associated species or habitat for the other occurrence near Tomales that is thought to be extirpated (CNDDB 2001).

The single extant occurrence of *Delphinium bakeri* grows in mesic (moderate moisture) conditions along an extensive north-facing slope under an overstory that includes *Umbellularia californica* (California bay), *Aesculus californica* (California buckeye), and *Quercus agrifolia* (coastal live oak). Other native plants associated with *D. bakeri* at this site include: *Baccharis pilularis* ssp. *consanguinea* (coyotebrush), *Symphorcarpos* cf. *rivularis* (snowberry), *Rubus ursinus* (California blackberry), *Pteridium aquilinum* (braken fern), *Polystichum munitum* (sword fern), *Pityrogramma triangularis* (goldback fern), *Dryopteris arguta* (coastal woodfern), *Adiantum jordanii* (maidenhair fern), *Polypodium glycyrrhiza* (licorice fern), *Toxicodendron diversilobum* (poison oak), *Ceanothus thyrsiflorus* (blueblossom ceanothus), *Lithophragma affine* (woodland star), and *Holodiscus discolor* (oceanspray) (J. Koontz, Center for Biodiversity, *in litt.,* 2002; CNDDB 2001). These plants are important indicators of remaining areas of natural habitat that support *D. bakeri,* and are likely to support ecological processes such as water retention, shading, nitrogen processing, and other factors that create suitable habitat conditions for *D. bakeri.* The property is privately owned, but Sonoma County has a right-of-way along the road. Pollinators have not specifically been identified for *D. bakeri,* but pollinators for species in the genus *Delphinium typically* are large hymenoptera, especially *Bombus* ssp. (bumblebees) (Guerrant 1978).

In 1942, Ewan noted that the habitat of *Delphinium bakeri* was formerly more abundant, but had been reduced by cultivation (Ewan 1942). Habitat conversion, grazing, and roadside maintenance activities are cited as the reasons for the decline of the species, and two of the three known occurrences of *D. bakeri* in Marin and Sonoma counties, including the occurrence at the type locality in Coleman Valley, have been extirpated (California Department of Fish and Game (CDFG) 1994). The single location where *D. bakeri* is known to remain extant is threatened by road work, such as right-of-way maintenance (including use of herbicides), overcollection, and sheep grazing (CNDDB 2001). For example, many plants were accidentally mowed by a county road maintenance crew in May 2002 (J. Koontz, *in litt.,* 2002). Because of the restriction in its range to a single population and the small population size of the one remaining occurrence, *D. bakeri* is extremely vulnerable to extinction from random natural events, such as unseasonal fire or insect outbreaks (Shaffer 1981; Primack 1993).

Delphinium luteum is a perennial herb in the buttercup family (Ranunculaceae). Heller (1903) described *D. luteum* based on type material collected from ''grassy slopes about rocks, near Bodega Bay, along the road leading to the village of Bodega'' in Sonoma County. Although Jepson (1975) reduced *D. luteum* to a variety of *D. nudicaule* (red larkspur), it is currently recognized as a full species (Warnock 1993). *D. luteum* grows from thin tuberous roots up to 30 cm (12 in) long to a height of 55 cm (22 in) tall. The leaves are mostly basal, fleshy, and green at the time of flowering. The flowers are cornucopia-shaped. The five conspicuous sepals are bright yellow, with the posterior sepal elongated into a spur. The inconspicuous petals occur in two pairs. The upper petals are narrow and unlobed; the lower petals are oblong to ovate (egg-shaped). The fruit is a follicle. *D. luteum* flowers from March to May. The species is distinguished from other *Delphinium* by its yellow flowers and its erect seed follicles (CNPS 1977). In contrast to typical pollinators for the genus *Delphinium,* potential pollinators for *D. luteum* are Allen's hummingbirds (*Selasphorus sasin*), which have been observed visiting *D. luteum* flowers. In addition, the flower shape and sucrose-dominated nectar are consistent with characteristics of species that are typically pollinated by hummingbirds (Guerrant 1978).

Delphinium luteum inhabits coastal prairie and coastal scrub areas, which typically have no overstory vegetation, at elevations ranging from sea level to

about 100 m (300 ft) within northwestern Marin and southwestern Sonoma counties, California (CNDDB 2001). The species occurs on moderate to steep slopes, generally near areas showing evidence of some level of ground disturbance in the past, including landslides (Guerrant 1978, CNDDB 2001). Roots of *D. luteum* are tuberous, long, and thin, an unusual combination in this genus, which may provide an advantage in thin, unstable soils (Weaver 1919 as cited in Guerrant 1978). Typical soil types supporting *D. luteum* include the Kneeland series in Sonoma County and the Yorkville series in Marin County. These soils derive from sandstone or shale, and share qualities of rapid runoff and high erosion potential (U.S. Department of Agriculture 1972; Soil Conservation Service (SCS) 1985). The most recently documented populations of *D. luteum* (those seen in the 1980s or later) tend to grow on north-facing slopes in canyon complexes with steep sides (LSA Associates (LSA) 1997; CNDDB 2001). Presumably the more shaded north-facing slopes provide a more moist microclimate than slopes facing other directions, while the steep-sloped canyon walls increase the likelihood of erosion and landslides in the vicinity. Two potential exceptions to this trend are evident (CNDDB 2001): one population near Tomales, California, is mapped on a south-facing slope, and a relatively nearby population does not appear to grow near any steep-sloped canyon walls. Both of these populations are in critical habitat Unit L4, described below. The first population has not been documented since 1983, and its mapped location is precise to a 0.32 km (0.20 mi) radius. This could put its actual location across the canyon on a north-facing slope. The other population is growing in a road cut, which might provide erosional and soil disturbance characteristics similar to those near canyon walls (CNDDB 2001).

Temperatures in the region inhabited by *Delphinium luteum* are moderated by fog. As a result, the summers are relatively cool and winters are relatively warm compared to inland habitats.

Much of the coastal prairie in this species' range has been grazed by livestock for over a century, and is now characterized by a mixture of nonnative annuals and forbs and native prairie plants. Native plants typically occurring with *D. luteum* include *Arabis blepharophylla* (rose rockcress), *Calochortus tolmei* (Tolmei startulip), *Mimulus aurantiacus* (orange bush monkeyflower), *Dudleya caespitosa* (sea lettuce), *Polypodium californicum* (California polyploidy), *Eriogonum parviflorum* (sea cliff buckwheat), *Toxicodendron diversilobum* (poison oak), *Romanzoffia californica* (California mistmaiden), *Hesperevax sparsiflora* (evax), *Pentagramma triangularis* (goldenback fern), and *Sedum spathulifolium* (broadleaf stonecrop) (CNDDB 2001; J. Koontz, *in litt.,* 2002;). These plants are important indicators of remaining areas of natural habitat that support *D. luteum,* and are likely to support ecological processes such as water retention, shading, nitrogen processing, and other factors that create suitable habitat conditions for *D. luteum.*

We know of 12 occurrences of *Delphinium luteum,* 11 of which are documented in the CNDDB (CNDDB 2001). (The CNDDB defines an ''occurrence'' of a plant species as a location where the species is present and which is separated from other such locations by at least 0.40 kilometer (km) (1/4 mile (mi)). All occurrences of *D. bakeri* and *D. luteum* mapped by the CNDDB GIS data layers indicate single populations.) Since the early 1980s, however, only 6 of these 11 occurrences have been documented (reported in the CNDDB or other reputable source). Of the other five occurrences in the CNDDB, three have not been documented since 1935 or earlier (two of which were revisited in the 1980s with negative results), another is based entirely on unsupported and undated information found on a 1979 map, and the fifth is a questionable identification never confirmed by a second sighting (CNDDB 2001). The six occurrences documented more recently in the CNDDB grow in three separate drainages, one in Sonoma County and two in Marin County. These groupings form the basis of three of the four critical habitat units we are proposing (see Units L1, L2 and L4, below). The twelfth occurrence, not yet recorded in the CNDDB, occurs in a third Marin County drainage (Amme 1993; D. Amme, California Department of Transportation (CalTrans), *in litt.* 2002; D. Amme, pers. comm. 2002), and forms the basis of critical habitat Unit L3, as described below.

Recent surveys have not found many plants in any of these populations. The largest number recorded by CNDDB is 134 plants for one of the Marin County populations in 1993. The total number of remaining individuals of *Delphinium luteum* currently is estimated at 100 to 175 plants (J. Koontz, *in litt.,* 2002). Each recently documented population faces one or more potential threats to its existence, including overcollection, road widening, inadequately managed sheep grazing, fire suppression, and hybridization with another *Delphinium* species (B. Guggolz, CNPS, pers. comm., 1995; CNDDB 2001). Additionally, the combination of few populations, small numbers of individuals within each population, narrow range, and restricted habitat makes *D. luteum* susceptible to extirpation in significant portions of its range from random natural events such as unseasonal fire, drought, disease, or other natural occurrences (Shaffer 1981; Primack 1993).

Previous Federal Action

Federal actions on the two plant species began when the Secretary of the Smithsonian Institution, as directed by section 12 of the Act (16 U.S.C. 1531 *et seq.*), prepared a report on those native U.S. plants considered to be endangered, threatened, or extinct in the United States. This report, known as House Document No. 94–51, was presented to Congress on January 9, 1975, and included *Delphinium bakeri* and *D. luteum* as species the Smithsonian considered to be endangered. On July 1, 1975, we published a notice in the **Federal Register** (40 FR 27823) accepting the report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and of our intention to review the status of the plant taxa named in the report. On June 16, 1976, we published a proposed rule in the **Federal Register** (41 FR 24523) determining approximately 1,700 vascular plant species, including *D. bakeri* and *D. luteum*, to be endangered species pursuant to section 4 of the Act. We assembled the list of 1,700 plant taxa on the basis of House Document No 94–51, our July 1, 1975, **Federal Register** publication (40 FR 27823), and comments and data received in response to both documents. General comments received in response to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909).

In 1978, Congress passed amendments to the Act requiring us to withdraw all listing proposals more than 2 years old. The amendments included a 1-year grace period for proposed rules which already were more than 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, proposed rule that had not been made final, along with four other proposals that had expired. We published an updated Notice of Review (NOR) for plants on December 15, 1980 (45 FR 82480). This NOR included *Delphinium bakeri* and *D. luteum* as ''category 1 candidates'' (defined at that time as species for which data in our

possession was sufficient to support proposals for listing).

On February 15, 1983, we published a notice in the **Federal Register** (48 FR 6752) of our prior finding that the listing of *Delphinium bakeri* and *D. luteum* was warranted but precluded in accordance with section 4(b)(3)(B)(iii) of the Act. Pursuant to section 4(b)(3)(C)(i) of the Act, such findings must be recycled annually, until the species is either proposed for listing or the petitioned action is found to be not warranted. Each October from 1983 through 1994, further findings were made that the listing of *D. bakeri* and *D. luteum* were warranted, but that the listing of these species was precluded by other pending proposals of higher priority.

On November 28, 1983, we published a supplement to the plant NOR (48 FR 53640). This supplement changed *Delphinium bakeri* and *D. luteum* from ''category 1'' to ''category 2 candidates'' (defined at the time as species for which data in our possession indicated listing was possibly appropriate, but for which substantial data on biological vulnerability and threats were not currently known or on file to support proposed rules).

The plant NOR was revised again on September 27, 1985 (50 FR 39526). *Delphinium bakeri* and *D. luteum* were included as category 2 candidates. Another revision of the plant NOR was published on February 21, 1990 (55 FR 6184). In this revision *D. bakeri* and *D. luteum* were included as category 1 candidates, and remained as category 1 candidates in the plant NOR published on September 30, 1993 (58 FR 51144). Upon publication of the February 28, 1996, NOR (61 FR 7596), we ceased using category designations and included *D. bakeri* and *D. luteum* as candidate species. We define candidate species as those for which we have on file sufficient information on the biological vulnerability and threats to support proposals to list them as threatened or endangered. On June 19, 1997, we published a proposed rule in the **Federal Register** (62 FR 33383) to list *D. bakeri* and *D. luteum* as endangered.

On June 17, 1999, our failure to issue final rules for listing *Delphinium bakeri* and *D. luteum* and seven other plant species as endangered or threatened, and our failure to make a final critical habitat determination for the nine species, was challenged in *Southwest Center for Biological Diversity and California Native Plant Society* v. *U.S. Fish and Wildlife Service and Bruce Babbitt* (Case No. C99–2992 (N.D.Cal.)). We subsequently published a final rule listing *D. bakeri* and *D. luteum* as endangered species on January 26, 2000 (65 FR 4156). On May 22, 2000, the judge signed an order requiring us to propose critical habitat for the two species by September 30, 2001. The court subsequently extended this deadline to June 10, 2002, based on a settlement agreement reached on October 1, 2001 *(Center for Biological Diversity, et al.*, v. *Gale Norton, et al.* (D.D.C.) (Case. No. Civ. 01–2063)). The agreement also established March 10, 2003, as the date by which we would reach a final critical habitat determination for the species.

We published a proposed critical habitat designation for *Delphinium bakeri* and *D. luteum* in the **Federal Register** on June 18, 2002 (67 FR 41367). Publication of the proposed rule opened a 60-day public comment period, which closed on August 19, 2002. On November 1, 2002, we published a notice announcing the availability of our draft economic analysis of the proposed critical habitat designation (67 FR 66599). The notice opened a public comment period on the draft economic analysis, and reopened the comment period on the proposed critical habitat designation. This second public comment period lasted approximately 30 days, closing on December 2, 2002.

Summary of Comments and Recommendations

In our June 18, 2002, proposed critical habitat designation (67 FR 41367) we solicited comments from all interested parties on all aspects of the proposed rule, including information related to biological justification, economic impacts, proposed critical habitat boundaries, and proposed projects. In our November 1, 2002, notice of availability for the draft economic analysis (67 FR 66599), we invited comments on the draft analysis and on the proposed critical habitat designation. In addition to these **Federal Register** publications, we also sent notification letters to appropriate Federal, State, and local agencies, scientific organizations, and other interested parties and invited them to comment. We solicited independent peer review of the proposed designation from three botanists with applicable areas of expertise (see Peer Review section below). We also invited public comment through the publication of notices in three local newspapers: the Marin Independent Journal (June 26, 2002), the Santa Rosa Press Democrat (June 27, 2002), and the Point Reyes Light (July 3, 2002).

Seven individuals, including one peer reviewer, responded with comments. One of those individuals initially requested a public hearing, but subsequently decided to meet instead with Sacramento Fish and Wildlife Office's Listing Branch personnel to submit his comments verbally. Four of the seven commenters indicated their overall support of the proposed designation, two were neutral, and one was opposed. We have reviewed all the comments we received for substantive issues and new information regarding *Delphinium bakeri* and *D. luteum*, and for potential impacts of the proposed critical habitat designation. The comments are addressed in the following summary.

Issue 1: Comments on the Biology of the Species

(1) *Comment:* One commenter questioned whether *Delphinium luteum* qualifies as a valid species.

Our Response: Although Jepson (1975) reduced *Delphinium luteum* to a variety of *D. nudicaule*, it currently is recognized as a full species (Warnock 1993). Guerrant (1978) proposed, based on morphological, ecological, and chemical characteristics, that *D. luteum* might have originated as a species from the hybridization of *D. nudicaule* (red larkspur) and *D. decorum* (yellowtinge larkspur). However, genetic testing by Koontz *et al.* (2001) has shown that if this did in fact occur, it was many generations ago, and that naturally occurring *D. luteum* cannot now be ''recreated'' simply by hybridizing *D. nudicaule* and *D. decorum.* Thus, the best available scientific information supports the recognition of *D. luteum* as a valid species.

(2) *Comment:* One commenter argued that we lack evidence to conclude, with regard to *Delphinium luteum*, that ''sheep grazing, fire, water run, rock quarry activities, etc. are a threat, and that there is a need to restrict them * * * The commenter also mentioned a study by Richard Knight of Colorado State University which found grazing land to be an important resource for many native wildlife species.

Our Response: The proposed critical habitat designation included ''unmanaged sheep grazing'' and ''unseasonal fire'' among potential threats faced by *Delphinium luteum* (67 FR 41367, at 41369), not just ''sheep grazing'' or ''fire.'' We did not list ''water run'' as a threat, and we are not aware of any populations currently being threatened by rock quarrying, although this has threatened populations in the past (Service 2000). The CNDDB (2001) lists sheep grazing as a threat for two of the three largest remaining occurrences of *D. luteum*, and specifically notes that flowers were

found to have been chewed off some of the plants. We recognize that properly controlled grazing can often benefit some native species by cropping back competing plants and by providing an incentive to avoid urban or agricultural development, but we also believe that overgrazing remains a threat for this species. The establishment of critical habitat is unlikely to restrict or affect grazing levels unless the activity has the involvement of a Federal agency, such as a permit or funding.

(3) *Comment:* Another commenter referred to unmanaged sheep grazing as one of the main threats to *Delphinium luteum.* The commenter argued that the remaining population locations may be limited to the steeper and brushier north-facing slopes specifically because those are the places which sheep find most difficult to reach. This commenter recommended that critical habitat for *D. luteum* include ''the larger coastal prairie community with all the traversing canyons and watersheds,'' possibly the entire Marin Gap between Bodega Bay and the Bolinas Ridge, to encourage the future establishment of conservation easements that could eventually ease grazing pressures and allow *D. luteum* populations to expand back outward.

Our Response: We agree that sheep grazing may be a key factor in restricting the species to north-facing slopes in some areas. We want to ensure it is understood, however, that although all but one recently documented population of *D. luteum* occurs on basically north-facing slopes, the species is not restricted to north-facing slopes. Slopes with other aspects can support the species, they support continuity within the units, and provide a range of microhabitat sites for potential expansion that is necessary for the conservation of the species. Therefore, we have redefined the primary constituent elements of the species to more clearly indicate that slope and aspect are separate requirements. Because areas within the defined units are considered critical habitat if they possess at least one of the primary constituent elements of the species, the treatment of slope and aspect as separate constituent elements will more clearly indicate our intent that critical habitat should include areas within each unit that are either steeply sloping or north aspected. However, we believe the possible historical impacts of sheep grazing on the range of *Delphinium luteum* are too speculative to support the expansion of the units beyond their current boundaries in the manner suggested by the commenter.

(4) *Comment:* One commenter thought the *Delphinium luteum* units followed specific soil types too closely and should include more steeply sloped (30 percent or greater) areas with other sandstone or shale-based soil types. He specifically recommended the Tocaloma-Saurin hillsides within Unit L4 and within the Walker Creek watershed east of Unit L4. He also recommended including sloped areas of Tomales series soils between Units L2 and L3.

Our Response: The reference to Kneeland and Yorkville series soils in the list of primary constituent elements for the species was meant as an example and not a limitation, so the areas in Unit L4 with Tocaloma-Saurin soils and slopes of 30 percent or greater do contain the primary constitutent element regarding soils, and we consider such areas to be included in our designation of critical habitat in Unit L4.

In response to the recommendation regarding the areas between two of the proposed units, we considered expanding the critical habitat boundaries to include the Tocaloma-Saurin hillsides along Walker Creek and the Tomales series soils between units L2 and L3. Given our limited current knowledge of the species and its conservation requirements, however, and because we have no records of *D. luteum* growing in the suggested locations, we have little certainty that these areas would meet the definition of critical habitat (as defined in section 3(5)(A) of the Act) as areas on which are found physical and biological features that are essential to the conservation of the species. Within the geographical area occupied by the species, we designate only areas currently known to be essential, and consequently we do not believe it is appropriate to include the suggested areas in our designation of critical habitat for *D. luteum.*

As further described in the section of this preamble entitled ''Critical Habitat'' (below), we recognize that our designation of critical habitat may not include all of the habitat areas that might eventually be determined to be necessary for the conservation 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. 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. Also, as provided for by section 4(a)(3) of the Act, we can revise our designation of critical habitat in the future if it is appropriate to do so.

Issue 2: Site Specific Comments

(5) *Comment:* Two commenters questioned the validity of the *Delphinium luteum* occurrence in Unit L3.

Our Response: This occurrence was documented in Amme (1993), and reconfirmed by both discoverers (D. Amme, *in litt.* 2002; D. Amme, pers comm. 2002; C. Patterson, pers comm. 2003). It was also cited in a plant survey conducted in 1997 (LSA 1997), although that survey did not attempt to directly reconfirm the occurrence's existence. Mr. Amme is a biologist for CalTrans, while Mr. Patterson is a consulting botanist with over 20 years' experience. Although Mr. Amme has indicated some concern that the occurrence may have hybridized to some extent with another species, a small amount of genetic introgression would be unlikely to invalidate the protections of the Act (Service 1996 (61 FR 4710)). Mr. Amme has mentioned to us the possibility that the occurrence could be a yellow-flowered hybrid of two other larkspur species: *Delphinium nudicaule* (red larkspur) and *D. decorum* (coast larkspur) (D. Amme, *in litt.*, 2003). While this possibility cannot be conclusively ruled out, we believe that given the extremely few *D. luteum* occurrences remaining, in the absence of evidence to indicate the occurrence is not *D. luteum*, we must proceed on the assumption that it is. If future evidence demonstrates conclusively that this occurrence is not *D. luteum*, the critical habitat designation can be revised at that time.

(6) *Comment:* Two commenters provided information regarding separate areas in Unit L3 that indicates the areas do not contain *Delphinium luteum* plants or appropriate habitat.

Our Response: Although developed areas such as buildings, roads, or lawns may inadvertently be included within critical habitat boundaries, such areas generally do not have any of the primary constituent elements of the species, and so do not qualify as critical habitat. Where possible we prefer to exclude such areas directly, so we have redrawn Unit L3 to avoid the areas in question. See the ''Summary of Changes from Proposed Rule'' section below.

(7) *Comment:* A commenter argued that Units L2 and L3 have been actively grazed or farmed for over 100 years and either they do not contain *Delphinium*

luteum or else *D. luteum* can coexist with current land uses, and therefore critical habitat designation in those areas is unnecessary.

Our Response: Maps of grazing impact, habitat quality, and habitat type prepared as part of an ''Overview Summary'' for a planned golf ranch in the area in 1992 show extensive grazing impacts (Marin Coast Associates 1992). However, the maps also show areas with relatively high quality habitat, and the L2 and L3 *Delphinium luteum* occurrences fall within these areas. Hence, *D. luteum* apparently can coexist with sheep grazing in areas which are not heavily grazed.

The Act defines critical habitat as areas on which are found physical and biological features essential to the conservation of the species and which may require special management considerations or protection. We believe that the occurrences in Units L2 and L3 are areas with features essential to the conservation of the species, and we also believe they may need special management considerations to survive despite having persisted to this point, because they remain subject to the various threats as described above. While critical habitat designation imposes no special management requirements on private landowners, it does require Federal agencies to take the species' habitat needs into account whenever their actions might adversely modify the habitat. It also alerts the public to the importance of the area for the species, thereby making it easier for landowners to obtain support or compensation from public or private sources for special management actions they are willing to take.

(8) *Comment:* A commenter stated that Units L2 and L3 need ground truthing to see if *Delphinium luteum* plants are still there.

Our Response: Based on consideration of the best available information, we have determined that Units L2 and L3 meet the definition of critical habitat. In general, more ground truthing would be helpful, but we are limited by our inability to enter private property without permission. In the case of Units L2 and L3, we have requested permission from one owner but have not received an answer. Ground truthing would be useful to ascertain further the value of the habitat for *Delphinium luteum.* Plants may be missed if they are not mature and flowering, and a seed bank may be present even when mature plants are not.

Issue 3: Legal and Procedural Comments

(9) *Comment:* A commenter recommended that we provide more accurate maps of unit boundaries and more background information on field reconnaissance work.

Our Response: The maps we publish are limited by the printing capabilities of the **Federal Register** and the Code of Federal Regulations. We can provide more accurate maps on request, however, as well as answer questions regarding field reconnaissance of particular areas. We also commonly publish maps and information on our Web page, *http://sacramento.fws.gov.* Because of private property considerations, our field reconnaissance was limited to habitat inspections made from public roads for Units B1, B2, L1, and L4, and at some other historically documented sites for *Delphinium luteum* which had not been confirmed since the early 1980s.

(10) *Comment:* A commenter found the comment period too short and asked us to extend it.

Our Response: As detailed above in the Previous Federal Action section, the initial comment period for the proposed rule lasted 60 days, and was followed by a second 30-day comment period to allow comment on both the proposed rule and the draft economic analysis. These time periods are within the requirements of our regulations, and we believe they allow a reasonable time for comment. We were unable to reopen the comment period a third time because we are under a court imposed deadline to reach a final critical habitat determination by March 10, 2003.

(11) *Comment:* One commenter argued that the Act requires us to make a draft economic analysis available prior to proposing critical habitat.

Our Response: Section 4(b)(2) of the Act requires us to ''designate critical habitat * * * after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat.'' We interpret this to mean the economic analysis must precede the final critical habitat designation, not the proposed designation. It would not be possible for us to weigh the economic impacts of a designation which we had not yet proposed, since the projected costs of critical habitat depend on the location and size of the areas which may be designated. We made the draft economic analysis available for review, and accepted comments on it, from November 1 to December 2, 2002.

(12) *Comment:* A commenter pointed out that we had not provided a map showing the locations of *Delphinium bakeri* and *D. luteum* occurrences, or the number of plants and date observed for each occurrence.

Our Response: We have access to much of this information through a use agreement with the CNDDB database, compiled and maintained by the CDFG. We do not believe it would be prudent for us to publish the exact locations of these plants because we might thereby facilitate collection or vandalism of them. We can provide more accurate maps on request, however, as well as answer questions regarding field reconnaissance of particular areas.

(13) *Comment:* A commenter argued that the California Environmental Quality Act (CEQA) requires us to complete an Environmental Impact Report for this critical habitat designation because it could result in a change in agricultural use.

Our Response: CEQA only applies to discretionary projects of State or local public agencies (Cal. Pub. Res. Code §§ 21063, 21080(a)).

(14) *Comment:* A commenter who had difficulty accessing the economic analysis on our website claimed this constituted a failure to make the information readily accessible, in violation of the Federal Data Quality Act. The commenter clarified in a separate e-mail that he was referring to the Service Information Quality Guidelines.

Our Response: The Information Quality Guidelines (Guidelines) (67 FR 64407) concern the accuracy of information disseminated by our agency. They are not violated by a failure of our ability to disseminate the information over the Internet on a particular day. Additionally, the Guidelines are intended to improve the internal management of information quality and do not create an enforceable legal right or benefit (67 FR 64407). The notice of availability of the draft economic analysis which we published in the **Federal Register** (67 FR 22404) provided contact information for personnel from our office who could have provided assistance.

Issue 4: Comments on the Economic Analysis

(15) *Comment:* A commenter stated that critical habitat designation causes a loss in property values which the economic analysis fails to take into account. The commenter suggested that the analysis might have quantified some of the lost land value by totaling the number of acres of grazing land affected, since such lands have a specific grazing value per acre. The commenter also stated that the economic analysis did not attempt to quantify ''the most basic economic effects a critical habitat designation will cause.''

Our Response: The commenter suggested that critical habitat designation and Federal listing restricts grazing activities which, in turn, reduces property values. In this situation, grazing activities are not expected to be changed by critical habitat designation or Federal listing because there are no section 7 requirements triggered specifically by private landowner grazing activities in the areas being designated as critical habitat. Although the implementation of section 7 regulations is not likely to reduce the value of land designated as critical habitat, uncertainty about the scope and impact of the designation may cause the areas to be temporarily stigmatized. Because public uncertainty about the section 7 process is often heightened immediately after critical habitat designation, stigma associated with the proposed designation may cause a reduction in a willingness-to-pay for the land. This, in turn, can result in a reduced land value. By definition, stigma effects are associated with perceived regulatory or land-value effects as opposed to actual regulatory or land-value effects. As explained in the final economic analysis, once the public understands the actual effect of critical habitat, any stigma associated with the area may be greatly reduced or even disappear. While stigma effects are solely attributable to critical habitat designation, the impacts are generally difficult to quantify. Therefore, a count of grazing acres within critical habitat would not have helped to quantify property values lost due to stigma effects.

Critical habitat designation and Federal listing of species do not impose on a private landowner any additional costs if future land uses are not changed by the designation and listing. The economic analysis concluded that because of county land use restrictions, no future development would occur in the areas we are designating as critical habitat. The county land use restrictions are independent of our designation of critical habitat. No section 7 consultation requirements are expected to be triggered within Marin County habitat units due to development.

The commenter also stated that the economic analysis did not attempt to quantify ''the most basic economic effects a critical habitat designation will cause.'' The intent of this statement is not entirely clear to us, and it may have been meant to reiterate the point discussed above, namely that the concern the economic analysis did not quantify possible losses in property value. Alternatively, the comment may be interpreted as being intended to point out that the economic benefits of critical habitat designation remained unquantified in the analysis, so we also are responding to that possible concern. We typically report all quantified benefits of critical habitat designation if there are peer reviewed and published studies estimating benefits, and if these studies use a relatively sound methodology. Because no such studies exist for *Delphinium bakeri* and *D. luteum,* the draft economic analysis discusses these benefits in qualitative terms, but does not provide a numerical estimate of their value. The section of this preamble entitled ''Critical Habitat'' (below) also addresses the benefits of designating critical habitat.

(16) *Comment:* A commenter stated that the draft economic analysis did not consider additional development plans in the designated critical habitat units located in Marin County.

Our Response: We consulted with officials of the Marin County Community Development Department (CDD) in an effort to obtain the most current and comprehensive information about the likelihood of future planned and proposed development within areas that were proposed for critical habitat. CDD officials confirmed that no development applications had been submitted for the critical habitat units in Marin County, and that future development is unlikely due to lack of utility infrastructure, distance to jobs and basic supplies, and agricultural zoning restrictions established by the Marin County General Plan.

(17) *Comment:* Two commenters mentioned that the economic analysis failed to account for costs associated with the treatment of critical habitat by State and local requirements such as the California Environmental Quality Act (CEQA) and the general plan for Marin County.

Our Response: The comments could be interpreted as expressing concern over the potential costs to landowners, or the concern may have been the potential costs to State and local governments of revising documents such as the county general plan to reflect critical habitat designation. We are responding to both of these potential interpretations. Critical habitat designation is not likely to affect the content or implementation of Marin County's General Plan, nor will it result in additional review under CEQA. Zoning and land use designations were determined prior to the proposed designation of critical habitat, and our rulemaking is unlikely to trigger any revisions of the General Plan. According to section 15065 (California Code of Regulations Title 14, Chapter 3) of CEQA guidelines, an environmental impact report (EIR) is required by local lead agencies, when, among other things, a project has the potential to ''reduce the number or restrict the range of an endangered, rare or threatened species.'' Although federally listed species are presumed to meet the CEQA definition of ''endangered, rare or threatened species'' under section 15380 (California Code of Regulations Title 14, Chapter 3), few additional constraints should result from the designation of critical habitat beyond those now in place as a result of the earlier listing of *Delphinium bakeri* and *D. luteum* as endangered species. Only if loss or degradation of the proposed project site's habitat resources (viewed comprehensively) are determined to be significant will significant impacts to habitat be analyzed and mitigation, where feasible, be planned as part of a project. Because officials from the CDD confirmed that no new development applications are anticipated for the proposed Marin County habitat units, no EIRs are likely to be prepared. Therefore, neither landowners nor State or local governments are likely to experience additional costs anticipated by the commenters.

(18) *Comment:* A commenter questioned why the draft economic analysis does not account for impacts of critical habitat designation on existing land uses such as stock pond maintenance and quarry operations.

Our Response: Federal assistance for stock pond maintenance is sponsored by the Natural Resource Conservation Service (NRCS), an agency in the U.S. Department of Agriculture (USDA). However, no consultations have occurred with the Service in the past for NRCS programs that provide assistance for stock pond maintenance. Therefore, based on the consultation history, this analysis assumes that the NRCS will continue its current operating procedures and is unlikely to consult with us on these types of activities in the future. As stated in the draft economic analysis, other programs sponsored by NRCS, namely technical and financial assistance to landowners for erosion and flood control projects, have a consultation history, and economic impacts of section 7 regulations for those activities have been estimated.

The U.S. Environmental Protection Agency requires under the Clean Water Act (33 U.S.C. 1251 *et seq.*), that a private landowner obtain a National Pollutant Discharge Elimination Program permit for any quarry operation that may result in a point source discharge of a pollutant into waters of

the United States. The commenter gave no specific mention of actual quarries, and, after consulting with an official at Region 2 of the California Water Quality Control Board, we are not aware of any quarries on or near the habitat units proposed for Marin County. Hence, no consultations or project modifications are likely to occur as no plans exist for additional quarries.

(19) *Comment:* A commenter thought the economic analysis should include the cost of suing us for improperly designating critical habitat.

Our Response: We have followed all of the legal requirements pertaining to the designation of critical habitat and believe we have made the designation properly, and consequently do not believe it is necessary or appropriate to engage in speculation regarding the potential for litigation and costs that might be associated with it. It is possible that litigation may be initiated in response to the rulemaking and if that happens, the court will determine whether the plaintiff(s) should be reimbursed for any of the costs of litigation, and if so, what the level of reimbursement should be.

(20) *Comment:* A commenter thought we should try to balance the economic impacts of the designation against the benefit to the species.

Our Response: In designating critical habitat, section 4(b)(2) of the Act requires us to take into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat, and allows us to exclude any area if the benefits of exclusion outweigh the benefits of designation, unless we determine that the failure to designate such an area will result in the extinction of the species. We have estimated the costs associated with the critical habitat designation in our economic analysis, and do not find that the benefits of exclusion, as indicated by the avoided costs, would outweigh the benefits to the species of designating the six units of critical habitat.

Peer Review

In accordance with our peer review 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 in which the species occurs, and familiarity with the principles of conservation biology. One of the three reviewers responded, providing us with comments that are summarized here.

Overall the peer reviewer supported the designation, finding that the proposed rule ''is well written and appears justified'' (J. Koontz, *in litt.,* 2002). He provided us with information regarding further habitat southeast of Unit L1 which appears to contain the primary constituent elements for *Delphinium luteum.* Although we do not believe that, in the absence of any new occurrences of the plant, the extension of the unit to include this area is essential to the conservation of the species at this time, we will keep the area in mind while developing a recovery plan. We will evaluate the value of this area for species recovery during the development of the recovery plan for these species.

The peer reviewer also suggested certain changes and additions which we have incorporated into the Background, Primary Constituent Elements, and Critical Habitat Designation sections of the rule, as appropriate. These changes include an updated estimate of the number of plants remaining, a more inclusive list of community associates for *Delphinium bakeri* and *D. luteum,* information regarding the mowing of the *D. bakeri* population in May 2002, and information regarding the possible hybrid origin of *D. luteum.* He also included updated or corrected citations for some of the points made in the proposed rule, and provided useful background information and opinion, such as contact information for other species experts and an overview of the costs and benefits to the species of designating critical habitat in the amounts proposed. Finally, he emphasized the importance of field reconnaissance and questioned the extent to which we were able do this for the proposed units. We addressed this comment in our responses to comments 8 and 9.

Summary of Changes From the Proposed Rule

In response to comment 3 (above) we redefined the primary constituent elements of the species to more clearly indicate that slope and aspect are separate requirements. Based on comment 6 (above), we refined our mapping with the result of eliminating approximately 24 ha (60 ac) of land proposed to be designated for Unit L3. The eliminated areas include the northernmost peninsular area of the unit, which contains several buildings and is heavily silted, and another peninsular area at the southwestern end of the unit, which contains a wastewater treatment and disposal system. These areas do not contain *Delphinium bakeri* and *D. luteum* plants, nor do they contain the primary constituent elements for these species. We have also incorporated changes suggested by our peer reviewer (*see* Peer Review section above).

Critical Habitat

Section 3 of the Act defines critical habitat as—(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed in accordance with section 4 of this Act, upon a determination that such areas are essential for the conservation of the species. ''Conservation,'' as defined by the Act, 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.

Section 7(a)(2) of the Act requires that Federal agencies shall, in consultation with us, insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat. Section 7 also requires conferences on Federal actions that are likely to jeopardize the continued existence of any species proposed to be listed or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. 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. 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, and consequently critical habitat designation does not afford any additional regulatory protection under the Act under those circumstances.

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 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, by helping people to avoid causing 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 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 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 all 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 geographical 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 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. We recognize that our designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the conservation of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas that support newly discovered populations in the future, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented by Federal agencies 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, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Within the geographical 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. Within the geographical area occupied by the species, we will attempt to avoid designating areas that do not now have the primary constituent elements, as defined at 50 CFR 424.12(b), which provide essential life cycle needs of the species. However, we may be restricted by our minimum mapping unit or mapping scale.

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, at a minimum, be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments or other unpublished materials, and discussions with experts.

Methods

As required by section 4(b)(2) of the Act and regulations at 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 *Delphinium bakeri* and *D. luteum.* We reviewed available information that pertains to the habitat requirements of these species, including data from research and survey observations; regional Geographic Information System (GIS) coverages (*e.g.*, soils, known locations, vegetation, land ownership); information from herbarium collections such as CalFlora ((*http://www.calflora.org*); data from CNDDB (2001); and data collected from project-specific and other miscellaneous reports submitted to us. This included information from our final rule listing *D. bakeri* and *D. luteum* as endangered (65 FR 4156), the CNDDB (2001), soil survey maps (SCS 1972, 1985), certified soil GIS layers for Marin County, geologic formation maps, 1993 digital orthophotoquarterquads, and discussions with botanical experts who have worked closely with these plant species. We also conducted site visits at one historical occurrence of *D. bakeri* and five historical occurrences of *D. luteum* as well as one extant occurrence of *D. bakeri* and three extant occurrences of *D. luteum* (to the extent we could visit the habitat without going onto private land).

Mapping

We delineated the critical habitat units by using data layers in a GIS format with all the known *Delphinium bakeri* and *D. luteum* occurrences from the CNDDB (2001) and other sources (D. Amme, *in litt.*, 2002, pers. comm., 2002). We created additional data layers to reflect vegetation types using aerial photographs, GIS data for Marin soils (Natural Resource Conservation Service 2001), and recent development using satellite imagery (CNES/SPOT Image Corporation 2001). We created an additional data layer by digitizing Kneeland soils data for Sonoma County from a U.S. Geological Survey (USGS) soil survey (1972). These data layers were laid over a base of USGS 3.75' digital orthophotographic quarter quadrangle images.

In designating critical habitat, we made an effort to avoid developed areas such as houses, intensive agricultural areas (such as row crops, vineyards, and orchards), and lands unlikely to contain the primary constituent elements for *Delphinium bakeri* or *D. luteum.* However, we did not map critical habitat in sufficient detail to exclude all developed areas. Developed areas within the boundaries of the mapped units, such as buildings, lawns, roads, parking lots, and other paved areas will not contain one or more of the primary constituent elements. Federal actions limited to these areas, therefore, would not trigger consultation relative to critical habitat under section 7 of the Act unless they affect the species, or affect primary constituent elements in adjacent critical habitat.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas to propose as critical habitat, we consider those physical and biological features 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, the following:

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

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

(3) Cover or shelter;

(4) Sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and generally;

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

Our regulations at 50 CFR 424.12(b) further direct that when considering the designation of critical habitat, we are to focus on the principal biological or physical constituent elements within the defined area that are essential to the conservation of the species, and we are to list known primary constituent elements with the critical habitat description. Our regulations describe known primary constituent elements in terms that are more specific than the description of physical and biological features. Specifically, primary constituent elements may include, but are not limited to, the following: roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, host species of plant pollinator, geological formation, vegetation type, tide, and specific soil types.

All areas identified as critical habitat for *Delphinium bakeri* and *D. luteum* are within the historical range and contain one or more of the primary constituent elements that we have identified, based on the best available scientific information, as essential for the conservation of the species.

Much of what is known about the specific physical and biological requirements of *Delphinium bakeri* and *D. luteum* is described in the Background section of this final rule. The designated critical habitat is designed to provide sufficient habitat to maintain self-sustaining populations of *D. bakeri* and *D. luteum* throughout their ranges, and to provide those habitat components essential for the conservation of these species. These habitat components provide for: (1) Space for individual and population growth, including areas that allow gene flow and provide connectivity or linkage between populations including open spaces and disturbed areas that in some instances may also contain nonnative plant species; (2) areas that provide basic requirements for growth such as water, light, minerals; (3) sites for germination, pollination, reproduction, and seed dispersal; (4) areas that support populations of pollinators and seed dispersal organisms; and (5) habitats that are representative of the historic geographical and ecological distributions of each species.

We believe the conservation of *Delphinium bakeri* and *D. luteum* is dependent upon a number of factors, including the conservation and management of sites where existing populations grow, the establishment of *D. bakeri* at a new location to provide insurance against stochastic (randomly occurring) events, the maintenance of normal ecological functions within these sites, and the preservation of the connectivity between sites to maintain recent levels of gene flow between sites through pollinator activity and seed dispersal agents. The areas we are designating as critical habitat provide some or all of the habitat components essential for the conservation of these two species.

Based on our knowledge to date, the primary constituent elements of critical habitat for *Delphinium bakeri* consist of:

(1) Soils that are derived from decomposed shale;

(2) Plant communities that support associated species, including, but not limited to: *Umbellularia californica* (California bay), *Aesculus californica* (California buckeye), and *Quercus agrifolia* (coastal live oak), *Baccharis pulularis* ssp. *consanguinea* (coyotebrush), *Symphorcarpos* cf. *rivularis* (snowberry), *Rubus ursinus* (California blackberry), *Pteridium aqulinum* (braken fern), *Polystichum munitum* (sword fern), *Pityrogramma triangularis* (goldback fern), *Dryopteris arguta* (coastal woodfern), *Adiantum jordanii* (maidenhair fern), *Polypodium glycyrrhiza* (licorice fern), *Toxicodendron diversilobum* (poison oak), *Ceanothus thyrsiflorus* (blueblossom ceanothus), *Lithophragma affine* (woodland star), and *Holodiscus discolor* (oceanspray); and

(3) Mesic (moderate moisture) conditions on extensive north-facing slopes.

Based on our knowledge to date, the primary constituent elements of critical habitat for *Delphinium luteum* consist of:

(1) Plant communities, including north coastal scrub or coastal prairie communities, including, but not limited to, species such as: *Arabis blepharophylla* (rose rockcress), *Calochortus tolmei* (Tolmei startulip), *Mimulus aurantiacus* (orange bush monkeyflower), *Dudleya caespitosa* (sea lettuce), *Polypodium californicum* (California polyploidy), *Eriogonum parviflorum* (sea cliff buckwheat), *Toxicodendron diversilobum* (poison oak), *Romanzoffia californica* (California mistmaiden), *Hesperevax sparsiflora* (evax), *Pentagramma triangularis* (goldenback fern), and *Sedum spathulifolium* (broadleaf stonecrop).

(2) Relatively steep sloped soils (30 percent or greater) derived from sandstone or shale, with rapid runoff and high erosion potential, such as Kneeland or Yorkville series soils;

(3) Generally north aspected areas; and

(4) Habitat upslope and downslope from known populations to maintain disturbance such as occasional rock slides or soil slumping that the species appears to require.

Criteria Used to Identify Critical Habitat

We identified areas on which are found physical and biological features essential for the conservation of *Delphinium bakeri,* based on consideration of the known primary constituent elements, in Marin County at the only location where the species currently is known to occur (Unit B2), as well as in the Coleman Valley area in Sonoma County (Unit B1), where the species was historically found. We are including the Coleman Valley site in our designation despite the apparent extirpation of *D. bakeri* from this location, because we believe the area is essential to the conservation of the species and still contains primary constituent elements for the species. The Coleman Valley unit encompasses the location where the species was first described, and it is one of very few locations where *D. bakeri* has ever been observed. We believe that reintroduction of *D. bakeri* at the Coleman Valley site is essential for the species' survival due to the extremely limited range of *D. bakeri,* its small population size (0 to 67 individuals over the last 20 years), and the high degree of threat from chance catastrophic events (Shaffer 1981, 1987; Primack 1993; Meffe and Carroll 1994). Such events are a concern when the number of populations or geographic distribution of a species is severely limited, as is the case with *D. bakeri.*

Establishment of a second location for *D. bakeri* is important in reducing the risk of extinction of the species due to such catastrophic events. Further, when considering establishment of new locations as part of meeting the conservation needs of a species, we believe it is appropriate to look first to reestablishing populations within the historic range of a species, especially specific areas where the species was once known to occur, rather than going to completely new areas. Our designation of critical habitat does not include the location near Tomales, California, however, because our information is too vague to accurately identify the site.

We identified critical habitat for *Delphinium bakeri* by mapping the distribution of the known occurrences of the species with respect to distance from the coast, location within watersheds, soil series associations, aspect of the slopes and watersheds, position on slopes, our field observations of the soil conditions at each location, and our field observations of the plant associations found in the area of each location. We then drew an initial critical habitat demarcation that included the appropriate soils, vegetation, and watershed, consistent with our understanding of the physical and biological features and primary constituent elements that are essential for the conservation of this species. We mapped the critical habitat units to include the upslope and downslope areas that would be important to the maintenance of these features and related primary constituent elements essential for the conservation of the species.

We identified areas with features essential to the conservation of *Delphinium luteum* in the locations where it is known to occur in Marin and Sonoma counties. Due to the limited number of populations of *D. luteum* and the high degree of threat from catastrophic events, we have determined that all areas with recently documented occurrences contain physical and biological features that are essential for the conservation of this species and are necessary and appropriate to designate as critical habitat. All four *D. luteum* units (L1, L2, L3, and L4) are within the geographical area currently occupied by the species, and *D. luteum* occurs in all four of the units. In addition, the Center for Plant Conservation (2002) recommends that additional populations be established and managed for this species. Some locations within these critical habitat units may be suitable sites for such introductions or for natural expansion of the existing populations.

As a rule, we drew boundary lines for *Delphinium luteum* critical habitat units to include all areas of the same soil type and in the same canyon system as the enclosed population(s). Although all but one recently documented population of *D. luteum* occurs on basically north-facing slopes, we consistently included as critical habitat both sides of the canyons which contain *D. luteum.* We did this because the folds and side canyons common to these sites can produce localized north aspected areas even on generally south aspected canyon walls, the species is not restricted to north-facing slopes, and south aspected slopes may support any of the other three primary constituent elements for this species. We did not extend critical habitat boundaries to deliberately include south aspected slopes unless they supported at least one of the other three primary constituent elements, although mapping limitations may have resulted in including a few such areas inadvertently. Including both sides of the canyons where the plant occurs also encompasses a wider range of microhabitats to support population growth. This approach also may have the benefit of making management of the units easier.

Units L1, L2, and L4 contain features which caused us to modify somewhat our general rule of drawing boundaries based on the same soil type and canyon system as the known population. In Unit L3, the soil boundaries conformed well to the canyon boundaries, and also included areas of steep-sloped canyon walls, so no modification of what was drawn (based on application of the general rule described above) was appropriate or necessary. Unit L1 soil boundaries included several branching canyons with numerous coastal drainage outlets, so we included those canyons which drained roughly to the same location and did not include the others. In Unit L2, the soil boundaries conformed well to the drainage, but because the area enclosed was very small and unbranched, and because the same soil type also occurred with suitable habitat in a separate drainage less than half a mile away, we extended the boundaries of the unit to include the north-facing slopes of the second drainage as bounded by the suitable soil type. The resulting unit is still the smallest of the four designated for *Delphinium luteum,* and by including this small area of nearby habitat, we can provide the resident *D. luteum* population an opportunity to colonize a new area. Given the susceptibility of *D. luteum* populations to extirpation by random, uncontrollable events, the establishment of new populations is essential to the continuing survival of the species.

Unit L4 contains the population growing in a road-cut away from steep-sloped canyon walls, as well as the population mapped on a south-facing slope. It also includes a third population which is located in typical habitat, but which the CNDDB lists as ''possibly extirpated'' due to the inability of several surveys to relocate it since 1982. All three populations are mapped as growing on different soil types (CNDDB 2001). However, with two exceptions, all soil types in the area share the rapid run-off and high erosion potential with which *Delphinium luteum* is associated. The two exceptions are the canyon floor and a small area at the head of the canyon where the walls are not steeply sloped. We are including these for contiguity of the unit and because both of them abut the location of the population located in the road cut. Taken together, the various soil types conform well to the main canyon boundaries (SCS 1985) and include all the habitat requirements of the species. Therefore, we have drawn Unit L4 largely according to the soil boundaries as they extend down the main canyon. We did not extend the unit up either of two large side canyons because those areas neither contain *D. luteum* populations nor a soil type common to all the populations in the unit.

Special Management Considerations

Special management considerations or protections may be needed to maintain the physical and biological features and primary constituent elements that are essential for the conservation of *Delphinium bakeri* and *D. luteum* 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 the plants are maintained at those sites and have the ability to reproduce and disperse in surrounding habitat. In other cases, however, active management may be needed to maintain the primary constituent elements for the two species.

As noted in the Critical Habitat section, ''special management considerations or protection'' is a term that originates in the definition of critical habitat. We believe the designated critical habitat units may require special management considerations or protection because remaining populations of *Delphinium bakeri* and *D. luteum* are extremely rare,

contain few individuals, and are subject to threats which could extirpate them. In addition to the risk due to random natural events that can result in the extinction of species with very few, small, and highly isolated populations, potential threats to the habitat of *D. bakeri* include overcollection, application of herbicides, and sheep grazing, and potential threats to the habitat of *D. luteum* include overcollection, road widening, sheep grazing, fire suppression, and hybridization. Currently, no legally operative plans or agreements have been developed that address the maintenance and improvement of the primary constituent elements important to the species, or that provide management for the long-term conservation of *D. bakeri* or *D. luteum.*

We have outlined below the most likely kinds of special management and protection that the habitat features and primary constituent elements essential to the conservation of *Delphinium bakeri* and *D. luteum* may require. The following actions apply to both species, unless otherwise noted:

(1) In all plant communities where these taxa occur, invasive, nonnative species need to be actively controlled;

(2) The quality of water must be maintained to keep it free from levels of herbicides or other chemical or organic contaminants that would be deleterious to the species;

(3) Certain areas where these species occur may need to be fenced to protect them from accidental or intentional trampling by humans and livestock;

(4) Aerial application of herbicides and insecticides that are likely to be deleterious to the species needs to be curtailed in the critical habitat. Exposure to deleterious herbicides and insecticides from drift needs to be avoided;

(5) The appropriate level of soil disturbance needs to be maintained (this applies only to *Delphinium luteum*); and

(6) Existing hydrologic conditions may need to be protected by avoiding activities that cause a change in surface or subsurface water flows.

Critical Habitat Designation

Lands designated as critical habitat areas described below contain physical or biological features essential to the conservation of *Delphinium bakeri* and *D. luteum,* including one or more of the primary constituent elements described above, and constitute our best assessment at this time of the areas which meet the Act's definition of critical habitat. The approximate areas of critical habitat by land ownership are shown in Table 1.

TABLE 1.—APPROXIMATE AREAS OF *Delphinium bakeri* AND *D. luteum* CRITICAL HABITAT IN HECTARES (HA) (ACRES (AC)). ALL CRITICAL HABITAT FOR BOTH SPECIES IS ON PRIVATE LANDS

Species (unit)	Private land
D. bakeri (B1)	322 ha (796 ac)
D. bakeri (B2)	418 ha (1,032 ac)
Subtotal *D. bakeri*.	740 ha (1,828 ac)
D. luteum (L1)	554 ha (1,369 ac)
D. luteum (L2)	133 ha (329 ac)
D. luteum (L3)	142 ha (351 ac)
D. luteum (L4)	193 ha (476 ac)
Subtotal *D. luteum*.	1,022 ha (2,525 ac)
Total (both species).	1,762 ha (4,353 ac)

Critical habitat for *Delphinium bakeri* includes one unit in Marin County which contains the only currently known location of *D. bakeri,* and a second unit in Sonoma County we believe includes the type locality for the species. The second unit is essential because establishment of a second location for *D. bakeri* is important in reducing the risk of extinction of the species due to catastrophic events. Critical habitat for *D. bakeri* totals 740 ha (1,828 ac), with 418 ha (1,032 ac) in Marin County and 322 ha (796 ac) in Sonoma County. Critical habitat for *D. luteum* includes four units. These units together contain all the *D. luteum* populations documented since the 1980s. Critical habitat for *D. luteum* includes 1,022 ha (2,525 ac), with 554 ha (1,369 ac) in Sonoma County and 468 ha (1,156 ac) in Marin County.

A brief description of each unit, along with our reasons for designating it as critical habitat, is presented below.

Unit B1: Coleman Valley, Sonoma County, California

This unit is located near Coleman Valley Road west of the town of Occidental, approximately 8 km (5 mi) from the coast. The 322 ha (796 ac) unit is bounded on the north side by Coleman Valley Road and represents an area either near or at the original type locality for *Delphinium bakeri.* The exact location of the type locality for *D. bakeri* is somewhat vague, with the location described only as ''Hedrin Ranch in Coleman Valley, West of Occidental.'' The location is mapped to within a 1.6 km (1 mi) radius in the CNDDB (CNDDB 2001).

This unit contains an extensive north-facing slope with mesic vegetation similar to the extant location of *Delphinium bakeri,* with the addition of coastal redwood. The Coleman Valley location of *D. bakeri* represents the northernmost extent of the known range of this species. This unit is essential for the survival as well as the conservation of *D. bakeri* because it provides a second area separate from the existing population for *D. bakeri,* into which the species can be reintroduced. We believe it is particularly important to have a second unit to reduce the likelihood that the species may become extinct as the result of a catastrophic event in the single location where the species is now known to occur. A second, geographically separate unit can provide greater protection to the species from chance events, such as disease, that can destroy the only remaining population.

Unit B2: Salmon Creek, Marin County, California

This unit is near the Marshall-Petaluma Road in Marin County approximately 10 km (6 mi) from the coast. This 418 ha (1,032 ac) unit is bounded on the north side by Salmon Creek and contains an extensive north-facing slope that is essential to maintaining the mesic conditions needed for the conservation of *Delphinium bakeri.* Land in this unit is privately owned with a county right-of-way along the road. This unit is of great importance to the survival of *D. bakeri* because it contains the only known extant occurrence of *D. bakeri,* and represents the southernmost extent of the range of this species.

Unit L1: Bodega Bay, Sonoma County, California

Unit L1 consists of 554 ha (1,369 ac) south of Bay Hill Road, near the town of Bodega in Sonoma County, California. This unit is comprised of Kneeland series soils, coastal prairie and scrub habitat, and is within the fog belt that moderates the climate. This unit contains features that are essential to the conservation of *Delphinium luteum.* It also is important for the conservation of the species because it supports about 30 percent of the roughly 220 total known remaining individual plants (based on the most recent population totals (CNDDB 2001; D. Amme, pers. comm. 2002)). Because so few *D. luteum* plants remain, habitat supporting all of them is essential to the continued survival and conservation of the species. In addition, this unit is important to the conservation of the

species because it contains two of the very few remaining sites at which the species has been recently observed. Due to the limited number of populations of *D. luteum,* and the high degree of threat of extinction from catastrophic events, we believe that habitat supporting all recently documented occurrences is essential for the conservation of this species.

Unit L2: Estero Americano, Marin County, California.

Unit L2 is located just south of Estero Americano on the Marin County coast. This 133 ha (328 ac) unit contains one occurrence of *Delphinium luteum,* with about 134 individual plants at last count (CNDDB 2001). It is located on Yorkville series soils that support coastal prairie and coastal scrub habitat and is within the fog belt that moderates the climate. This unit contains features that are essential for the survival of *D. luteum.* The unit also is important because it contains the single largest population of the plant, with more than half of all the individuals in the entire species. Because so few *D. luteum* plants remain, we believe that providing habitat to support all of the them is essential to the continued survival and conservation of the species. In addition, this unit is essential to the conservation of the species because it contains one of very few remaining sites at which the species has been recently observed. Due to the limited number of populations of *D. luteum,* and the high degree of threat of extinction from catastrophic events, we believe that habitat supporting all recently documented occurrences is essential for the conservation of this species.

Unit L3: Estero de San Antonio, Marin County, California.

Unit L3 is located near the mouth of the Estero de San Antonio in Marin County and includes steep sloped canyon walls composed of Yorkville series soils on both sides of the water channel, with coastal prairie and coastal scrub habitat and temperatures moderated by fog. This 142 ha (351 ac) unit contains one population of *Delphinium luteum* discovered in 1993 that is not yet recorded in the CNDDB. This unit is important because it is positioned roughly halfway between Unit L4 to the south, and Units L1 and L2 to the north, and may help to prevent the genetic isolation of Unit L4. It also contains the largest continuous area of Yorkville soils of all the units. Yorkville soils are important because, in Units L2 and L3, these soils support roughly two thirds of all individual *D. luteum* plants. Because a large proportion of the remaining *D. luteum* individuals occur on Yorkville soils, we believe these soils are an indicator of situations in which the plants are likely to survive and reproduce. Therefore, we believe areas which contain these soils are essential to the conservation of the species.

Unit L4: Tomales, Marin County, California.

Unit L4 is located approximately 1.6 km (1 mi) south of the town of Tomales in Marin County. This 193 ha (476 ac) unit consists of coastal prairie and coastal scrub within the fog belt. It is known to have contained three populations of *Delphinium luteum,* although two of the populations have not been documented since the early 1980s, and one of these has been listed by the CNDDB as ''possibly extirpated'' (CNDDB 2001). The ''possibly extirpated'' population may have consisted of hybrids of *D. luteum* and *D. nudicaule* (red larkspur). The third population occurs on a road embankment rather than in the vicinity of canyon walls. This population was documented as recently as 2000, and was genetically tested and confirmed to be a non-hybrid, but only one plant was seen at that time (J. Koontz, in *litt.*, 2002). This unit contains primary constituent elements that are essential to the conservation of the species. The unit also is important to the conservation of the species because it contains one of very few remaining sites at which the species has been recently observed. Due to the limited number of populations of *D. luteum,* and the high degree of threat of extinction from catastrophic events, we believe that habitat supporting all recently documented occurrences is essential for the conservation of this species. In addition, this unit is important because it represents the southernmost extent of the range of *D. luteum.* The population growing in the road embankment may also provide important information on the characteristics of managed soil disturbances which can support *D. luteum.* Such information would be of great help in conserving the species.

Effects of Critical Habitat Designation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, permit, or carry out are not likely to result in the destruction or adverse modification of critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' However, in a March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434), the Court found our definition of destruction or adverse modification to be invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to 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 proposed species, or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist Federal agencies in eliminating conflicts that may be caused by their 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 actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or result in the destruction or adverse modification of 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 formal 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 we believe would avoid resulting in the destruction or adverse modification of critical habitat.

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 over the action, or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect subsequently designated critical habitat, or adversely modify or destroy proposed critical habitat.

Activities on Federal lands that may affect *Delphinium bakeri* or *D. luteum* or their critical habitat will require consultation under section 7 of the Act. Activities on private, State, county, or lands under local jurisdictions that involve a Federal action such as funding (*e.g.*, Federal Highway or Federal Emergency Management Act funding), or a permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act), will continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on non-Federal and private lands that are not federally funded, authorized, or permitted, do not require section 7 consultation. Not all of the area within the boundaries of the mapped units provide primary constituent elements capable of supporting *Delphinium bakeri* or *D. luteum.* For instance, buildings, lawns, roads, parking lots, and other paved areas will not contain one or more of the primary constituent elements. Federal actions limited to these areas, therefore, would not be subject to section 7 consultation unless the action would affect the species or primary constituent elements in adjacent designated critical habitat.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 of the Act ensures that actions funded, authorized, or carried out by Federal agencies are not likely to jeopardize the continued existence of a listed species, or result in the destruction or adverse modification of 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.

Section 4(b)(8) of the Act requires us to evaluate briefly and describe, in any proposed or final regulation that designates critical habitat, those activities involving a Federal action that may destroy or adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat would be those that alter the primary constituent elements to the extent that the value of critical habitat for the conservation of *Delphinium bakeri* or *D. luteum* would be appreciably reduced. Within the units designated as critical habitat, this pertains only to those areas containing the primary constituent elements. 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 for *Delphinium luteum* or *D. bakeri* include, but are not limited to:

(1) Ground disturbances which destroy or degrade primary constituent elements of the plant (*e.g.*, clearing, tilling, grading, construction, road building, and mining);

(2) Activities which directly or indirectly affect *Delphinium bakeri* or *D. luteum* plants or underlying seed bank (*e.g.*, herbicide application and heavy off-road vehicle use that could degrade the habitat on which the species depends, incompatible introductions of nonnative herbivores, and incompatible grazing during times when *D bakeri* or *D. luteum* is producing flowers or seeds);

(3) Activities which significantly degrade or destroy likely pollinator populations for *Delphinium bakeri* (*e.g.*, pesticide applications that degrade or destroy large hymenoptera, especially *Bombus* ssp. (bumblebees)) in proximity to the designated critical habitat for *D. bakeri*; and

(4) Activities that would appreciably change the rate of erosion of soils for *Delphinium luteum* such as slope stabilization; residential and commercial development, including road building and golf course installation; and vegetation manipulation, such as clearing and grubbing upslope from *D. luteum.*

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor, Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section). Requests for copies of the regulations, 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 (telephone 503/231–6131; facsimile 503/231–6243).

Exclusions Under Section 4(b)(2)

Subsection 4(b)(2) of the Act allows us to exclude areas from the critical habitat designation where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in extinction of the species. Following a review of available information from our files, public comments on the proposal, and the economic analysis of the proposed designation, we have determined that none of the lands proposed as critical habitat warranted exclusion from the final designation based on economic impacts or other relevant impacts pursuant to section 4(b)(2).

Relationship to Habitat Conservation Plans (HCPs) and Other Planning Efforts

Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed wildlife 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 generally prohibited by the Act, listed plant species may also be covered in an HCP for wildlife species. Currently, no

HCPs exist that include *Delphinium bakeri* or *D. luteum* as covered species.

In the event that future HCPs covering *Delphinium bakeri* or *D. luteum* are developed within the boundaries of the 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 these 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 *D. bakeri* or *D. luteum.* The process would also enable us to conduct detailed evaluations of the importance of such lands to the long-term survival and conservation of the species in the context of constructing a biologically configured system of interlinked habitat blocks configured to promote the conservation of the species through application of the principles of conservation biology.

We will provide technical assistance and work closely with applicants throughout the development of any future HCPs to identify lands essential for the long-term conservation of *Delphinium bakeri* or *D. luteum*, and appropriate management for those lands. 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, we conducted a draft economic analysis to estimate the potential economic effect of the designation. The draft analysis was made available for review on November 1, 2002 (67 FR 66599). We accepted public comment on the draft analysis until December 2, 2002.

Our economic analysis evaluated the potential future effects associated with the section 7 consultation requirements of *Delphinium bakeri* and *D. luteum* as 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 section 7'' scenario and compared it to a ''with section 7'' scenario. The ''without section 7'' baseline represented the level of protection currently afforded to the species under the Act if section 7 protective measures were absent, and includes protections afforded by other Federal, State, and local laws such as the California Environmental Quality Act. The ''with section 7'' scenario identifies land-use activities likely to involve a Federal nexus that may affect the species or its designated critical habitat, and that therefore have the potential to be subject to future consultations under section 7 of the Act.

Upon identifying section 7 impacts, the analysis proceeds to consider the subset of impacts that can be attributed exclusively to the critical habitat designation. The upper-bound estimate includes both jeopardy and critical habitat impacts. The subset of section 7 impacts likely to be affected solely by the designation of critical habitat represents the lower-bound estimate of the analysis. The categories of potential costs and benefits considered in the analysis included: (1) Conducting section 7 consultations associated with the listing or with the critical habitat; (2) modifications to projects, activities, or land uses resulting from the section 7 consultations; (3) uncertainty and public perceptions resulting from the designation of critical habitat; and (4) potential offsetting benefits associated with critical habitat including educational benefits. Our economic analysis recognizes that there may be costs from delays associated with reinitiating completed consultations after the critical habitat designation is made final.

The analysis estimated that this critical habitat designation will result in the need for one formal and two informal section 7 consultations. The formal consultation will be required for a State highway culvert repair project, while the informal consultations will result from an estimated two flood and erosion control projects on private land that will involve a Federal nexus. The total administrative cost of these consultations is estimated at $18,000, of which $7,000 is attributable to this critical habitat designation as opposed to other section 7 requirements pertaining to the listing of the species. No project modifications are expected to occur as a result of these consultations.

Total costs resulting from technical assistance, formal and informal consultations, development of biological assessments, and project modifications due to listing and critical habitat designation are presented in the economic analysis, according to land use activities and individual critical habitat units. Costs to third parties result from technical assistance, consultations, and development of a biological assessment. Costs to Federal action agencies include those incurred from consultations. Costs to the Service result from technical assistance and consultations.

We received a few comments on the draft economic analysis of the proposed determination. We considered these comments, and our response to them is included as part of the preamble of this rule (see Summary of Comments and Recommendations), as well as in the final Addendum to the Economic Analysis. As a result of the comments received, a correction was made in relation to a statement in the draft economic analysis that private landowners should incur no additional costs as a result of section 7 requirements. In fact, certain private landowners participating in flood control and revegetation projects that have a Federal nexus are expected to pay for costs associated with an informal consultation with the Service. The final Addendum to the Economic Analysis discusses the resulting correction, and the effects were included in the description (above) of costs associated with expected informal consultations. The final Addendum to the Economic Analysis also provides explanations to more clearly explain and justify the methodology used, based on comments received concerning the methodology. There were no other revisions or additions to the draft economic analysis.

A copy of the final economic analysis and supporting documents are included in our administrative record and may be obtained by contacting the Sacramento Fish and Wildlife Office (see **ADDRESSES** section). Copies of the final economic analysis also are available on the Internet at *http://pacific.fws.gov/news/.*

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 final rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the final rule clearly stated? (2) Does the final rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the final rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the final rule? (5) What else could we do to make the notice 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. You may e-mail your comments to this address: *Exsec@ios.doi.gov.*

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, the Office of Management and Budget (OMB) has determined that this critical habitat designation is not a significant regulatory action. This rule will not have an annual economic effect of $100 million or more or adversely affect any economic sector, productivity, competition, jobs, the environment, or other units of government.

This designation will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. It will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Finally, this designation will not raise novel legal or policy issues. Accordingly, OMB has not reviewed this final critical habitat designation.

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 a 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 this final rule, we are certifying that the critical habitat designation for *Delphinium bakeri* and *D. luteum* will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

Small entities include small organizations, such as independent nonprofit 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 (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result.

SBREFA does not explicitly define either ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in the area. Similarly, the analysis considers the relative cost of compliance on the revenues/profit margins of small entities in determining whether or not entities incur a ''significant economic impact.'' Only small entities that are expected to be directly affected by the designation are considered in this portion of the analysis. This approach is consistent with several judicial opinions related to the scope of the RFA. (*Mid-Tex Elec. Coop., Inc. v. FERC* 773 F.2d 327 (D.C. Cir. 1985) and *American Trucking Associations, Inc.* v. *USEPA*, 175 F.3d 1027 (D.C. Cir. 1999)).

To determine if a 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 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.

In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement. Designation of critical habitat only has the potential to affect activities conducted, funded, or permitted by Federal agencies. 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 *Delphinium bakeri* or *D. luteum.* Federal agencies must also consult with us if their activities may affect designated critical habitat. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation.

As required under section 4(b)(2) of the Act, we conducted an analysis of the potential economic impacts of this critical habitat designation. In the analysis, we found that the future section 7 consultations resulting from the listing of *Delphinium bakeri* and *D. luteum* and the proposed designation of critical habitat could potentially impose total economic costs for consultation and modifications to projects up to $18,000 with approximately $7,000 of this attributable to critical habitat designation over the next 10-year period. The small business activities taking place within the critical habitat units which might be affected by section 7 consultation requirements are forestry, agriculture, and livestock production (Economic and Planning Systems 2002, 2003).

In summary, we have considered whether this rule could result in significant economic effects on a substantial number of small entities. Our analysis concluded that there are 653 smaller producers in forestry, agriculture, and livestock production for

Sonoma and Marin counties, of which only 0.3 percent are likely to be affected by this rule. Therefore, we are certifying that the designation of critical habitat for *Delphinium bakeri* and *D. luteum* will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

OMB's Office of Information and Regulatory Affairs has determined that this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. 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. We anticipate that this final rule will not place significant additional burdens on any entity.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order 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. The primary land uses within this designated critical habitat are agricultural. This rule is not expected to significantly affect energy supplies, distribution, or use. In our economic analysis, we did not identify energy production or distribution as being significantly affected by this designation, and we received no comments indicating that the proposed designation could 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) 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 Federal agencies must ensure that any small government action they (the Federal agencies) authorize (permit) or fund is not likely to result in the adverse modification or destruction of designated critical habitat.

(b) This rule will not produce a Federal mandate on State, local, or Tribal governments of $100 million or greater in any year. The designation of critical habitat imposes no obligations on State or local governments. Therefore, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act

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 approximately 1,762 ha (4,353 ac) of lands as critical habitat for the two *Delphinium* species in Marin and Sonoma counties, California in a takings implication assessment. This 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. In keeping with the Department of the Interior policy, we requested information from, and coordinated development of this critical habitat designation with, the appropriate State resource agencies in California. We will continue to coordinate any future changes in the designation of critical habitat for *Delphinium bakeri* and *D. luteum* with the appropriate State agencies. Where these species are present, the designation of critical habitat 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 consultation under section 7 of the Act on non-Federal lands (where a Federal nexus occurs) that might otherwise not have occurred. The designation 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 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 consultations 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 are designating critical habitat in accordance with the provisions of the Endangered Species Act, as amended. The rule uses standard property descriptions and identifies the principal constituent elements within the designated areas to assist the public in understanding the habitat needs of *Delphinium bakeri* and *D. luteum.*

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This rule will not impose new 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, with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This rule 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 Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a Government-to-Government basis. The designated critical habitat for *Delphinium bakeri* and *D. luteum* does not contain any lands that we have

identified as impacting Tribal trust resources. *D. bakeri* and *D. luteum* are known only to occur on private lands. We are not aware of any Tribal lands in or near our critical habitat units for *D. bakeri* and *D. luteum.* Therefore, we have determined that there are currently no Tribal lands essential for the conservation of *D. bakeri* or *D. luteum* because they do not support populations or provide essential habitat for either plant species. If we learn of any Tribal lands in the vicinity of the critical habitat designation subsequent to this proposal, we will coordinate with the Tribes before making a final determination as to whether any Tribal lands should be included as critical habitat for *D. bakeri* or *D. luteum.*

References Cited

A complete list of all references cited herein is available upon request from the Sacramento Fish and Wildlife Office (*see* **ADDRESSES** section)

Author

The primary authors of this final rule are Kirsten Tarp and Glen Tarr, Sacramento 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, Transportation.

Regulation Promulgation

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

PART 17—[AMENDED]

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

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

2. In § 17.12(h), revise the entries for ''*Delphinium bakeri*'' and ''*Delphinium luteum*,'' under ''FLOWERING PLANTS,'' to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rule
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Delphinium bakeri	Baker's larkspur	U.S.A. (CA)	Ranunculaceae	E	681	17.96(a)	NA
Delphinium luteum ...	Yellow larkspur	U.S.A. (CA)	Ranunculaceae	E	681	17.96(a)	NA
*	*	*	*	*	*	*	

3. In § 17.96, amend paragraph (a) by adding critical habitat entries for ''Family Ranunculaceae Delphinium bakeri'' and ''Family Ranunculaceae Delphinium luteum'' in alphabetical order to read as follows:

§ 17.96 Critical habitat—plants.

(a) * * *

Family Ranunculaceae: *Delphinium bakeri* (Baker's larkspur)

(1) Critical habitat units are depicted for Sonoma and Marin counties, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Delphinium bakeri* are the habitat components that provide:

(i) Soils that are derived from decomposed shale;

(ii) Plant communities that support associated species, including, but not limited to: *Umbellularia californica* (California bay), *Aesculus californica* (California buckeye), *Quercus agrifolia* (coastal live oak), *Baccharis pulularis* ssp. *consanguinea* (coyotebrush), *Symphorcarpos* cf. *rivularis* (snowberry), *Rubus ursinus* (California blackberry), *Pteridium aqulinum* (braken fern), *Polystichum munitum* (Sword fern), *Pityrogramma triangularis* (goldback fern), *Dryopteris arguta* (coastal woodfern), *Adiantum jordanii* (maidenhair fern), *Polypodium glycyrrhiza* (licorice fern), *Toxicodendron diversilobum* (poison oak), *Ceanothus thyrsiflorus* (blueblossom ceanothus), *Lithophragma affine* (woodland star), and *Holodiscus discolor* (oceanspray); and

(iii) Mesic conditions on extensive north-facing slopes.

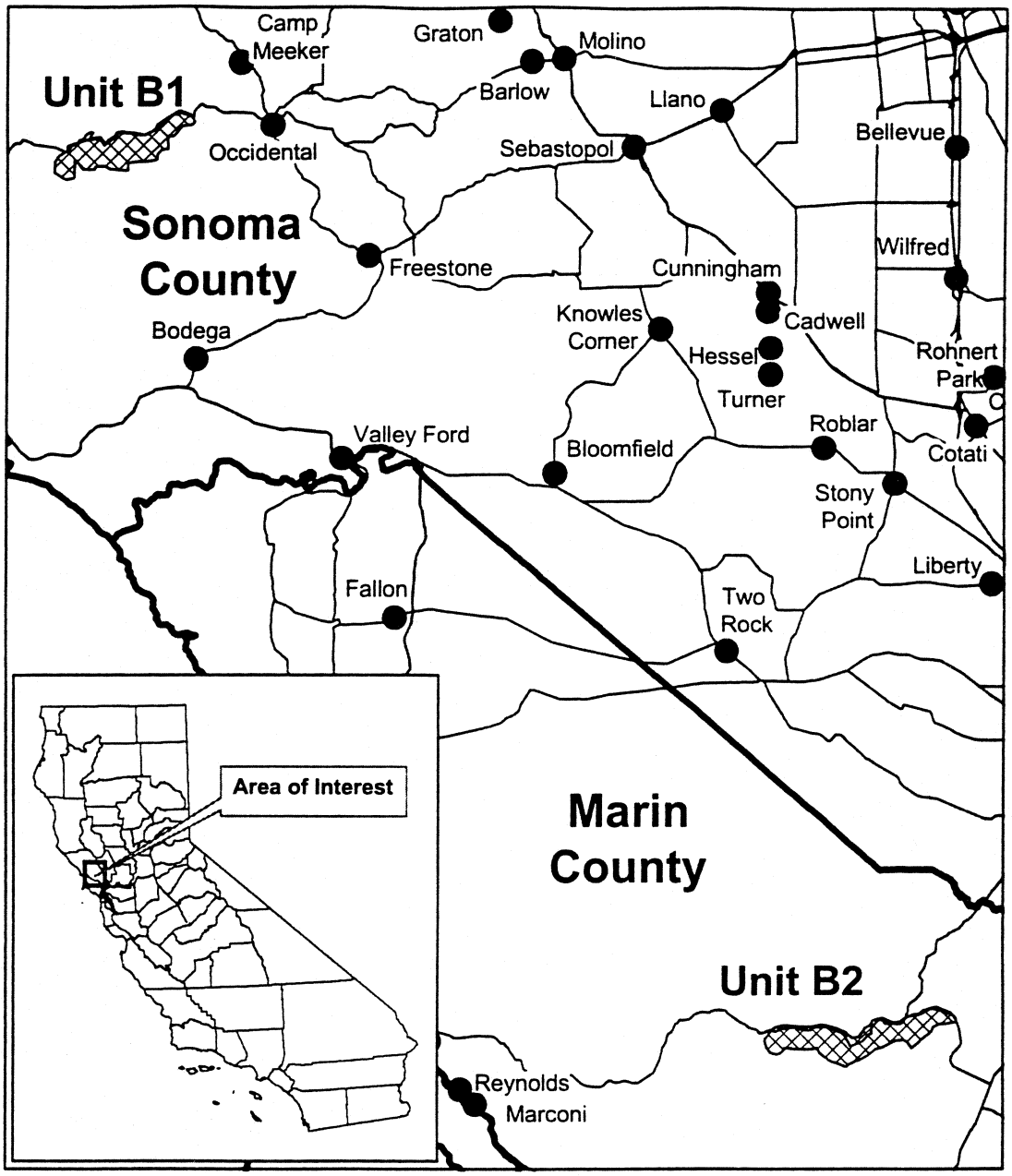
(3) Critical habitat does not include existing features and structures made by people, such as buildings, roads and other paved areas, lawns, and developed areas not containing one or more of the primary constituent elements.

(4) Critical Habitat Map Units.

(i) Data layers defining map units were created on a base of USGS 7.5′ quadrangles obtained from the State of California's Stephen P. Teale Data Center. Proposed critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(ii) Map 1—Index map for *Delphinium bakeri* follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–P

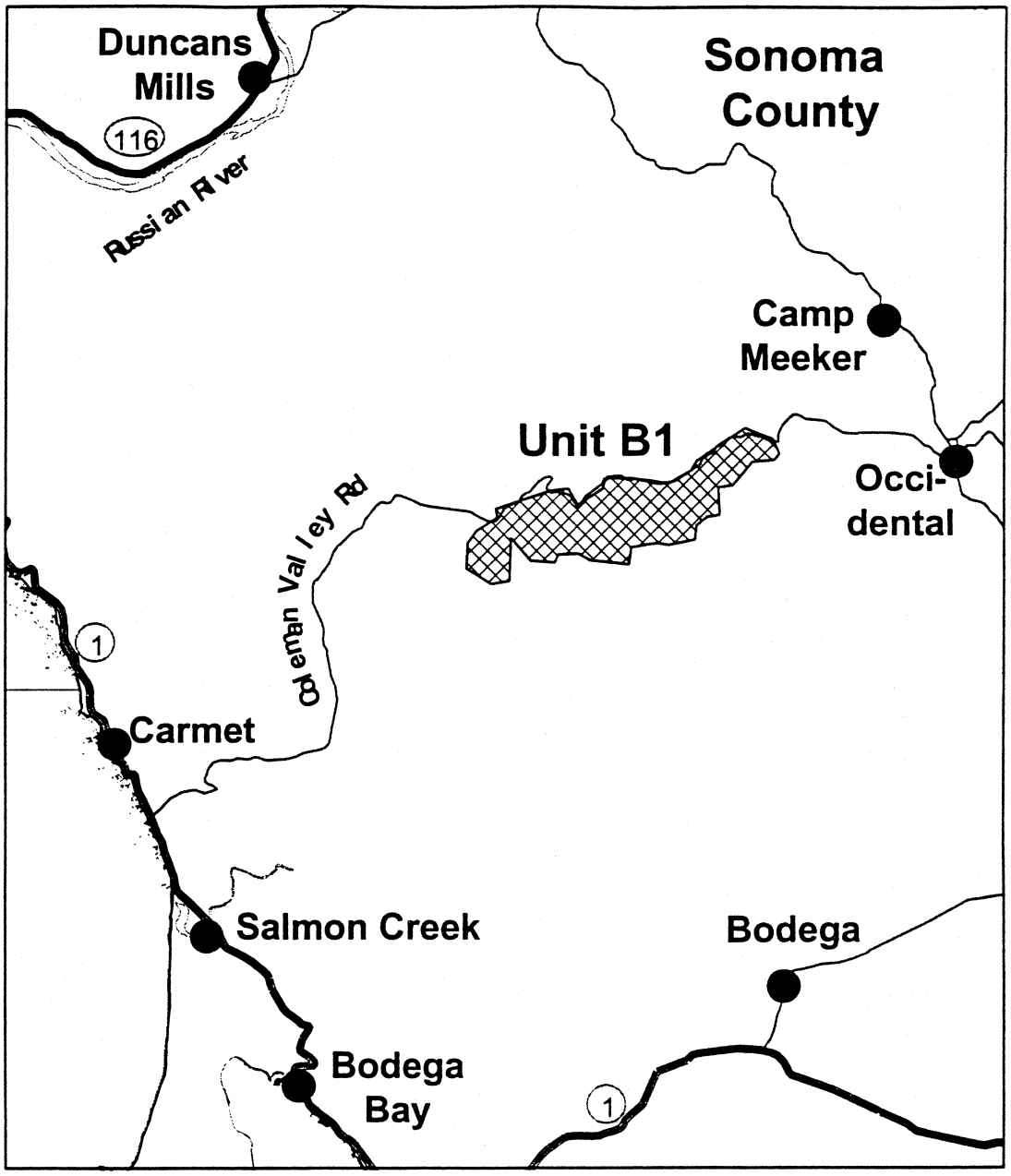
(5) Unit B1: Sonoma County, California.

(i) From USGS 1:24,000 quadrangle maps Camp Meeker and Duncan Hills, California, land bounded by the following UTM10 NAD83 coordinates (E,N): 498360, 4249440; 498030, 4249650; 498040, 4249990; 498160,

4250150; 498430, 4250320; 498420, 4250440; 499140, 4250680; 499380, 4250710; 499510, 4250490; 499840, 4250710; 499880, 4250840; 500250, 4250840; 500580, 4250770; 500730, 4250780; 501020, 4250950; 501080, 4251070; 501360, 4251270; 501520, 4251370; 501730, 4251520; 502100, 4251370; 502190, 4251180; 502120, 4251090; 501830, 4251060; 501570, 4250750; 501380, 4250720; 501400, 4250360; 501230, 4250330; 501090, 4250220; 501070, 4250030; 500720, 4249960; 500550, 4249990; 500220, 4249930; 500190, 4249700; 499680, 4249760; 499520, 4249850; 499250, 4249830; 499210, 4249730; 498880, 4249750; 498620, 4250050; 498600, 4249490; 498360, 4249440.

(ii) Map 2—Unit B1 for *Delphinium bakeri* follows:

BILLING CODE 4310–55–P



Map 2: Critical Habitat Unit B1
Delphinium bakeri

Critical Habitat

Miles
0 1 2

N
W E
S

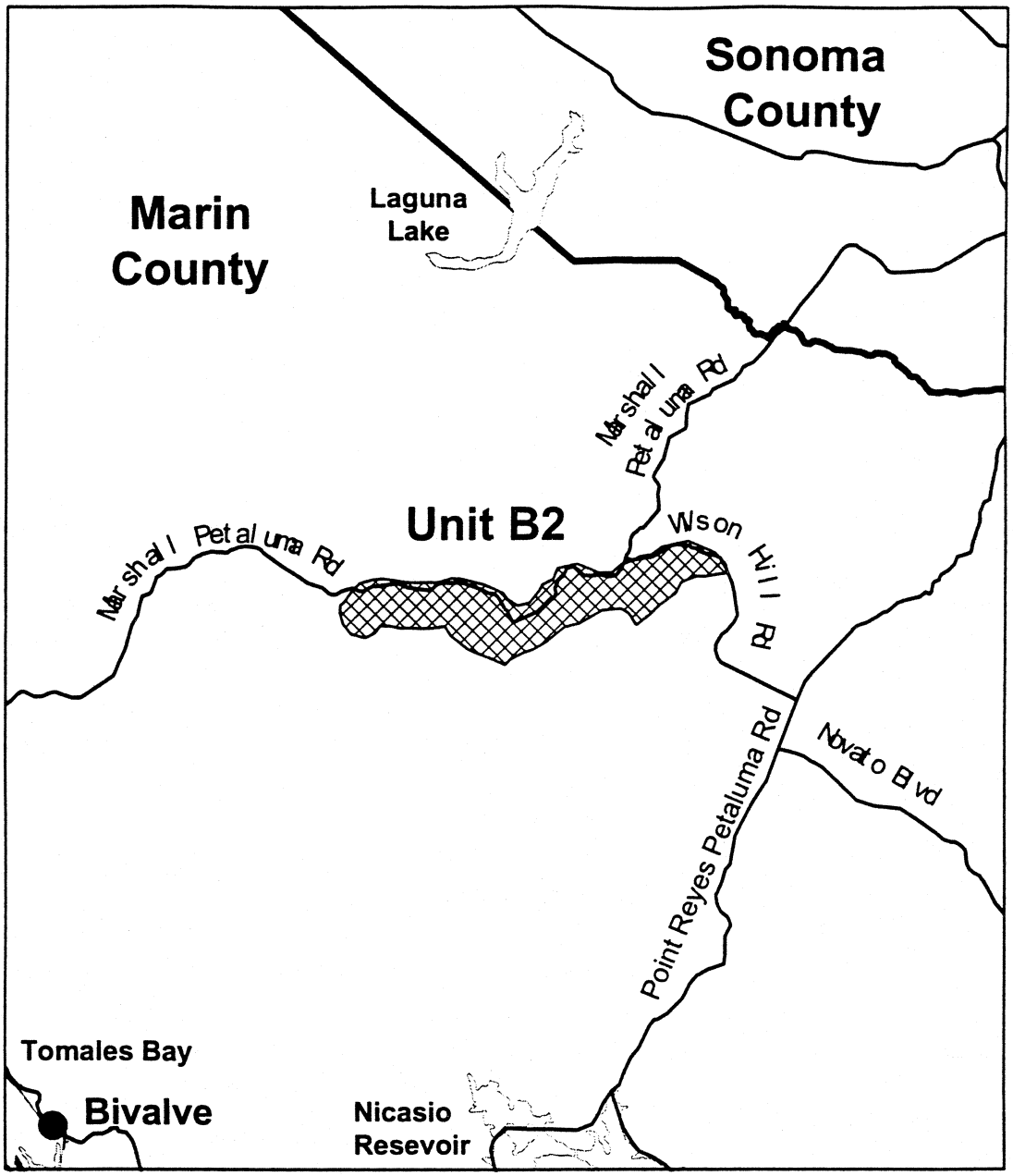
BILLING CODE 4310–55–C

(6) Unit B2: Marin County, California.

(i) From USGS 1:24,000 quadrangle maps Petaluma and Point Reyes NE, California, land bounded by the following UTM10 NAD83 coordinates (E,N): 521780, 4222900; 521560, 4223000; 521350, 4223070; 521230, 4223130; 520980, 4223320; 520890, 4223460; 520680, 4223430; 520220, 4223440; 520100, 4223460; 519940, 4223460; 519870, 4223360; 519720, 4223280; 519510, 4223340; 519400, 4223480; 519350, 4223630; 519360, 4223760; 519410, 4223800; 519530, 4223970; 519640, 4224090; 519830, 4224140; 519980, 4224160; 520440, 4224100; 520760, 4224100; 520990, 4224170; 521130, 4224160; 521460, 4224080; 521740, 4223960; 521820, 4223870; 521960, 4223770; 522130, 4223810; 522290, 4224000; 522320, 4224070; 522480, 4224160; 522550, 4224310; 522830, 4224380; 523160, 4224240; 523340, 4224250; 523470, 4224360; 523660, 4224430; 523750, 4224480; 523920, 4224510; 524070, 4224620; 524460, 4224710; 524860, 4224530; 525010, 4224370; 525030, 4224250; 524690, 4224190; 524590, 4224200; 524360, 4224100; 524280, 4223950; 524050, 4223780; 523920, 4223650; 523700, 4223480; 523600, 4223640; 523480, 4223720; 523210, 4223700; 522880, 4223510; 522650, 4223450; 522370, 4223230; 522170, 4223120; 522050, 4223080; 521860, 4222980; 521780, 4222900.

(ii) Map 3—Unit B2 for *Delphinium bakeri* follows:

BILLING CODE 4310–55–P



Map 3: Critical Habitat Unit B2
Delphinium bakeri

Critical Habitat

Miles
0 1 2

N
W E
S

BILLING CODE 4310–55–C

Family Ranunculaceae: *Delphinium luteum* (Yellow larkspur)

(1) Critical habitat units are depicted for Sonoma and Marin counties, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Delphinium luteum* are the habitat components that provide:

(i) Plant communities, including north coastal scrub or coastal prairie communities, including but not limited to: *Arabis blepharophylla* (rose rockcress), *Calochortus tolmei* (Tolmei startulip), *Mimulus aurantiacus* (orange bush monkeyflower), *Dudleya caespitosa* (sea lettuce), *Polypodium californicum* (California polyploidy), *Eriogonum parviflorum* (sea cliff buckwheat), *Toxicodendron diversilobum* (poison oak), *Romanzoffia californica* (California mistmaiden), *Hesperevax sparsiflora* (evax), *Pentagramma triangularis* (goldenback fern), and *Sedum spathulifolium* (broadleaf stonecrop);

(ii) Relatively steep sloped soils (30 percent or greater) derived from sandstone or shale, with rapid runoff and high erosion potential, such as Kneeland or Yorkville series soils;

(iii) Generally north aspected areas; and

(iv) Habitat upslope and downslope from known populations to maintain disturbance such as occasional rock slides or soil slumping that the species appears to require.

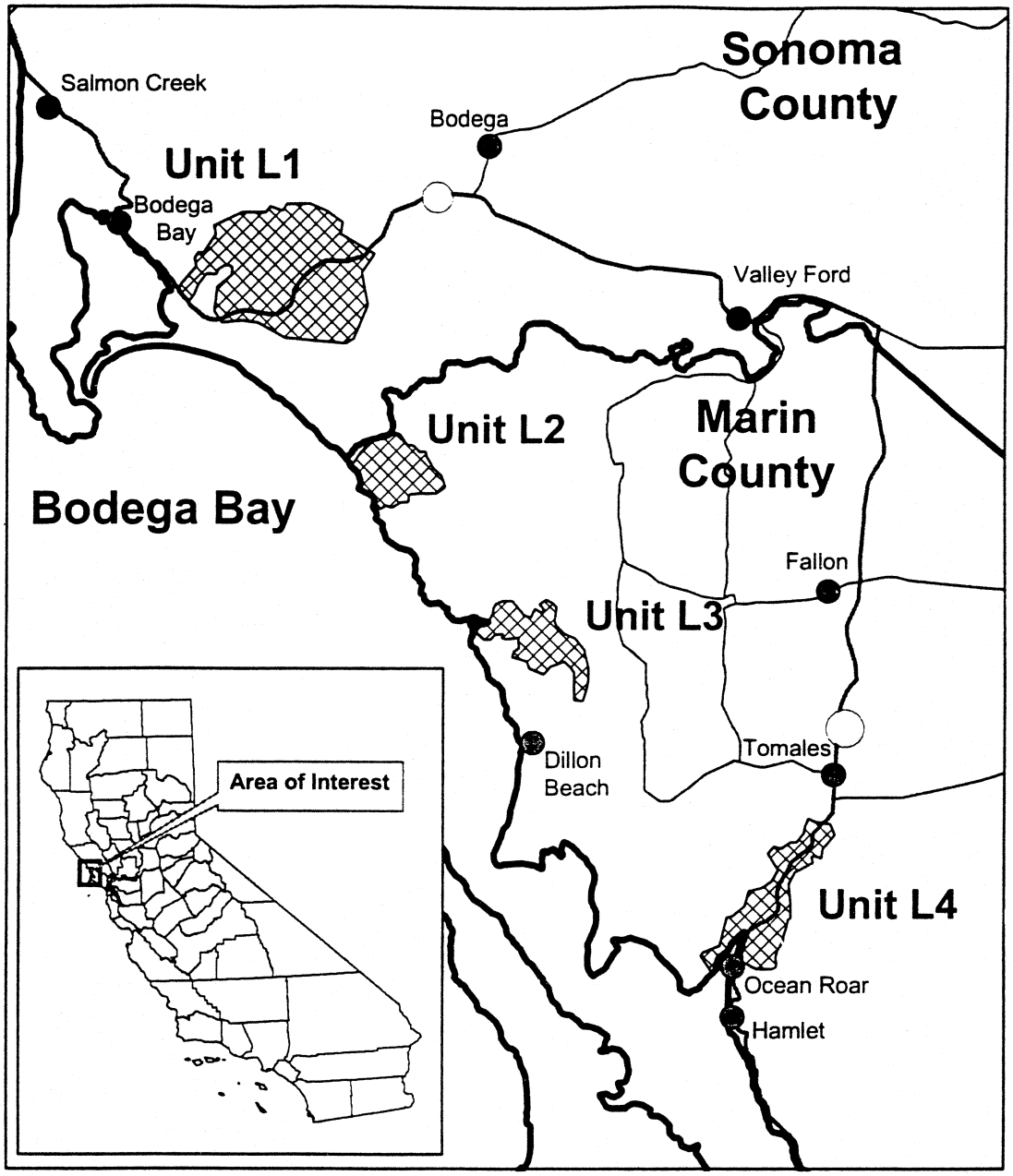
(3) Critical habitat does not include existing features and structures made by people, such as buildings, roads and other paved areas, lawns, and other developed areas not containing one or more of the primary constituent elements.

(4) Critical Habitat Map Units.

(i) Data layers defining map units were created on a base of USGS 7.5' quadrangles obtained from the State of California's Stephen P. Teale Data Center. Proposed critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(i) Map 4–Index map for *Delphinium luteum* follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–P

(5) Unit L1: Bodega Bay, Sonoma County, California.

(i) From USGS 1:24,000 quadrangle map Bodega Head. Lands bounded by the following UTM10 NAD83 coordinates (E,N): 496820, 4241560; 496870, 4241690; 497130, 4241990; 497110, 4242130; 497170, 4242240;

497250, 4242220; 497470, 4242550; 497440, 4242700; 497930, 4242940; 498340, 4242940; 498430, 4243040; 498640, 4242960; 498720, 4243080; 499110, 4243090; 499410, 4242960; 499690, 4242760; 499650, 4242560; 500250, 4242210; 500030, 4241880; 500140, 4241320; 499900, 4240730; 499750, 4240650; 498690, 4240750; 498220, 4241010; 497940, 4241050; 497590, 4241010; 497450, 4241220; 497500, 4241630; 497750, 4241830; 497760, 4241970; 497720, 4242010; 497630, 4242010; 497520, 4241940; 497480, 4241850; 497320, 4241860; 497170, 4241680; 497100, 4241500; 497030, 4241410; 496910, 4241440; 496820, 4241560.

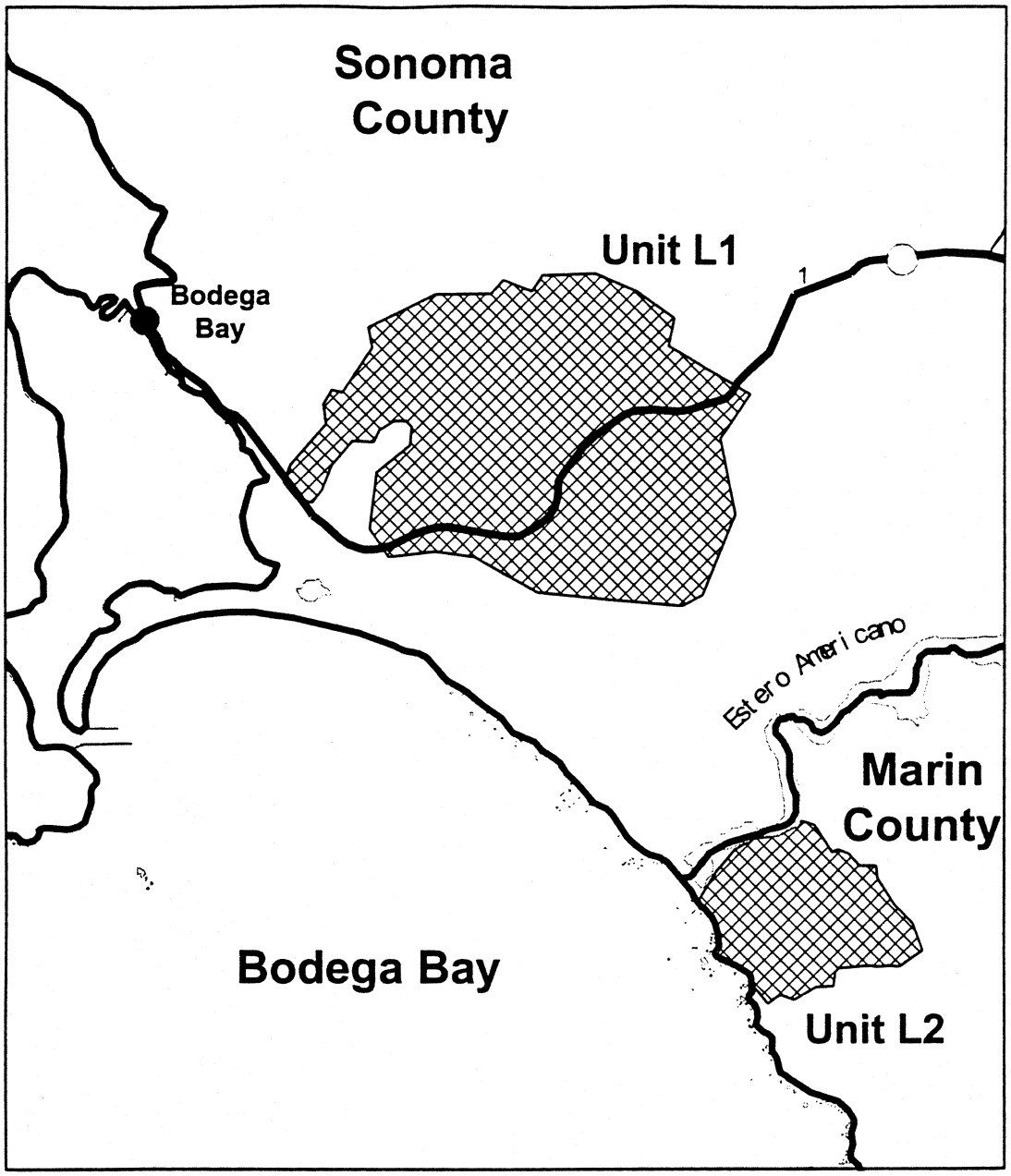
(ii) Map for Unit L1 is set forth below.

(6) Unit L2: Estero Americano, Marin County, California.

(i) From USGS 1:24,000 quadrangle map Valley Ford. Lands bounded by the following UTM10 NAD83 coordinates (E,N): 499970, 4238100; 500010, 4238150; 500010, 4238240; 499870, 4238480; 500010, 4238710; 500140, 4238860; 500280, 4238940; 500470, 4238970; 500580, 4239030; 500630, 4239070; 500720, 4239040; 500850, 4238840; 500890, 4238860; 500970, 4238830; 501050, 4238740; 501170, 4238740; 501180, 4238650; 501300, 4238460; 501440, 4238320; 501510, 4238120; 501340, 4238000; 501270, 4238010; 501190, 4238000; 501120, 4238010; 500900, 4237990; 500870, 4237960; 500860, 4237860; 500730, 4237850; 500570, 4237760; 500470, 4237800; 500380, 4237730; 500250, 4237890; 500240, 4237940; 500180, 4237980; 499990, 4238060; 499970, 4238100.

(ii) Map 5—Units L1 and L2 for *Delphinium luteum* follows:

BILLING CODE 4310–55–P



Map 5: Critical Habitat Units L1 and L2
Delphinium luteum

Critical Habitat

Miles
0 0.75 1.5

N
W E
S

BILLING CODE 4310–55–C

(7) Unit L3: Estero de San Antonio, Marin County, California.

(i) From USGS 1:24,000 quadrangle map Valley Ford. Lands bounded by the following UTM10 NAD83 coordinates (E,N): 502060, 4235600; 502110, 4235750; 502230, 4235770; 502300, 4235840; 502350, 4235930; 502370,

4236030; 502410, 4236100; 502510, 4236150; 502700, 4236150; 502900, 4235910; 503010, 4235860; 502900, 4236160; 502870, 4236120; 502700, 4236260; 502880, 4236400; 503060, 4236370; 503130, 4236240; 503070, 4236180; 503090, 4236010; 503200, 4235950; 503260, 4235990; 503170, 4236090; 503280, 4236180; 503410, 4236100; 503470, 4236040; 503430, 4235810; 503460, 4235720; 503600, 4235580; 503800, 4235490; 503950, 4235300; 504020, 4235010; 504030, 4234810; 504000, 4234630; 503920, 4234390; 503780, 4234410; 503780, 4234890; 503710, 4234990; 503610, 4234970; 503520, 4234840; 503560, 4234620; 503580, 4234470; 503520, 4234440; 503350, 4234580; 503360, 4234710; 503250, 4234860; 502990, 4234970; 502950, 4235100; 502700, 4235170; 502710, 4235260; 502810, 4235330; 502800, 4235510; 502580, 4235480; 502510, 4235510; 502530, 4235580; 502390, 4235560; 502310, 4235470; 502200, 4235470; 502060, 4235600.

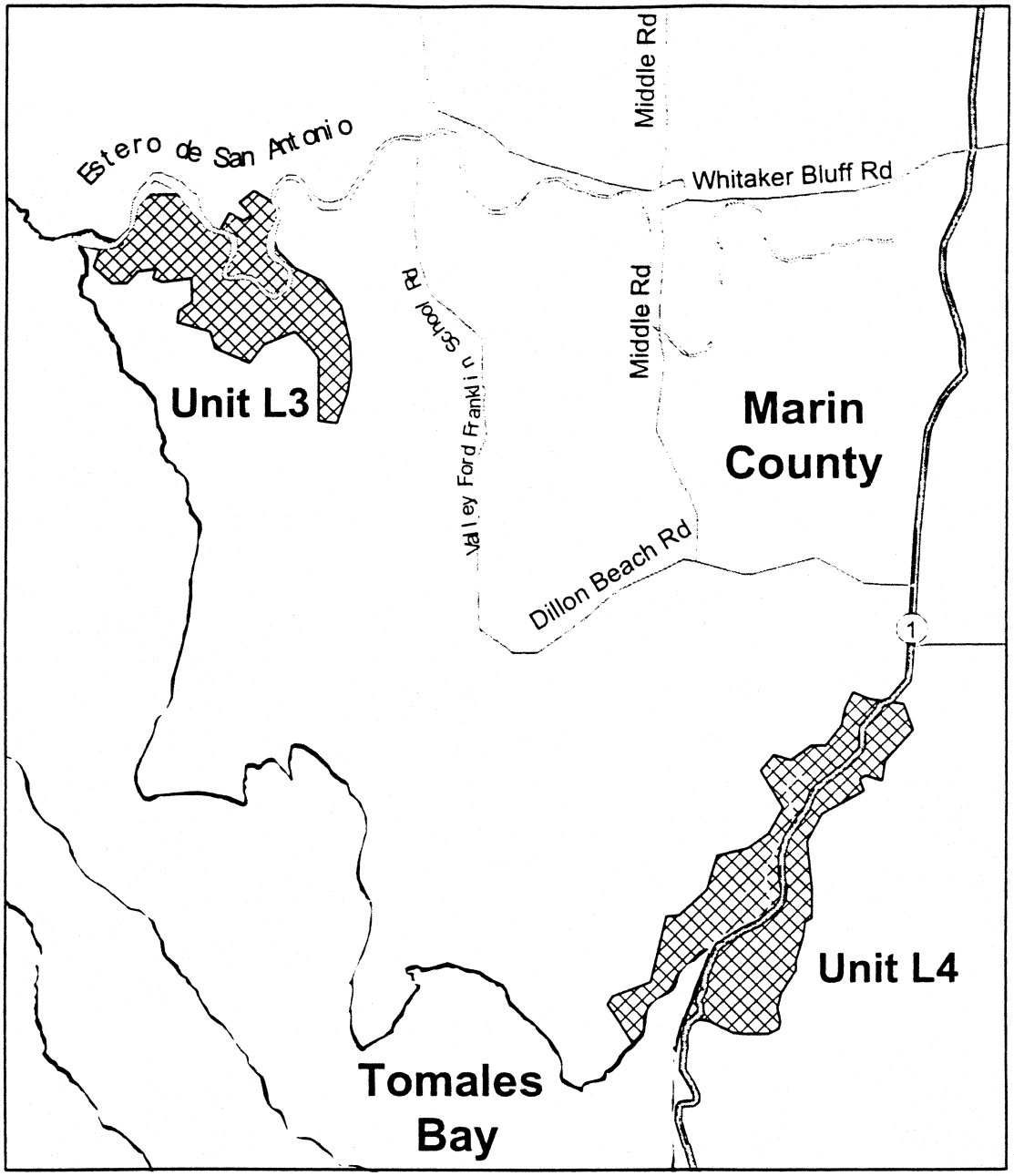
(ii) Map for Unit L3 is set forth below.

(8) Unit L4: Tomales, Marin County, California.

(i) From USGS 1:24,000 quadrangle map Tomales. Lands bounded by the following UTM10 NAD83 coordinates (E,N): 506200, 4229650; 506000, 4229960; 506040, 4230020; 506330, 4230130; 506450, 4230630; 506550, 4230640; 506760, 4230830; 506840, 4231090; 507070, 4231150; 507230, 4231260; 507340, 4231460; 507170, 4231740; 507270, 4231860; 507400, 4231820; 507550, 4231930; 507660, 4231930; 507780, 4232080; 507810, 4232220; 507870, 4232340; 507990, 4232290; 508250, 4232250; 508320, 4232050; 508110, 4231810; 508090, 4231660; 507960, 4231700; 507920, 4231670; 507950, 4231580; 507630, 4231410; 507520, 4231200; 507560, 4230830; 507560, 4230620; 507510, 4230590; 507490, 4230470; 507440, 4230300; 507440, 4230220; 507330, 4230050; 507300, 4229930; 507320, 4229820; 507310, 4229770; 507230, 4229730; 507060, 4229730; 506960, 4229740; 506780, 4229830; 506710, 4229840; 506580, 4229790; 506600, 4229860; 506720, 4230150; 506770, 4230340; 506640, 4230230; 506460, 4230020; 506200, 4229650.

(ii) Map 6—Units L3 and L4 for *Delphinium luteum* follows:

BILLING CODE 4310–55–P



Map 6: Critical Habitat Units L3 and L4

Delphinium luteum

Critical Habitat

Miles

0 0.75 1.5

N

W E

S

* * * * *

Dated: March 7, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–6133 Filed 3–17–03; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AG93

Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for *Sidalcea keckii* (Keck's checkermallow)

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 *Sidalcea keckii* (Keck's checkermallow). Approximately 438 hectares (ha) (1,085 acres (ac)) are designated in California, consisting of three separate units: one unit in Fresno County, 206 ha (510 ac), and two units in Tulare County, one of 86 ha (213 ac) and one of 146 ha (362 ac). 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 our proposal, including data on economic and other impacts of the designation.

DATES: This rule becomes effective on April 17, 2003.

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 the normal business hours at the Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Kirsten Tarp or Susan Moore, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service (telephone 916/414–6600; facsimile 916/414–6710; *kirstent_tarp@fws.gov* or *susan_moore@fws.gov).*

SUPPLEMENTARY INFORMATION:

Background

Sidalcea keckii (Keck's checkermallow) is an annual herb of the mallow family (Malvaceae). The species grows 15 to 33 centimeters (cm) (6 to 13 inches (in)) tall, with slender, erect stems that are hairy along their entire length. Leaves towards the base of the plant have a roughly circular outline, and seven to nine shallow lobes arranged somewhat like the fingers of a hand (palmate). Leaves farther up the plant have fewer lobes which are more deeply divided. Both types of leaves also have irregular serrations at their margins forming ''teeth.'' The plant flowers in April and early May, producing five petalled flowers that are either solid pink or pink with a maroon center. Petals are 1 to 2 cm (0.4 to 0.8 in) long, and are often shallowly notched at their outermost margins. Below the petals is a smaller calyx (cuplike structure) formed by five narrow green sepals (modified leaves). Each sepal is 8 to 11 millimeters (mm) (0.3 to 0.4 in) long, and may have a maroon line running down its center. Below the calyx are bracts (modified leaflike structures), which are much shorter than the sepals and are either undivided or divided into two threadlike lobes. *Sidalcea keckii* is distinguished from other members of its genus by the maroon lines on its sepals, its much shorter bracts, and by stems which are hairy along their entire length (Kirkpatrick 1992; Shevock 1992; Hill 1993).

Sidalcea keckii fruit consist of four to five wedge-shaped sections arranged in a disk. The sections measure 3 to 4 mm (0.1 to 0.2 in) across, and each contains a single seed (Abrams 1951; Hill 1993; Cypher 1998). Sections mature and separate in May, but their methods of dispersal, other than gravity, are currently unknown (Cypher 1998). Also unknown are the seeds' requirements for germination (sprouting) in the wild, their typical germination dates, and how long the seeds remain viable in the soil. Based on other Malvaceae species, and on recent observations of extreme yearly fluctuations in numbers of above-ground plants, it is likely that *S. keckii* seeds remain viable for several years and form a persistent soil seed bank (W. Moise as in E. Cypher, Endangered Species Recovery Program, California State University, *in litt.*, 1999; S. Hill, Illinois Natural History Survey, pers. comm., 2002). Persistent seed banks consist of all the viable seeds left ungerminated in the soil longer than a single growing season, and typically extend over a much greater area than the observable above-ground plants (Given 1994). The number and location of standing plants in a population with a persistent seed bank may vary 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. As the depository from which each new generation of plants must grow, such seed banks are extremely important for an annual species' long-term survival in an area, and may maintain a population through years in which few or no above-ground plants can grow or survive (Baskin and Baskin 1978).

The primary pollinators of *Sidalcea keckii* are unknown, but two related California species of *Sidalcea* (*S. oregana* ssp. *spicata* and *S. malviflora* ssp. *malviflora*) are pollinated primarily by various species and families of solitary bees, bumble bees, and bee flies (Ashman and Stanton 1991; Graff 1999). Many bees of the solitary bee genus *Diadasia* specialize in collecting pollen solely from members of the Malvaceae family (Service 1998).

Sidalcea keckii is endemic to California and grows in relatively open areas on grassy slopes of the Sierra foothills in Fresno and Tulare counties. It is associated with serpentine soils (Kirkpatrick 1992; Cypher 1998), which are unusually low in nutrients and high in heavy metals. These soil properties tend to restrict the growth of many competing plants (Brooks 1987). As with many serpentine species, *S. keckii* appears to compete poorly with densely growing non-native annual grasses (Stebbins 1992; Weiss 1999).

The primary reason so much remains unknown about *Sidalcea keckii* is that after botanists first collected samples from a site near White River, Tulare County in 1935, 1938, and 1939 (Wiggins 1940; California Natural Diversity Database (CNDDB) 2001), it was not collected or observed by botanists again for over 50 years. A possible reason for this includes the somewhat vague description of the White River site (Wiggins 1940). Searches at the site may also simply have been conducted during poor years when few above-ground plants had germinated from the seed bank (S. Hill, *in litt.,* 1997). Now that botanists have a better understanding of what constitutes appropriate habitat for the species, based on the discovery of additional sites (see below), it is possible that future surveys may relocate *S. keckii* at the White River site. Initial visits to the site have already identified areas of likely habitat (J. Stebbins, Herbarium Curator, California State University, pers. comm., 2002).

Sidalcea keckii was presumed extinct until it was rediscovered in 1992 at a site near Mine Hill in Tulare County (Stebbins 1992). The Mine Hill population contained about 60 plants growing on private land around a serpentine rock outcrop on 20 to 40 percent slopes at about 229 meters (m) (750 feet (ft)) in elevation. Associated plants included *Achyrachaena mollis* (blow-wives), *Bromus madritensis* ssp. *rubens* (red brome), *Lepidium nitidum* (shining peppergrass), *Senecio vulgaris* (common groundsel), *Plantago erecta* (California plantain), and *Silene gallica* (windmill pink) (Kirkpatrick 1992; Cypher 1998). We have received information that the standing population at Mine Hill may have been extirpated by conversion of the habitat to an orange grove (J. Stebbins, *in litt.,* 2002). Much of the area around the original population at Mine Hill remains potentially viable however, and may contain a seed bank or standing plants.

Using habitat information from the Mine Hill site, botanists resurveyed a location in the Piedras area of Fresno County where *Sidalcea keckii* had been documented in 1939, and rediscovered the population in 1998 (Service 1997; CNDDB 2001). This population spans a mix of private and Federal land, much of which has since been purchased by Sierra Foothill Conservancy (SFC) to provide a reserve for the plant (SFC 2001). Although initially only 217 plants were found at the site (Service 2000), subsequent surveys have found 500 to 1,000 plants in 8 separate patches ranging in elevation from 183 to 305 m (600 to 1,000 ft) (Cypher 1998; C. Peck, SFC, *in litt.,* 2002). Associated plants at this site include *Bromus heartaches* (soft chess), *Dichelostemma capitatum* (blue dicks), *Gilia tricolor* (bird's eye gilia), *Trileleia ixioides* (pretty face), *Trileleia laxa* (Ithuriel's spear), *Asclepias* sp. (milkweed), and *Madia* sp. (tarweed) (Cypher 1998). Another population was discovered near Piedra in 2002, but we do not yet have details regarding its exact location (J. Stebbins, *in litt.,* 2002).

Sidalcea keckii is threatened by urban development, competition from non-native grasses, agricultural land conversion, and random events (S. Hill, pers. comm., 2002; C. Peck, *in litt.*, 2002; Service 2000). Cattle grazing at the current level does not appear to be detrimental, and may reduce encroachment by non-native grasses (C. Peck, *in litt.*, 2002; Weiss 1999). Cattle have been observed to cause some damage to *S. keckii* by eating or trampling it, although the damage was barely noticeable a week later (Cypher 1998). However, unmanaged increases in grazing during months of flowering, seed-set, or seed maturation, could potentially reduce local population viability and thereby affect long term conservation. The plant's low population numbers, particularly at Mine Hill, leave it vulnerable to random environmental events such as extreme weather, disease, or insect infestations (Shaffer 1981, 1987; Menges 1991). The isolation of *S. keckii* populations exacerbates these vulnerabilities by reducing the likelihood of recolonization of extirpated populations. Inbreeding depression and loss of genetic variability may also be causes for concern in such small isolated populations (Ellstrand and Elam 1993).

Previous Federal Action

Federal action on *Sidalcea keckii* began when the Secretary of the Smithsonian Institution, as directed by section 12 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), prepared a report on those native plants considered to be endangered, threatened, or extinct in the United States. This report (House Doc. No. 94–51) was presented to Congress on January 9, 1975, and included *S. keckii* as threatened. On July 1, 1975, we published a notice in the **Federal Register** (40 FR 27823) accepting the report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and of our intention to review the status of the plant taxa named in the report. On June 16, 1976, we published a proposed rule in the **Federal Register** (41 FR 24523) determining approximately 1,700 vascular plant species to be endangered pursuant to section 4 of the Act. *Sidalcea keckii* was not included on this initial list.

We addressed the remaining plants from the Smithsonian report in a subsequent Notice of Review (NOR) on December 15, 1980 (45 FR 82479). In that NOR, we determined *Sidalcea keckii* to be a category 1 candidate species, which we defined as a species for which we had enough information on biological vulnerability and threats to support preparation of a listing proposal. We published updates of the plant candidate lists in NORs dated September 27, 1985 (50 FR 39526), February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144), each time maintaining *S. keckii* as a category 1 species. In the NOR published February 28, 1996 (61 FR 7596), we discontinued the use of different categories of candidates, and defined ''candidate species'' as those meeting the definition of former category 1. We maintained *S. keckii* as a candidate species in that NOR, as well as in subsequent NORs published September 19, 1997 (62 FR 49398), and October 25, 1999 (64 FR 57533).

On July 28, 1997, we published a proposed rule to list *Sidalcea keckii* as an endangered species under the Act (62 FR 40325). On June 17, 1999, our failure to issue a final rule and to make a critical habitat determination for *S. keckii* was challenged in *Southwest Center for Biological Diversity, et al.*, v. *U.S. Fish and Wildlife Service, et al.* (N.D. Cal) (Case No. C99–2992 CRB). On February 16, 2000, we published a final rule listing *S. keckii* as an endangered species (65 FR 7757). A May 22, 2000, court order, based on a joint stipulation with the plaintiffs, required us to complete a proposed critical habitat designation by September 30, 2001. The court extended the deadline to propose critical habitat for this species, based on a further settlement agreement reached by the parties. In a consent decree issued October 2, 2001, the court required us to complete a proposed critical habitat designation for *S. keckii* and certain other species by June 10, 2002, and to issue a final critical habitat designation for the species by March 10, 2003 (*Center for Biological Diversity, et al.*, v. *Gale Norton, et al.* (D.D.C.) (Case. No. Civ. 01–2063)).

We published a proposed rule for *Sidalcea keckii* in the **Federal Register** June 19, 2002 (67 FR 41669). In the proposal, we determined that it was prudent to designate approximately 438 hectares (ha) (1,085 acres (ac)), consisting of three separate units: one unit in Fresno County, 206 ha (510 ac), and two units in Tulare County, one of 86 ha (213 ac) and one of 146 ha (362 ac). Publication of the proposed rule opened a 60-day public comment period, which closed on August 19, 2002. On October 31, 2002, we published a notice announcing the reopening of the comment period on the proposal to designate critical habitat for *S. keckii*, and a notice of availability of the draft economic analysis on the proposed determination (67 FR 66378). This second public comment period closed on December 2, 2002.

Summary of Comments and Recommendations

In the June 19, 2002, proposed critical habitat designation (67 FR 41669), we requested all interested parties to submit comments on the specifics of the proposal including information related to biological justification, economics, proposed critical habitat boundaries, and proposed projects. The initial 60-day comment period closed on August 19, 2002. The comment period was

reopened from October 31, 2002, to December 2, 2002 (67 FR 66378), to allow for additional comments on the proposed designation, and comments on the draft economic analysis of the proposed critical habitat.

We contacted all appropriate Federal, State, and local agencies, elected officials, scientific organizations, and other interested parties and invited them to comment. In addition, we invited public comment through the publication of legal notices in the Tulare Advance Register and the Fresno Bee on June 27, 2002. We provided notification of the draft economic analysis to all interested parties. This was accomplished through letters and news releases faxed and/or mailed to affected elected officials, media outlets, local jurisdictions, and interest groups. We also posted the proposed rule and draft economic analysis and associated material on our Sacramento Fish and Wildlife Office internet site following their release on June 19, 2002, and October 31, 2002, respectively.

We received individually written letters from two parties, including one peer reviewer. Both comments were neutral regarding the designation of critical habitat. We reviewed both comments received for substantive issues and new information regarding critical habitat and Sidalcea keckii. The comments were either incorporated directly into the final rule or are addressed in the following summary. We received no comments regarding the draft economic analysis.

Peer Review

In accordance with our peer review 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. One of the three peer reviewers responded, and provided us with comments which were summarized in the following section and incorporated into the final rule.

Issue 1: Critical habitat identified at the Mine Hill Unit may be misplaced. John Stebbins and Karen Kirkpatrick, the two individuals who found the population, mapped the population in slightly different locations, one of which was mapped much closer to the Centerville clay soils. In addition, John Stebbins' collection notes stated the soil type was Centerville clay. This commenter recommended that the population be visited in the spring and mapped with a Geographic Positioning System (GPS) unit to precisely map the occurrence. If the landowner will not allow access to the property, it is recommended that the critical habitat boundary be extended to include the adjacent Centerville clay soils.

Our Response: Because we are under a settlement agreement to complete a final rule by March 10, 2003, we do not have the option of postponing the designation of critical habitat in order to determine the location of the *Sidalcea keckii* population more precisely with a GPS unit. We disagree with extending the critical habitat boundary to the adjacent Centerville clay soils because most of the adjacent Centerville clay soils are already in agricultural fields or orchards and would be unlikely to contribute to the conservation of *S. keckii.*

The Mine Hill Unit we proposed incorporates both the area mapped by John Stebbins and the area mapped by Karen Kirkpatrick. Although it is true that the area mapped by Karen Kirkpatrick is closer to the boundary of the Centerville clay, it is still within the area mapped as Coarsegold Series soils.

Issue 2: Both commenters mentioned that the population of *Sidalcea keckii* at the Mine Hill Unit may have been extirpated by citrus groves. One of the commenters stated that, considering the very limited range of the species, none of the three sites is expendable, and there is a good possibility that areas of natural land may remain on the appropriate soil types within or adjacent to the boundaries of the proposed critical habitat.

Our Response: Our information about the status of the population at the Mine Hill site is inconclusive. The standing population at Mine Hill may have been extirpated by conversion of the habitat to an orange grove. We do not know how much habitat may have been converted. We believe that much of the habitat around the original population at Mine Hill remains potentially viable and may contain a seed bank or standing plants.

Issue 3: The location of the population mapped at White River may be misplaced. The CNDDB gives the elevation as 427 m (1,400 ft); however the original description of the site gives the elevation as 380 m (1,247 ft). Given the uncertainty of the precise location of any remaining seed bank, the boundary of the critical habitat proposed at White River should extend all the way to the edge of the Cibo soils.

Our Response: We had originally included the referenced Cibo soil area as critical habitat, but a small portion of the Cibo soil area (less than approximately 2 ha (5 ac)) was inadvertently eliminated when the final proposed critical habitat boundaries were delimited using the Universal Transverse Mercator (UTM) grid. Under the Act and the Administrative Procedure Act (5 U.S.C. 553), we are required to allow the public an opportunity to comment on the proposed rulemaking. Therefore, because this new area was not included in the proposed rule, we are not including it in the final rule. Although this area was not included in the critical habitat proposal, it may be important to the recovery of *Sidalcea keckii* and could be included in recovery activities in the future.

Summary of Changes From the Proposed Rule

Based on a review of the comments received on the proposed determination of critical habitat, we reevaluated our proposed designation and made minor changes to the text in the background section of the rule. No changes were made to the unit boundaries delimiting the areas determined to be essential for the conservation of *Sidalcea keckii.* The unit boundaries as depicted in this final rule encompass 438 ha (1,085 ac).

Critical Habitat

Section 3 of the Act defines critical habitat as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species, and (II) that may require special management considerations or protection; and (ii) specific areas outside the 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.

In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''a direct or indirect alteration that appreciably diminishes

the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to: alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' However, in a March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434), the Court found our definition of destruction or adverse modification to be invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

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 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, by helping people to avoid causing 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 all 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 that support newly discovered populations in the future, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act, and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard 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, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b)(2) of the Act and regulations at 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 *Sidalcea keckii.* This included information from our own documents on *S. keckii* and related species; the CNDDB (2001); peer-reviewed journal articles and book excerpts regarding *S. keckii* and related species, or regarding more generalized issues of conservation biology; unpublished biological documents regarding *S. keckii* or related species; site visits, and discussions with botanical experts.

We compared geological and ecological characteristics of the various locations of the plant by using information from the above sources as well as geographic information system (GIS) coverages of documented *Sidalcea keckii* population locations (CNDDB 2001); soil survey maps (U.S. Soil Conservation Service (SCS) 1971, 1982; U.S. Department of Agriculture, Natural Resource Conservation Service (NRCS) 2001); aerial photographs (CNES/SPOT Image Corporation (SPOT) 2001); topological features (United States Geological Survey (USGS) 1990); features of underlying rock (California Department of Conservation (CDC) 2000) and vegetation cover (USGS 1990). We also examined geological maps not available on GIS (California Division of Mines and Geology (CDMG) 1991, 1992).

The Piedra and the Mine Hill critical habitat units are occupied by both above-ground plants and seed banks, depending on the time of year (*i.e.*, plants are not observable above-ground all year). Although above-ground plants have not been observed on the White River unit since the 1930s, a complete survey has not been done due to the lack of access to lands in private ownership. ''Occupied'' is defined here as any area with above-ground *Sidalcea keckii plants* or a *S. keckii* 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.

Each of the critical habitat units likely includes areas that are unoccupied by *Sidalcea keckii.* ''Unoccupied'' is defined here as an area that contains no above-ground *S. keckii* plants and that is unlikely to contain a viable seed bank. Determining the specific areas that this taxon occupies is difficult because, depending on the climate and the natural variations in habitat conditions, the extent of the distributions may either shrink and 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 any meaningful way what proportion of each critical habitat unit may actually be occupied by *S. keckii.* Therefore, patches of unoccupied habitat are probably interspersed with patches of occupied habitat in each unit. 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. 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. Both occupied and unoccupied areas that are proposed as critical habitat are essential to the conservation of the species.

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 *Sidalcea keckii* is described in the Background section of this final rule. The designated critical habitat is designed to provide sufficient habitat to maintain self-sustaining populations of *S. keckii* throughout its range and allow for the expansion of populations in order to help reach the primary goal of conservation, and to provide those habitat components essential for the conservation of the species. These habitat components provide for: (1) individual and population growth, including sites for germination, pollination, reproduction, pollen and seed dispersal, and seed dormancy; (2) areas that allow gene flow and provide connectivity or linkage within larger populations; (3) areas that provide basic requirements for growth, such as water, light, and minerals; and (4) areas that support populations of pollinators and seed dispersal organisms.

We believe the long-term conservation of *Sidalcea keckii* is dependent upon the protection of existing population sites and the maintenance of ecological functions within these sites, including connectivity between colonies (*i.e.*, groups of plants within sites) within close geographic proximity to facilitate pollinator activity and seed dispersal. The areas we are designating as critical habitat provide some or all of the habitat components essential for the conservation of *S. keckii.* Based on the best available information at this time, the primary constituent elements of critical habitat for *S. keckii* are:

(1) Minimally shaded annual grasslands in the foothills of the Sierra Nevada Mountains containing open patches in which competing vegetation is relatively sparse; and

(2) Serpentine soils or other soils that tend to restrict competing vegetation.

Criteria Used to Identify Critical Habitat

We identified critical habitat areas essential to the conservation of *Sidalcea keckii* in the three primary locations where it currently occurs or has been known to occur: the Piedra area of Fresno County, the Mine Hill area of Tulare County, and near White River in Tulare County. We are designating sufficient critical habitat at each site to maintain self-sustaining populations of *S. keckii* at each of these locations.

During the development of this rule, we considered the role of unoccupied habitat in the conservation of *Sidalcea keckii.* Due to the historic loss of the habitat that supports this species, we believe that future conservation and recovery of this taxon depends not only on protecting it in the limited area that it currently occupies, but also on providing the opportunity to expand its distribution by protecting currently unoccupied habitat that contains the necessary primary constituent elements within its historic range.

To help achieve our goal of conservation of *Sidalcea keckii*, we are including the White River site, despite the fact that *S. keckii* has not been documented there in recent years. The White River population is the type location where the plant was originally discovered and described from and still is documented to contain the primary constituent elements that would support the species. It is one of the extremely few locations where *S. keckii* has ever been observed and may be occupied by a seed bank. We have evidence from the Piedra site, where *S. keckii* was undocumented from 1939 until its rediscovery in 1998 (Cypher 1998; CNDDB 2001), that such rediscoveries are possible for *S. keckii.* The Piedra site supports the largest known *S. keckii* population, with 500 to 1,000 plants when last surveyed (Cypher 1998). Even if the species is not rediscovered at the White River site, we still believe the site is essential to the conservation of the species because it is the most appropriate site for a reestablishment effort. The combination of limited range, few populations, and restricted habitat makes *S. keckii* susceptible to extinction or extirpation due to random events, such as fire, disease, or other occurrences (Shaffer 1981, 1987; Primack 1993, Meffe and Carroll 1994). Such events are a concern when the number of populations or geographic distribution of a species are severely limited, as is the case with *S. keckii.* Establishment of a third location for *S. keckii* is likely to prove important in reducing the risk of extinction due to such catastrophic events.

Despite the association of *Sidalcea keckii* with serpentine soils (Kirkpatrick 1992; Cypher 1998), only a portion of *S. keckii* plants at the Piedra site grow on soil identified by SCS maps as being serpentine derived (the soil, Fancher extremely stony loam) (SCS 1971; NRCS 2001). Other patches at Piedra grow on what SCS maps indicate are Cibo clays, while the Mine Hill population of *S. keckii* grows in an area mapped as Coarsegold rock outcrop complex (NRCS 2001). Neither of these latter two soil types normally derive from serpentine rock (SCS 1971, 1982), although the underlying geology may contain it. Geologic maps, for example, show the Cibo soils of the Piedra population straddling an arm of

underlying serpentine rock (CDMG 1991; CDC 2000). The soils may, therefore, in fact be derived from such rock or include pockets of soil derived from such rock, or the amount of serpentine rock may be too small to be mapped (E. Russell, NRCS, pers. comm., 2002). Available geologic maps fail to show any serpentine rock in the vicinity of the type locality White River population (CDMG 1992; Jennings 1977; CDC 2000), but instead show that the area contains Cibo clays. However, Cibo soils have an intrinsic tendency to dry out, harden, and form deep cracks during the summer which can discourage the growth of some plants (E. Russell, pers. comm., 2002). Hence, these soils would limit vegetation competition in favor of *S. keckii.*

Based on available soils and geologic maps, the Coarsegold soils of the Mine Hill population do not overlie serpentine rock, nor are they intrinsically restrictive to plant growth (CDMG 1991; Jennings 1977; SCS 1982; CDC 2000; E. Russell, pers. comm., 2002). The botanists who discovered the population, however, characterized the site as a ''serpentine rock outcrop'' (Kirkpatrick 1992). Although geologic maps do not list serpentine rock at the site itself, they do show it within a mile to the northeast and southwest (CDMG 1991; Jennings 1977; CDC 2000). The site itself sits over ''precenazoic metasedimentary and metavolcanic rocks of great variety'' (Jennings 1977). Hence, it appears likely that the site consists of a pocket habitat of serpentine soil which was too small to be mapped (E. Russell, pers. comm., 2002). SCS soil maps tend to list only the dominant soil type in an area. Other such pocket habitats may exist within the same combination of soil and underlying rock.

Mapping

We delineated the critical habitat units by creating data layers in a GIS format. First, we identified the locations of the *Sidalcea keckii* populations using information from the CNDDB (2001) and published and unpublished documents from those who located the known populations (Kirkpatrick 1992; Stebbins 1992). In the case of the Piedra population, where *S. keckii* grew in more than one patch, we identified the locations and approximate dimensions of the various patches as well, based on information provided by SFC (C. Peck, *in litt.*, 2002). We mapped populations or patch locations from all sites on USGS 7.5[1] quadrangle topological maps (USGS 1990) to obtain information on elevation, slope, and recognizable surface features. We then used soil survey maps (NRCS 2001) to restrict potential critical habitat to the boundaries of the basic soil types on which the populations grow. In areas where the presence of *S. keckii* could not be explained by the properties of the mapped soil type alone (such as the Coarsegold soils at the Mine Hill location), we mapped critical habitat boundaries to the same underlying rock type as at the population site (CDC 2000). We then used recent aerial photos (SPOT 2001), topological maps (USGS 1990), and discussions with experts familiar with the areas (R. Faubion, U.S. Bureau of Reclamation (BOR), pers. comm., 2002; C. Peck, pers. comm., 2002) to eliminate large contiguous areas which were noticeably more overgrown or which were not grassland and, therefore, not suitable habitat for the species.

In order to provide determinable legal descriptions of the critical habitat boundaries, we then used an overlayed 100-meter grid to establish UTM North American Datum of 1983 (NAD 83) coordinates which, when connected, provided the critical habitat unit boundaries. We include the legal description derived from the UTM coordinates for each unit in the Regulation Promulgation section, below.

In designating critical habitat, we made an effort to avoid developed areas, such as housing developments and agricultural fields, that are unlikely to contribute to the conservation of *Sidalcea keckii.* 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 *S. keckii.* Areas within the boundaries of the mapped units, such as buildings, roads, and paved 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 of the Act consultation, unless they affect the species or primary constituent elements in adjacent critical habitat.

Critical Habitat Designation

Lands designated as critical habitat are under private and Federal jurisdiction and include one or more of the primary constituent elements described above. The approximate areas of critical habitat by land ownership are shown in Table 1.

TABLE 1.—APPROXIMATE AREAS IN HECTARES (HA) AND ACRES (AC) OF CRITICAL HABITAT FOR *Sidalcea keckii* BY LAND OWNERSHIP

Unit	Federal	Private	Total
1. Piedra	3 ha (7 ac)	203 ha (503 ac)	206 ha (510 ac)
2. Mine Hill	0	86 ha (213 ac)	86 ha (213 ac)
3. White River	0	146 ha (362 ac)	146 ha (362 ac)
Totals	3 ha (7 ac)	435 ha (1,078 ac)	438 ha (1,085 ac)

The three critical habitat units include the only two locations where *Sidalcea keckii* has been observed since the 1930s and the type locality. This later site may still be occupied by a seed bank, and is the most appropriate location to consider for reestablishment efforts. A brief description of each critical habitat unit is given below:

Unit 1: Piedra

Unit 1 is on the western slopes of Tivy Mountain in the Piedra area of southern Fresno County. It contains 206 ha (510 ac), of which 203 ha (503 ac) are privately owned and 3 ha (7 ac) are managed by the BOR (R. Faubion, pers. comm., 2002). Of the privately owned land, 77 ha (189 ac) of proposed critical habitat is on the Tivy Mountain Reserve which is owned by SFC and established for the conservation of *Sidalcea keckii* and other rare plants. SFC uses managed grazing as a tool to reduce competing non-native grasses from *S. keckii* sites, and monitors the plant as well (SFC 2001). Another 6.5 ha (16 ac) of this unit occurs on a conservation easement held by SFC on privately owned land adjacent to the reserve.

Recent surveys of the areas containing documented populations of *Sidalcea keckii* were conducted in 1998, 2000,

and 2001. In 1998, surveys coordinated by the BOR found 500 to 1,000 plants in the area (Cypher 1998). Surveys conducted in 2000 and 2001 by the SFC found eight separate patches of *S. keckii* growing on both Fancher and Cibo soils (C. Peck, *in litt.,* 2002).

This unit is essential to the conservation of the species because it is one of the two sites at which the species has been observed since the 1930s. When the number of populations or geographic distribution of a species are severely limited, as is the case when plants have only been observed recently at two locations, possible extinction or extirpation due to random events become a concern. Examples of random events that are a concern include fire and disease (Shaffer 1981, 1987; Primack 1993, Meffe and Carroll 1994). This unit is also essential because it includes the most northerly location known for *S. keckii,* and is the only location where above-ground plants with maroon-centered flowers have been documented (Cypher 1998).

Unit 2: Mine Hill

Unit 2 is about 3 km (2 mi) south of Success Dam and 5 km (3 mi) east of Porterville in Tulare County and contains 86 ha (213 ac), all of which are on privately owned land. Unit 2 encompasses a single known patch of *Sidalcea keckii,* which contained approximately 60 plants when last surveyed in 1992. At the request of the landowner, it has not been surveyed since that time. However, based on information from public comment, the standing population at Mine Hill may have been extirpated by conversion of the habitat to an orange grove. We currently do not know how much habitat may have been converted, although we believe that much of the habitat around the original population remains potentially viable and may contain a seed bank or standing plants. The Coarsegold rock outcrop soils of the area are best suited to rangeland (SCS 1982), which is the current use of the area where not converted to orchard. However the site is also zoned for mobile home development (R. Brady, Tulare County Planning Department, pers. comm., 1997).

This unit is essential to the conservation of the species because it is presumably one of the two known locations where *Sidalcea keckii* plants have been observed since the 1930s. As is the case with Unit 1, when the number of populations or geographic distribution of a species are severely limited, possible extinction or extirpation due to random events become a concern. Examples of random events that are a concern include fire and disease (Shaffer 1981, 1987; Primack 1993, Meffe and Carroll 1994).

Unit 3: White River

Unit 3 is located near the town of White River in southern Tulare County. It contains 146 ha (362 ac), all of which is private land. Unit 3 contains the ''type'' location, specimens from which were used to first describe the species in 1940 (Wiggins 1940). This site is the only one not closely associated with serpentine rock, but contains the primary constituent elements that would support the species. This may be due to the presence of currently unknown and unmapped serpentine areas, or it may be due to an increased ability to compete on non-serpentine Cibo soils.

As noted above, the White River site is one of the extremely few locations where *Sidalcea keckii* has ever been observed and may be occupied by a seed bank. *Sidalcea keckii* plants may still occur here, but none have been documented recently. Even if the species is not rediscovered at the White River site, we believe the site is essential to the conservation of the species. Because *S. keckii* has been observed at the site, it is the most appropriate site at which a reestablishment effort might be attempted. The combination of small range, few populations, and restricted habitat makes *S. keckii* susceptible to extinction or extirpation from a significant portion of its range due to random events, such as fire, disease, or other occurrences (Shaffer 1981, 1987; Primack 1993, Meffe and Carroll 1994). Such events are a concern when the number of populations or geographic distribution of a species are severely limited, as is the case with *S. keckii.* Establishment of a third location for *S. keckii* is likely to be an important component in reducing the risk of extinction due to such catastrophic events. This location also represents the southernmost extent of the known historical range of the species.

Effects of Critical Habitat Designation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, permit, 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 measures 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 and conclusion(s) of the opinion (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 likelihood of jeopardizing the continued existence of listed species, or resulting in the destruction or adverse modification of critical habitat.

Reasonable and prudent alternatives can vary from slight project modification 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 conference with us on actions for which formal consultations has been completed, if those actions may affect designated critical habitat, or adversely modify or destroy proposed critical habitat.

Federal activities that may affect *Sidalcea keckii* or its critical habitat will require consultation under section 7 of the Act. Activities on private lands that require a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*), a section 10(a)(1)(B) of the Act permit from the Service, or any other activity requiring Federal action (*e.g.*, funding or authorization from the Federal Highways Administration or Federal Emergency Management Agency) will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on non-Federal lands that are not federally funded, authorized, or permitted do not require section 7 consultation. Not all of the areas within these units are capable of supporting *S. keckii* or its primary constituent elements, and such areas would not be subject to section 7 consultation unless the action would affect the species or primary constituent elements in adjacent designated critical habitat.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 of the Act ensures that actions funded, authorized, or carried out by Federal agencies are not likely to jeopardize the continued existence of a listed species, or destroy or adversely modify 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.

Section 4(b)(8) of the Act requires us to evaluate briefly and describe, in any proposed or final regulation that designates critical habitat, those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat would be those that alter the primary constituent elements to the extent that the value of critical habitat for the conservation of *Sidalcea keckii* 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 for *Sidalcea keckii* include, but are not limited to:

(1) Ground disturbances which destroy or degrade primary constituent elements of the plant (*e.g.*, clearing, tilling, grading, construction, road building, mining, etc.);

(2) Activities that directly or indirectly affect *Sidalcea keckii* plants or underlying seed bank (*e.g.*, herbicide application and off-road vehicle use that could degrade the habitat on which the species depends, incompatible introductions of non-native herbivores, incompatible grazing management during times when *S. keckii* is producing flowers or seeds, clearing, tilling, grading, construction, road building, mining, etc.);

(3) Encouraging the growth of *Sidalcea keckii* competitors (*e.g.*, widespread fertilizer application).; and

(4) Activities which significantly degrade or destroy *Sidalcea keckii* pollinator populations (*e.g.* pesticide applications).

If you have questions regarding whether specific activities will constitute destruction or adverse modification of critical habitat, contact the Field Supervisor, Sacramento Fish and Wildlife Office (*see* **FOR FURTHER INFORMATION CONTACT** 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, Branch of Endangered Species, 911 NE. 11th Ave., Portland, OR 97232 (telephone 503/231–2063; facsimile 503/231–6243).

Exclusions Under Section 4(b)(2)

Subsection 4(b)(2) of the Act allows us to exclude areas from the critical habitat designation where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in extinction of the species. Following a review of available information from our files, public comments on the proposal, and the economic analysis of the proposed designation, we have determined that none of the lands proposed as critical habitat warranted exclusion from the final designation based on economic impacts or other relevant impacts pursuant to section 4(b)(2).

Relationship to Habitat Conservation Plans and Other Planning Efforts

Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed wildlife species incidental to otherwise lawful activities. An incidental take permit application must be supported by a habitat conservation plan (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 generally prohibited by the Act on private land, listed plant species may also be covered in an HCP for wildlife species. Currently, no HCPs exist that include *Sidalcea keckii* as a covered species. However, we are currently working with PG&E on the development of an HCP on operations and maintenance activities. This HCP is intending to treat *S. keckii* as a covered species, and the area designated as critical habitat for *S. keckii* may overlap with the planning area for this HCP.

In the event that future HCPs covering *S. keckii* 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 *S. keckii.* The process would also enable us to conduct detailed evaluations of the importance of such lands to the long-term survival and conservation of the species in the context of constructing a system of interlinked habitat blocks configured to promote the conservation of the species through application of the principles of conservation biology.

We will provide technical assistance and work closely with applicants throughout the development of any future HCPs to identify lands essential for the long-term conservation of *S. keckii,* and appropriate management for those lands. 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 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, we conducted a draft economic analysis to estimate the potential economic effect of the designation. The draft analysis was made available for review on October 31, 2002 (67 FR 66378). We accepted public comment on the draft analysis until December 2, 2002.

Our economic analysis evaluated the potential future effects associated with the listing of *Sidalcea keckii* 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 section 7'' scenario and compared it to a ''with section 7'' scenario. The ''without section 7'' baseline represented the level of protection currently afforded to the species under the Act if section 7 protective measures were absent, and includes protections afforded by other Federal, State, and local laws such as the California Environmental Quality Act. The ''with section 7'' scenario identifies land-use activities likely to involve a Federal nexus that may affect the species or its designated critical habitat and which have the potential to be subject to future consultations under section 7 of the Act.

Upon identifying section 7 impacts, the analysis proceeds to consider the subset of impacts that can be attributed exclusively to the critical habitat designation. The upper-bound estimate includes both jeopardy and critical habitat impacts (*e.g.*, total section 7 impacts). The subset of section 7 impacts likely to be affected solely by the designation of critical habitat represents the lower-bound estimate of the analysis. The categories of potential costs considered in the analysis included costs associated with: (1) Conducting section 7 consultations associated with the listing or with the critical habitat, including reinitiated consultations and technical assistance; (2) modifications to projects, activities, or land uses resulting from the section 7 consultations; (3) uncertainty and public perceptions resulting from the designation of critical habitat; 4) potential indirect effects associated with the designation; and (5) potential offsetting beneficial costs associated with critical habitat including educational benefits. 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 a perceived increase in the regulatory burden.

The analysis estimated that there will be seven future section 7 consultations related to the proposed critical habitat designation for *Sidalcea keckii.* The seven consultations included a reinitiated programmatic consultation for oil pipeline maintenance, five informal consultations for private land acquisition using BOR funds, and one internal consultation by the Service to insure compliance with an HCP that is currently under development. The administrative cost of these consultations is estimated to range from $19,500 to $50,700 over a 10-year period. No project modifications are expected to occur as a result of these consultations. The total consultation cost attributable solely to the critical habitat designation is estimated between $7,000 and $12,600 over a 10-year period, with the remainder attributable co-extensively to the listing.

Total costs resulting from technical assistance, formal and informal consultations, development of biological assessments, and project modifications due to listing and critical habitat designation are presented in the economic analysis, according to land use activities and individual critical habitat units. Costs incurred by third parties result from technical assistance, consultations, and development of a biological assessment. Costs to Federal action agencies include those incurred from consultations. Costs to the Service result from technical assistance and consultations.

We did not receive any comments on the draft economic analysis of the proposed determination. Following the close of the comment period, the economic analysis was finalized. There were no revisions or additions to the draft economic analysis.

A copy of the final economic analysis and supporting documents are included in our supporting record for this rulemaking and may be obtained by contacting the Sacramento Fish and Wildlife Office (see **ADDRESSES** section). Copies of the final economic analysis also are available on the Internet at *http://pacific.fws.gov/news/.*

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, the Office of Management and Budget (OMB) has determined that this critical habitat designation is not a significant regulatory action. This rule will not have an annual economic effect of $100 million or more or adversely affect any economic sector, productivity, competition, jobs, the environment, or other units of government. This designation will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. It will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Finally, this designation will not raise novel legal or policy issues. Accordingly, OMB has not reviewed this final critical habitat designation.

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 a 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 this final rule, we are certifying that the critical habitat designation for *Sidalcea keckii* will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

Small entities include small organizations, such as independent nonprofit 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 (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this 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 this 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 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. Designation of critical habitat only has the potential to affect activities conducted, funded, or permitted by Federal agencies. 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 *Sidalcea keckii*. Federal agencies must also consult with us if their activities may affect designated critical habitat. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation.

As required under section 4(b)(2) of the Act, we conducted an analysis of the potential economic impacts of this critical habitat designation. In the analysis, we found that the future section 7 consultations resulting from the listing of *Sidalcea keckii* and the proposed designation of critical habitat could potentially impose total economic costs for consultation and modifications to projects to range between approximately $19,500 to $50,700 over the next 10-year period.

The primary land use activity within the three units is grazing. Additionally, Pacific Gas & Electricity also maintains two powerlines in Unit 1, and Southern California Gas operates and maintains oil pipelines within the boundaries of its Northern Service Territory, which include Unit 3. The analysis identified three categories of activities that will potentially require section 7 consultation with the Service in the next 10 years. These included informal consultations with the BOR on habitat acquisition; a reinitiation of a programmatic consultation with the Bureau of Land Management on oil pipeline operations and maintenance; and an internal section 7 consultation on an HCP currently under development. None of the remaining activities are foreseeable, have a Federal nexus, and are harmful to the plant or its habitat.

In summary, we have considered whether this rule could result in significant economic effects on a substantial number of small entities. Our analysis concluded that the only economic costs likely to occur as a result of the critical habitat designation will be borne solely by Federal agencies, which do not qualify as small business entities. Therefore, we are certifying that the designation of critical habitat for *Sidalcea keckii* will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

OMB's Office of Information and Regulatory Affairs has determined that this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. 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. We anticipate that this final rule will not place significant additional burdens on any entity.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not a significant regulatory action under Executive Order 12866. It is not expected to significantly affect energy supplies, distribution, or use. In our Economic Analysis, we did not identify energy production or distribution as being significantly affected by this designation, and we received no comments indicating that the proposed designation could significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effect 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 on State, local, or Tribal governments of $100 million or greater in any year. The designation of

critical habitat imposes no obligations on State or local governments. Therefore, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act

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 approximately 438 ha (1,085 ac) of lands in Fresno and Tulare counties, California, as critical habitat for *Sidalcea keckii*. The takings implications assessment concludes that this final rule does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism Assessment is not required. In keeping with Department of the Interior policy, we requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies in California. We will continue to coordinate any future changes in the designation of critical habitat for *Sidalcea keckii* with the appropriate State agencies. Where the species is present, the designation of critical habitat 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 consultation under section 7 of the Act on non-Federal lands (where a Federal nexus occurs) that might otherwise not have occurred. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are 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 consultations 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, as amended. 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 *Sidalcea keckii*.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This rule will not impose new record-keeping 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 that 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 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 federally recognized Tribes on a Government-to-Government basis. The designated critical habitat for *Sidalcea keckii* 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 in this final rule is available upon request from the Sacramento Fish and Wildlife Office (*see* **ADDRESSES** section).

Author

The primary authors of this final rule are Glen Tarr and Kirsten Tarp, Sacramento 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 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 entry for ''Sidalcea keckii,'' under ''FLOWERING PLANTS,'' 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							
*	*	*	*	*	*		*
Sidalcea keckii	Keck's checkermallow.	U.S.A. (CA)	Malvaceae—Mallow	E	685	17.96(a)	NA
*	*	*	*	*	*		*

3. In § 17.96, amend paragraph (a) by adding an entry for ''Family Malvaceae'' *Sidalcea keckii* in alphabetical order to read as follows:

§ 17.96 Critical habitat—plants.

(a) * * *

Family Malvaceae: *Sidalcea keckii* (Keck's checkermallow).

(1) Critical habitat units are depicted for Fresno and Tulare Counties, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Sidalcea keckii* are the habitat components that provide:

(i) Minimally shaded annual grasslands in the foothills of the Sierra Nevada Mountains containing open patches in which competing vegetation is relatively sparse; and

(ii) Serpentine soils or other soils that tend to restrict competing vegetation.

(3) Existing features and structures made by people, 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*

(i) Data layers defining map units were created on a base of USGS 7.5' quadrangles, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(ii) **Note:** Index map follows:

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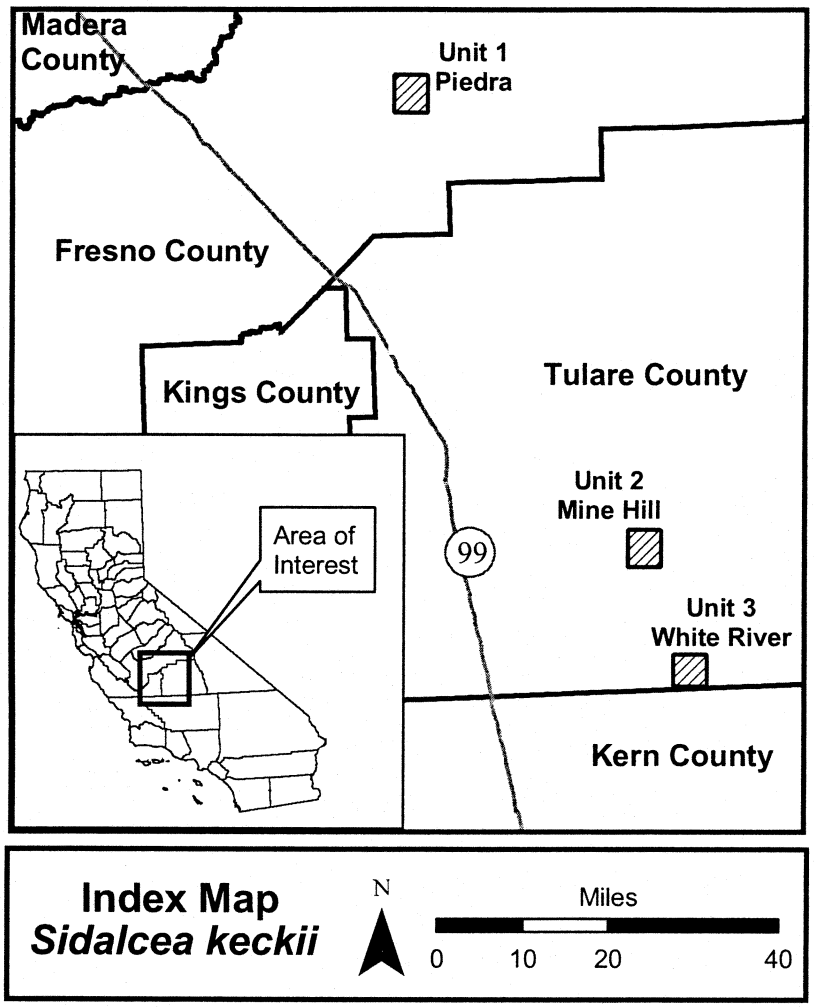

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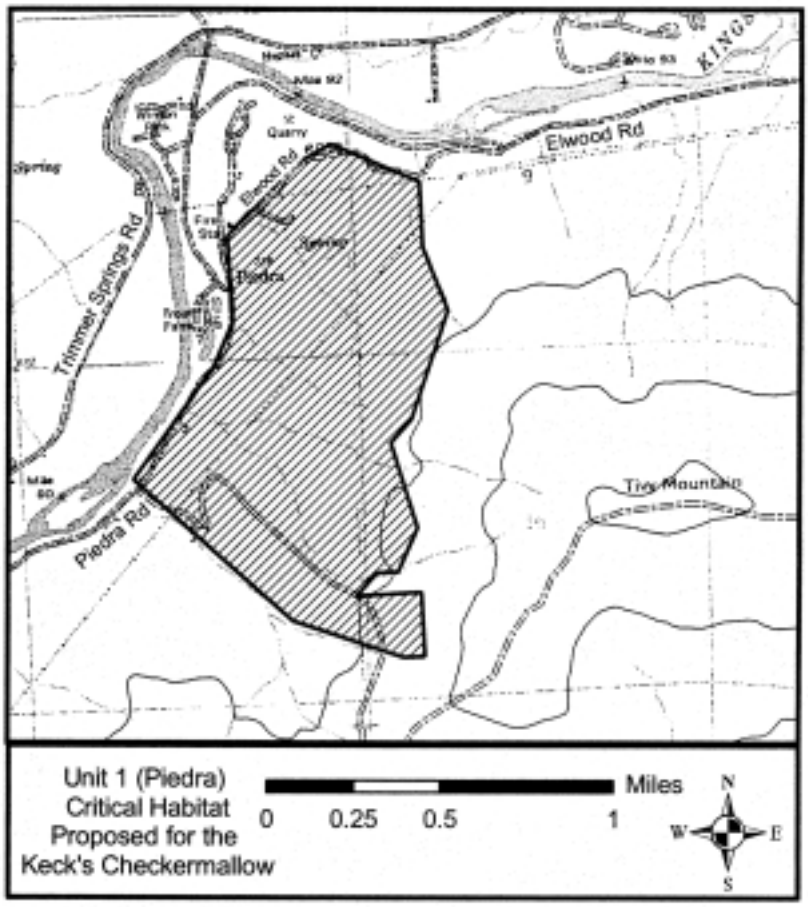
(5) Unit 1: Piedra Unit, Fresno County, California.

(i) From USGS 1:24,000 quadrangle maps Piedra, and Pine Flat Dam, California; land bounded by the following UTM11 NAD83 coordinates (E,N): 288300, 4074700; 288200, 4074700; 287700, 4074900; 287000, 4075600; 287400, 4076100; 287500, 4076300; 287500, 4076700; 287800, 4077000; 288000, 4077100; 288400, 4076900; 288400, 4076600; 288500, 4076300; 288300, 4075800; 288200, 4075700; 288300, 4075300; 288200, 4075100; 288100, 4075100; 288000, 4075000; 288300, 4075000; 288300, 4074700.

(ii) **Note:** Unit 1 map follows:

BILLING CODE 4310–55–P



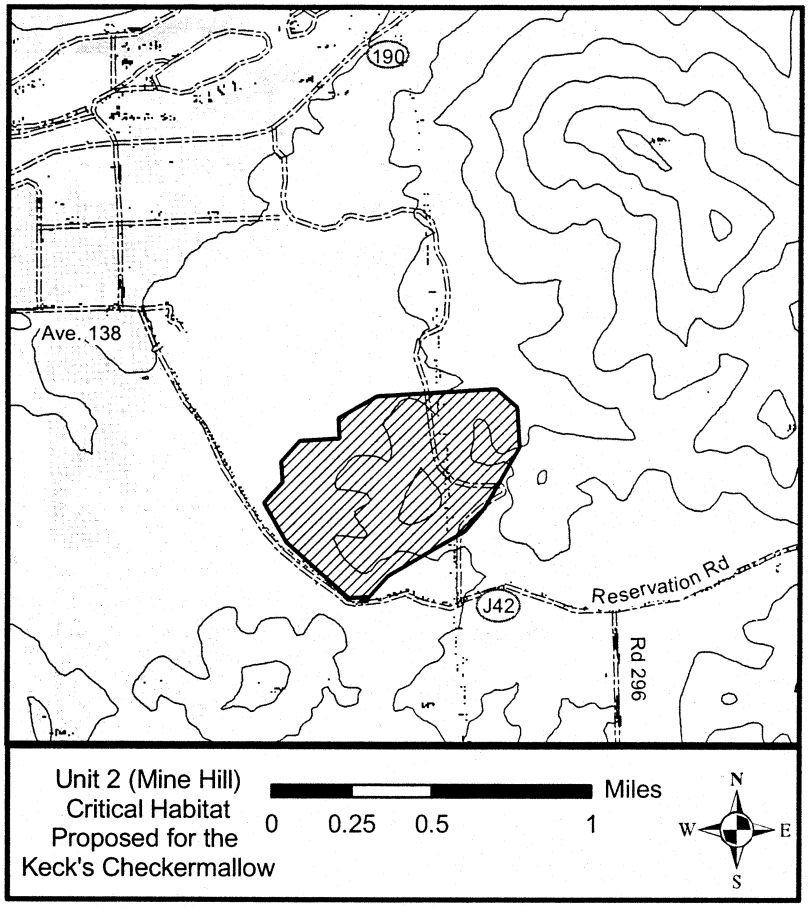
BILLING CODE 4310–55–C

(6) Unit 2: Mine Hill Unit, Tulare County, California.

(i) From USGS 1:24,000 quadrangle maps Success Dam, California; land bounded by the following UTM11 NAD83 coordinates (E,N): 326600, 3988600; 326500, 3988600; 326200, 3988900; 326100, 3989100; 326200, 3989200; 326200, 3989300; 326300, 3989400; 326500, 3989400; 326500, 3989500; 326700, 3989600; 327300, 3989600; 327400, 3989500; 327400, 3989300; 327200, 3989000; 327100, 3988900; 326700, 3988700; 326600, 3988600.

(ii) **Note:** Unit 2 map follows:

BILLING CODE 4310–55–P



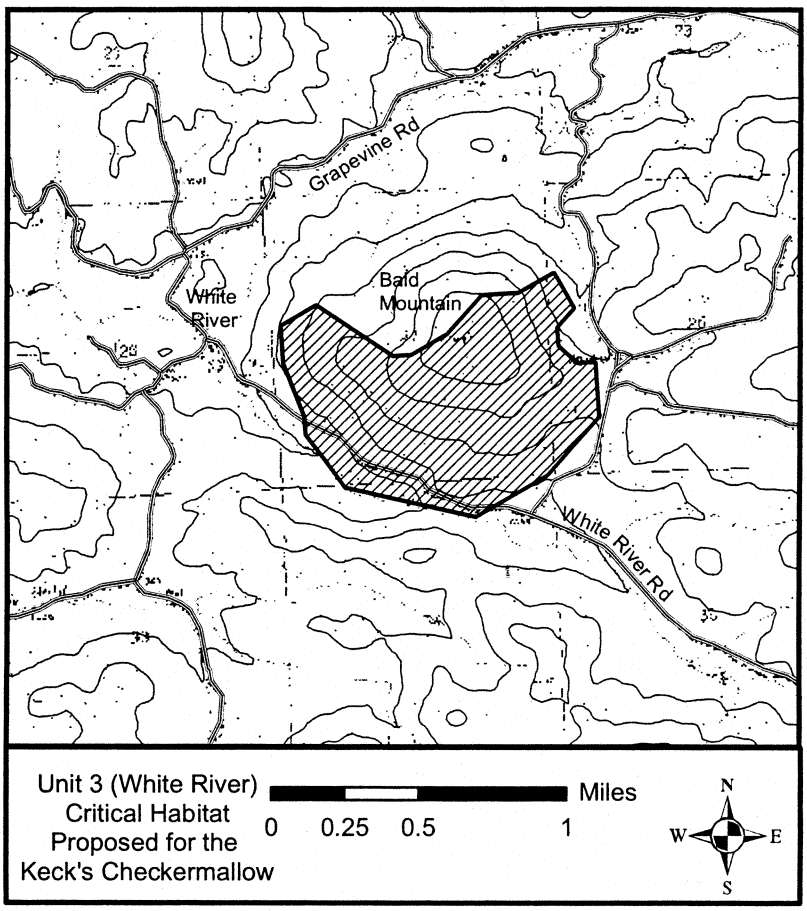
BILLING CODE 4310–55–C

(7) Unit 3: White River Unit, Tulare County, California.

(i) From USGS 1:24,000 quadrangle maps White River, California; land bounded by the following UTM11 NAD83 coordinates (E,N): 334800, 3963600; 334100, 3963800; 333900, 3964100; 333900, 3964200; 333800, 3964500; 333800, 3964700; 334000, 3964800; 334400, 3964500; 334500, 3964500; 334700, 3964600; 334900, 3964800; 335100, 3964800; 335300, 3964900; 335400, 3964700; 335300, 3964600; 335300, 3964500; 335400, 3964400; 335500, 3964400; 335500, 3964100; 335200, 3963800; 334800, 3963600.

(ii) **Note:** Unit 3 map follows:

BILLING CODE 4310–55–P



Dated: March 7, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–6132 Filed 3–17–03; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 68, No. 52
Tuesday, March 18, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1219

[Doc. No. FV–03–702–PR]

Hass Avocado Promotion, Research, and Information Order; Termination of the Definition of ''Substantial Activity''

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The purpose of this proposed rule is to seek comments on the proposed termination of the definition of ''substantial activity'' in the Hass Avocado Promotion, Research, and Information Order (Order). The definition relates to the eligibility of importers to serve on the Hass Avocado Board (Board). This action is expected to increase the number of importers eligible to serve on the Board.

DATES: Comments must be received by May 19, 2003.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to: Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs (FV), Agricultural Marketing Service (AMS), USDA, Stop 0244, Room 2535–S, 1400 Independence Avenue, SW., Washington, DC 20250–0244. Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours. Comments may also be submitted electronically to: *malinda.farmer@usda.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. A copy of this rule may be found at: *www.ams.usda.gov/fv/rpdocketlist.htm.*

FOR FURTHER INFORMATION CONTACT: Julie A. Morin, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 2535–S, Washington, DC 20250–0244; telephone (202) 720–6930, fax (202) 205–2800, or e-mail *julie.morin@usda.gov.*

SUPPLEMENTARY INFORMATION: The Hass Avocado Promotion, Research, and Consumer Information Order (Order) [7 CFR part 1219] became effective on September 9, 2002 [67 FR 56895]. It was issued under the Hass Avocado Promotion, Research and Information Act of 2000 (Act) [7 U.S.C. 7801–7813].

Executive Orders 12866 and 12988

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In addition, this proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The proposed rule is not intended to have retroactive effect. Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or state law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the Act, a person subject to the Order may file a petition with the Secretary of Agriculture (Secretary) stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not established in accordance with the law, and requesting a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order, or any obligation imposed in connection with the Order, shall be filed within two years after the effective date of the Order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Secretary will issue a ruling on a petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's final ruling.

Regulatory Flexibility and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et. seq.*], the Agency is required to examine the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. AMS has examined the impact of this proposed rule on small entities.

There are approximately 6,000 producers, 200 importers, and 100 first handlers covered by the Hass avocado program. The Small Business Administration [13 CFR 121.201] defines small agricultural producers as those having annual receipts of $750,000 or less annually and small agricultural service firms as those having annual receipts of $5 million or less. Importers and first handlers would be considered agricultural service firms. Using these criteria, most producers and importers covered by the program would be considered small businesses, and most handlers would not.

In order to serve as an importer member on the Board, an importer is defined as a person who is involved in, as a substantial activity, the importation of Hass avocados for sale or marketing in the United States. Section 1219.30(d) of the Order states that a substantial activity means that the volume of a person's Hass avocado imports must exceed the volume of the person's production or handling of domestic Hass avocados. According to the California Avocado Commission (CAC), this restriction has had a limiting effect on the number of importers eligible to serve on the Board. Several importers are ineligible to serve on the Board because they produce or handle more Hass avocados than they import. Therefore, terminating the definition of ''substantial activity'' is expected to increase the number of importers eligible to serve on the Board.

The proposed action on the Order would not impose additional recordkeeping requirements on first handlers, producers, or importers of Hass avocados because the number of nominees would remain unchanged.

There are no relevant federal rules that duplicate, overlap, or conflict with the proposed rule.

We have performed this Initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities, and we invite comments concerning potential effects of the proposed change.

Background

The Order became effective on September 9, 2002. Assessments on domestic and imported fresh Hass avocados began on January 2, 2003. The funds will be used to maintain and expand markets for Hass avocados in the United States. The Hass Avocado Board (Board), which is appointed by the Secretary, will operate under the supervision of the USDA's (the Department) Agricultural Marketing Service (AMS).

In determining who is eligible to serve as an importer member of the Board, the Act provides for a substantial activity test. In order to implement this provision, the Order needed to provide criteria to enable the Department to measure substantial activity. The Department determined that basing a person's eligibility on the person's business activity and which industry function (producing or importing) predominates was a reasonable measure that gave a clear and understandable benchmark. However, after having completed the importer member nomination process for the initial Board, we now believe that this criteria should be revised since it had such limiting effect on the number of importer nominees. The limiting effect was shown by the importers only having six nominees although the Order provided for 16 nominees.

The California Avocado Commission (CAC) has requested that the ''substantial activity'' definition be terminated. The CAC noted that the substantial activity language has had a limiting effect on the pool of importer candidates for possible appointment to the Board and also, that several of the largest importers are not eligible to serve on the Board because they produce or handle more Hass avocados that they import.

Regarding the subsequent step of adopting a new definition, the Department believes that it would be appropriate to wait until the Board is seated so that the Board can review the issue and make a recommendation to the Department on any new definition of substantial activity. Waiting for the Board to be seated will provide the opportunity for the Board to review and make a recommendation to the Department. Further, the Board can seek industry consensus on the new definition before submitting a recommendation to the Department.

All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 1219

Administrative practice and procedure, Advertising, Consumer information, Hass avocados, Hass avocado promotion, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1219 is proposed to be amended as follows:

1. The authority citation for part 1219 continues to read as follows:

Authority: 7 U.S.C. 7401–7425

§ 1219.30 [Amended]

2. The last sentence in § 1219.30 paragraph (d) is removed.

Dated: March 14, 2003.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–6510 Filed 3–14–03; 11:50 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. FAA–2002–14081; Notice No. 03–02]

RIN 2120–AH67

Transponder Continuous Operation; Extension of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: This action extends the comment period for an NPRM that was published on January 14, 2003. In that document, the FAA proposed to revise the instrument and equipment requirements for airplanes operated in domestic, flag, and supplemental operations to require affected airplanes to have the capability to help assure immediate activation of the designated air traffic control (ATC) hijack alert code, and continuous transmission of that code to ATC during a hijack situation. This extension is a result of a request from the Air Transport Association to extend the comment period to the proposal.

DATES: Comments must be received on or before April 18, 2003.

ADDRESSES: Comments on this document should be mailed or delivered, in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA–2002–14081, 400 Seventh Street, SW., Room Plaza 401, Washington, DC 20590. Comments may be filed and examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays, except Federal holidays. Comments also may be sent electronically to the Dockets Management System (DMS) at the following Internet address: http://dms.dot.gov at any time. Commenters who wish to file comments electronically, should follow the instructions on the DMS Web site.

FOR FURTHER INFORMATION CONTACT: Richard E. Jennings, Aircraft Certification Service, Aircraft Engineering Division, AIR–130, Federal Aviation Administration, c/o Atlanta ACO, 1895 Phoenix Boulevard, Suite 450, Atlanta, GA 30349; telephone (770) 703–6090; facsimile (770) 703–6055, e-mail *Richard.Jennings@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

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

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments

filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Background

On January 8, 2003, the Federal Aviation Administration (FAA) issued Notice No. 03–02, Transponder Continuous Operation (68 FR 1942, January 14, 2003). Comments to that document were to be received on or before March 17, 2003.

By letter dated March 11, 2003, the Air Transport Association requested that the FAA extend the comment period for Notice No. 03–02 for 30 days. ATA stated that after publication of the NPRM, the FAA issued a Notice of Proposed Policy regarding Proposed Policy Statement No. ANM–03–111–12 (the Policy). The Policy proposed technical guidance material for compliance with the technical requirements of the NPRM. In order to ensure ATA's comments to the NPRM take into consideration the complex technical and compliance issues raised in the Policy and the NPRM, ATA requested an extension of the NPRM comment period.

Extension of Comment Period

In accordance with § 11.47(c) of Title 14, Code of Federal Regulations, the FAA has reviewed the petitions made by ATA for extension of the comment period to Notice No. 03–02. ATA has shown a substantive interest in the proposed rule and good cause for the extension. The FAA also has determined that extension of the comment period is consistent with the public interest, and that good cause exists for taking this action.

Accordingly, the comment period for Notice No. 03–02 is extended until April 18, 2003.

Issued in Washington, DC on March 13, 2003.

Ronald T. Wojnar,

Acting Director, Aircraft Certification Service.

[FR Doc. 03–6511 Filed 3–14–03; 11:44 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 255 and Part 399

[Dockets Nos. OST–97–2881, OST–97–3014, OST–98–4775, and OST–99–5888]

RIN 2105–AC65

Computer Reservations System (CRS) Regulations; Statements of General Policy

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Denial of petition for fact hearing.

SUMMARY: The Department has issued a notice of proposed rulemaking on whether it should readopt or amend its existing rules governing airline computer reservations systems (CRSs). The notice includes a detailed discussion of the tentative factual findings and analysis underlying the Department's proposals. The public will have an opportunity to submit comments and reply comments on those proposals. Sabre, a CRS, has filed a petition asking for a ''fact hearing'' where the commenters could cross-examine each other and members of the Department's staff. The Department is denying Sabre's petition.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St., SW., Washington, DC 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION: The Department is conducting a rulemaking reexamining whether its existing rules governing CRS operations are necessary and, if so, are effective. We issued a notice of proposed rulemaking that set forth our tentative proposals regarding the existing rules and our tentative belief that we should not extend the rules to cover the sale of airline tickets through the Internet. 67 FR 69366, November 15, 2002. Comments and reply comments on our notice of proposed rulemaking are now due March 16 and May 15, 2003, respectively, because we granted a request by Sabre and eighteen other persons to extend by three months the period for preparing comments and reply comments. 67 FR 72869, December 9, 2002.

On December 23, Sabre, a CRS, filed a petition asking us to hold a ''fact hearing.'' Sabre asserts that our notice did not provide an adequate factual basis for our tentative findings and proposals. Sabre seeks a hearing at which Sabre and other interested persons could cross-examine Department staff members on the notice's factual findings and could question persons designated by each commenter as knowledgeable about the facts in its comments. Sabre Petition at 5. We invited the public to file responses to Sabre's petition. 68 FR 1172, January 9, 2003.

Two of the other systems, Galileo and Amadeus, and the American Society of Travel Agents (''ASTA''), the largest travel agency trade association, support Sabre's petition insofar as it seeks oral testimony on the issues, although they do not urge us to give commenters the ability to cross-examine Department staff. Six airlines—American, Continental, Delta, Northwest, United, and America West—and Orbitz, an on-line travel agency owned by five of those airlines (all but America West), oppose Sabre's petition. They contend that we have no legal obligation to hold a hearing, that notice-and-comment procedures can create an adequate record, and that a hearing would only delay our final decision in the proceeding, which would be contrary to the need to update the rules as soon as possible.

In its reply Sabre alleges that it does not wish to delay the proceeding but does seek to test the data on which we relied in preparing our notice of proposed rulemaking. Sabre claims that the hearing would not require much time.

Summary of Decision

We are denying Sabre's petition for a ''fact hearing'' that would give each commenter the opportunity to interrogate Department staff members about the basis for the notice of proposed rulemaking's tentative findings and proposals and to cross-examine representatives from the other commenters. Such a hearing would be neither necessary nor useful. Our notice discussed in detail the basis for our proposals, and we have given the public the opportunity to file both comments and reply comments, which will enable them to present their evidence and arguments on the issues.

We agree with several of the commenters that a hearing where they can present their factual and legal arguments may be useful. We therefore plan to hold such a hearing between the end of the comment period, March 16, and the end of the reply comment period, May 15.

Discussion

The notice-and-comment procedures established by the Administrative Procedure Act, supplemented by our proposed hearing, should provide an

adequate record for our final decision. Interested persons will have an ample opportunity to present their views on the relevant factual, legal, and policy issues and to respond to the arguments made by other commenters, particularly since we have authorized the commenters to submit reply comments. Our notice of proposed rulemaking set forth a detailed analysis underlying our tentative findings and proposals, which we based on the most current data available to us. Interested persons can therefore see the rationale for our proposals.

We and the Civil Aeronautics Board (''the Board'') used the notice-and-comment procedures in all past CRS rulemakings. *See* 57 FR 43792; 62 FR 59799–59800. Those procedures allowed us and the Board to resolve material factual disputes without holding any kind of hearing. As discussed below, the Seventh Circuit held that the Board could adopt the initial CRS rules without holding a hearing. *United Air Lines* v. *CAB,* 766 F.2d 1107 (7th Cir. 1985). Furthermore, we rejected a claim by Sabre in our earlier rulemaking on CRS parity clauses that the notice-and-comment procedures authorized by the Administrative Procedure Act were inadequate and must be supplemented with a formal hearing. We determined that Sabre's argument had no merit. 62 FR 59784, 59800, November 5, 1997.

Furthermore, as noted, we have determined to hold a hearing where commenters can orally present their arguments. That hearing will give the commenters an additional opportunity to present their position and enable us to develop a better record.

Sabre, however, urges us to hold a ''fact hearing'' where the commenters can question each other's experts and can cross-examine Department staff members on the tentative analysis and findings presented in the notice of proposed rulemaking. We are denying Sabre's request, because the kind of hearing sought by Sabre is not necessary for the development of a complete record on the rulemaking issues.

The comment process will give interested persons an opportunity to address our tentative factual findings and analysis. They do not need a ''fact hearing'' to present updated information. We enhanced their opportunity to respond to our proposals by authorizing reply comments as well as comments and, at Sabre's request, by extending the entire comment period by three months.

Sabre asserted that such information as the percentage of airline bookings made through a travel agency using a CRS, the percentage of travel agency subscribers who own their own equipment, and the travel agents' ability to access other systems and databases from their CRS equipment may be critical to our decision-making. Sabre Petition at 3–5. We agree that such factual information may well be useful. Sabre can include recent data on these points in its written and oral comments, and we invite the other commenters to present their own data on these issues.

In addition, Sabre's ''fact hearing'' would not significantly improve the rulemaking record, because it would include an examination of our staff. Sabre Reply at 8. We do not plan to base our final decision solely on the information known to our staff when the notice of proposed rulemaking was issued. We will also fully consider all factual information and argument provided by the comments and reply comments. The commenters' familiarity with the current state of the airline distribution and CRS businesses will enable them to provide current and accurate information on industry conditions and developments.

Furthermore, holding a ''fact hearing'' could substantially delay our final decision in this proceeding despite Sabre's claims to the contrary, without necessarily improving the quality of the record for our decision. As noted, Sabre proposed that we allow staff members to be cross-examined by the commenters and allow each of them to question experts designated by the others. Sabre also proposed to present its own evidence at the hearing. Sabre Petition at 4–5. Sabre additionally listed 73 factual statements that it intends to challenge. Sabre Petition at 27–32. Other commenters presumably would use a hearing to challenge other factual findings that Sabre will not contest. Given these conditions and the number of commenters in this proceeding, a ''fact hearing'' would likely require a substantial amount of time.

Sabre noted that, in 1976, the Administrative Conference of the United States recommended that agencies consider, among other things, providing for cross-examination procedures in some rulemakings. Sabre Petition at 22–23, citing Recommendation 76–3, *Procedures in Addition to Notice and the Opportunity for Comment in Informal Rulemaking,* 41 FR 29654, July 19, 1976. That Conference recommendation suggested that agencies consider doing more than just issue a notice of proposed rulemaking and provide one round of comments in informal rulemakings. The Conference suggested that agencies in appropriate cases should consider using additional procedures such as, among other things, issuing an advance notice of proposed rulemaking with an opportunity to comment and allowing commenters to submit written responses to each other's comments on a notice of proposed rulemaking. 41 FR 29655. As noted, we have taken both of these steps. The Conference also suggested that agencies could consider providing an opportunity for cross-examination of the commenters and agency staff, but it did not recommend doing so in all complex rulemakings. The Conference instead stated, ''An agency should * * * permit cross-examination only to the extent that it believes that the anticipated costs (including those related to increasing the time involved and the deployment of additional agency resources) are offset by anticipated gains in the quality of the rule and the extent to which the rulemaking procedure will be perceived as having been fair.'' 41 FR 29655. The Conference recommendation grew out of a study of several court decisions that had required agencies to create an opportunity for cross-examination in specific rulemakings, Stephen F. Williams, '' 'Hybrid Rulemaking' under the Administrative Procedure Act: A Legal and Empirical Analysis,'' published at 42 U. Chicago L. Rev. 401 (Spring 1975). The study concluded that cross-examination in these rulemakings had been of ''questionable efficacy'' and that ''cross-examination may actually tend to frustrate its own supposed goal: elucidation of the issues.'' *Id.* at 445, 444. We believe that a ''fact hearing'' of the kind sought by Sabre would not significantly improve the quality of our final decision but probably would substantially delay the completion of this rulemaking. Our experience with past CRS rulemakings shows that we may fairly and accurately resolve disputed factual issues in the context of a rulemaking proceeding without an opportunity for cross-examination.

In addition, we have no legal obligation to hold a ''fact hearing.'' Sabre initially argued that we were required by law to grant its petition for a ''fact hearing.'' Sabre Petition at 11–19. Sabre has apparently abandoned that claim, for Sabre's reply contended only that the ''fact hearing'' would be the best way to obtain current and correct information necessary for our final decision in the rulemaking. Sabre Reply at 6. Our issuance of a notice of proposed rulemaking that set forth in detail the basis for our tentative findings and proposals clearly satisfies all legal requirements. The Administrative Procedure Act ''makes clear that notice

of the scope and general thrust of the proposed rule, and an opportunity to submit written comments, are all the procedure that an agency engaged in 'informal rulemaking' is required to provide.'' *United Air Lines* v. *CAB,* 766 F.2d at 1116.

When United challenged the Civil Aeronautics Board's use of informal rulemaking procedures in the first CRS rulemaking, the Seventh Circuit expressly held that the Board was not required to hold a formal hearing before adopting the original CRS rules, notwithstanding the nature of the issues in that rulemaking and the existence of factual disputes. *United Air Lines* v. *CAB,* 766 F.2d 1107 (7th Cir. 1985). As the court stated, ''the weight of authority * * * is overwhelming against forcing an administrative agency to hold an evidentiary hearing to resolve disputed issues of antitrust fact.'' 766 F.2d at 1119. ''Agencies, without having to conduct an evidentiary hearing, have been allowed to decide such antitrust questions as whether a particular firm or group of firms has or is abusing or is likely to abuse market power * * *.'' 766 F.2d at 1120. Furthermore, requiring evidentiary hearings would probably not improve the quality of rulemaking decisions by much, for ''cross-examination is perhaps not a terribly useful tool for extracting the truth about what are at bottom complex economic phenomena.'' 766 F.2d at 1121.

Sabre nonetheless asserted that this proceeding involves disputed issues of material adjudicative fact that cannot fairly be resolved through notice-and-comment rulemaking procedures. Sabre Petition at 18–19. Since this is a rulemaking, our decision will not involve adjudicative fact-finding. Moreover, even if the proceeding did involve disputes over adjudicative facts, Sabre's position would be erroneous. As we pointed out in the parity clause rulemaking, we have decided adjudicatory cases without holding a formal hearing, and the courts have upheld such procedural choices. 62 FR at 59800, citing *City of St. Louis* v. *DOT,* 936 F.2d 1528, 1534, n.1 (8th Cir. 1991). In adjudicatory proceedings, we have resolved factual disputes over antitrust issues, even in controversial cases, through show-cause procedures that provided no opportunity for cross-examination. *See, e.g., U.S.–U.K. Alliance Case,* Orders 2001–12–5 (December 4, 2001) and 2002–1–12 (January 25, 2002); *American Airlines* v. *Iberia, Lineas Aereas de Espana,* Order 90–6–21 (June 8, 1990) at 13–14. Because the presence of material antitrust issues in an adjudication does not mandate an evidentiary hearing, the presence of such issues in this rulemaking similarly cannot mandate such a hearing.

Sabre primarily grounded its petition for a ''fact hearing'' on a charge that our notice of proposed rulemaking set forth no factual support, based on recent data, for our tentative findings and proposals. Sabre thus complained that the notice of proposed rulemaking ''is virtually devoid of information reflecting developments since the 1992 modifications of the rule,'' such as ''new Internet technology, increasingly 'Web-savvy' air travelers (and travel agents); airlines' divestiture of their CRS ownership; and airlines' attempts to reach consumers via direct marketing promotions.'' Sabre Petition at 15. These allegations ignore the lengthy discussions of these matters in the notice of proposed rulemaking. *See* 67 FR 69373–69375, 69376–69378, 69379–69380, 69411–69415 (airline, travel agent, and consumer use of the Internet); 67 FR 69373, 69382–69383, 69384–69385 (system ownership changes). For example, we considered whether the Internet and other changes in airline distribution would give airlines some bargaining leverage against the systems. We tentatively found that the travel agencies' ability to access Web sites for airline information and bookings should give airlines some ability to bypass the systems, although the possible inefficiency of using multiple sources of information might deter travel agents from routinely booking airline tickets outside of a system. We based this factual analysis on, among other things, comments submitted last year by travel agency parties in a related rulemaking and recent press articles. 67 FR 69373, 69379, 69391. We also suggested that the Internet in some respects may not have weakened the systems' market power. 67 FR 69376–69377. We further noted, however, that the airlines' ability to deny the systems access to their E-fares (or webfares) could give airlines some bargaining leverage against the systems, due to the systems' economic interest in obtaining those fares so that travel agents could book them through a system. 67 FR 69381. Some systems have since offered airline participants lower fees in exchange for access to the airlines' E-fares. *See, e.g.*, October 25, 2002, U.S. Airways Press Release; January 21, 2003, Galileo Press Release; and September 25, 2002, American Press Release.

Furthermore, we gave the public notice of our intent to consider these issues by issuing a supplemental advance notice of proposed rulemaking that specifically asked interested persons to file comments addressing the impact of the systems' ownership changes and the growing use of the Internet in airline distribution. 65 FR 45551, July 24, 2000. Sabre, like all other interested persons, had the opportunity to submit comments on these issues with recent factual information.

Sabre additionally argued that the courts in reviewing the validity of our final decision in this proceeding would consider whether the notice of proposed rulemaking satisfied the substantial evidence standard. Sabre Petition at 11–12. This argument has no merit even if the substantial evidence standard would be the applicable standard for judicial review. The substantial evidence standard does not require agencies to adopt rulemaking procedures in addition to those required by the Administrative Procedure Act. Moreover, on review the courts would consider whether our final decision, not the notice of proposed rulemaking, has the necessary support in the record. Sabre's argument also assumes that our notice of proposed rulemaking did not provide a factual basis for our proposals. As shown, that assumption is false.

Sabre wrongly contended that a ''fact hearing'' is necessary to satisfy our obligations under section 515 of the Treasury and General Government Appropriations Act, 2001, Pub. L. 106–554. Sabre Petition at 23. Pursuant to that statute on data quality, agencies provide a process allowing affected persons to seek and obtain corrections of information disseminated by an agency that does not meet applicable guidelines for quality, objectivity, utility, and integrity.

Sabre's suggestion that a fact hearing should be held to ensure compliance with the data quality statute is contrary to our guidelines. There is nothing in the statute or our guidelines or those of the Office of Management and Budget on the subject that require a ''fact hearing.'' Moreover, our guidelines specifically state that we comply with the statute in informal rulemaking proceedings when interested persons have the opportunity to file comments in response to a notice of proposed rulemaking containing alleged factual misstatements, Department Guidelines at 24–25:

> When the Department seeks public comment on a document and the information in it (*e.g.*, a notice of proposed rulemaking * * *.), there is an existing mechanism for responding to a request for correction. This mechanism is a final document that responds to public comments (*e.g.*, the preamble to a final rule).

Sabre's comments on our notice of proposed rulemaking may ask us to correct factual statements in the notice, and we will do so in our final rule if warranted. Sabre has conceded that that is all that our guidelines require in rulemakings. Sabre Petition at 23, n.10.

Finally, Sabre demanded that we supplement the public record with studies considered or available to us during our preparation of the notice of proposed rulemaking, including the report that was to be prepared as a result of the CRS study begun in 1994. Sabre Reply at 4–5. We have already identified the reports that we relied on in preparing the notice of proposed rulemaking, since we cited the sources for each factual statement made in the notice. Since the staff did not prepare a final or draft report on the study begun in 1994, the document sought by Sabre does not exist, except insofar as the notice of proposed rulemaking itself reflects the staff's study and analysis. 67 FR 69369; 65 FR 45551, 45555, July 24, 2000. We will base our final decision in this proceeding on the public record and the material cited in the notice of proposed rulemaking.

Amadeus has asked us to place in the docket the source materials cited by the notice of proposed rulemaking so that the public can more easily prepare comments. Amadeus Reply at 7–8. We have already placed in the docket some of that material, and we are placing additional cited sources in the docket.

Issued in Washington, DC on March 12, 2003.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 03–6448 Filed 3–17–03; 8:45 am]

BILLING CODE 4910–62–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 174–1174; FRL–7467–5]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve an amendment to the Missouri State Implementation Plan (SIP). This amendment pertains to the revision of two Missouri air program rules which control particulate matter emissions from indirect heating sources located in the Springfield-Greene County area and the out-state area.

In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. 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. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

DATES: Comments on this proposed action must be received in writing by April 17, 2003.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: March 3, 2003.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 03–6306 Filed 3–17–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 175–1175; FRL–7467–7]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve an amendment to the Missouri State Implementation Plan (SIP). This amendment pertains to the revision of a Missouri air program rule which controls volatile organic compound emissions in the Kansas City area.

In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. 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. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

DATES: Comments on this proposed action must be received in writing by April 17, 2003.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: March 3, 2003.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 03–6308 Filed 3–17–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 171–1171; FRL–7467–9]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve an amendment to the Missouri State Implementation Plan (SIP) submitted by the state of Missouri. This revision pertains to the rescission of two outdated opacity rules for the Kansas City and St. Louis areas and the revision of the state-wide opacity rule. In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. 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. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

DATES: Comments on this proposed action must be received in writing by April 17, 2003.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: March 3, 2003.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 03–6310 Filed 3–17–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 176–1176; FRL–7468–3]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve an amendment to the Missouri State Implementation Plan (SIP) submitted by the state of Missouri. This revision pertains to updating the state's Air Quality Index (AQI) rule to make it consistent with the Federal rule. The AQI is used by states for daily air quality reporting to the general public. Approval of this revision will ensure consistency between the state and Federally-approved rules, and ensure Federal enforceability of the revised state rule. In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. 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. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

DATES: Comments on this proposed action must be received in writing by April 17, 2003.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: March 3, 2003.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 03–6312 Filed 3–17–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[FRL–7468–8]

Waste Characterization Program Documents Applicable to Transuranic Radioactive Waste From the Savannah River Site Proposed for Disposal at the Waste Isolation Pilot Plant

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA, or ''we'') is announcing the availability of, and soliciting public comments for 30 days on, Department of Energy (DOE) documents on waste characterization programs applicable to certain transuranic (TRU) radioactive waste at the Savannah River Site (SRS) proposed for disposal at the Waste Isolation Pilot Plant (WIPP). The documents are procedures and other materials related to the Central Characterization Project (CCP), established by DOE to augment the ability of TRU waste sites to characterize and certify the waste in accordance with EPA's WIPP Compliance Criteria. The documents are available for review in the public dockets listed in **ADDRESSES.** We will use these documents to evaluate the CCP activities at SRS to characterize SRS-generated contact-handled (CH) retrievably-stored TRU debris waste during an inspection conducted the week of March 24, 2003. The purpose of the inspection is to verify that the CCP can properly characterize SRS-generated contact-handled (CH) TRU debris waste, consistent with the WIPP Compliance Criteria and Condition 3 of EPA's final certification decision for the WIPP.

DATES: The EPA is requesting public comment on these documents. Comments must be received by EPA's official Air Docket on or before April 17, 2003.

ADDRESSES: Comments should be submitted to: Air and Radiation Docket, Attn: Docket A–98–49, EPA Docket Center (EPA/DC), EPA West, Mail Code

6102T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460.

DOE documents related to the CCP are available for review in the official EPA Air Docket in Washington, DC, Docket No. A–98–49, Category II–A2, and at the following three EPA WIPP informational docket locations in New Mexico: In Carlsbad at the Municipal Library, hours: Monday–Thursday, 10 a.m.–9 p.m., Friday–Saturday, 10 a.m.–6 p.m., and Sunday, 1 p.m.–5 p.m.; in Albuquerque at the Government Publications Department, General Library, University of New Mexico, hours: vary by semester; and in Santa Fe at the New Mexico State Library, hours: Monday–Friday, 9 a.m.–5 p.m.

Copies of items in the docket may be requested by writing to Docket A–98–49 at the address provided above, or by calling (202) 566–1742. As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket procedures, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Ms. Rajani D. Joglekar, Office of Radiation and Indoor Air, (202) 564–9310, or call EPA's 24-hour, toll-free WIPP Information Line, 1–800–331–WIPP, or visit our Web site at *http://www.epa.gov/radiation/wipp*.

SUPPLEMENTARY INFORMATION:

Background

DOE is operating the WIPP near Carlsbad in southeastern New Mexico as a deep geologic repository for disposal of TRU radioactive waste. As defined by the WIPP Land Withdrawal Act (LWA) of 1992 (Public Law 102–579), as amended (Public Law 104–201), transuranic (TRU) waste consists of materials containing elements having atomic numbers greater than 92 (with half-lives greater than 20 years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Much of the existing TRU waste consists of items contaminated during the production of nuclear weapons, such as rags, equipment, tools, and sludges.

On May 13, 1998, EPA announced its final compliance certification decision to the Secretary of Energy (published May 18, 1998, 63 FR 27354). This decision stated that the WIPP will comply with EPA's radioactive waste disposal regulations at 40 CFR part 191, subparts B and C.

The final WIPP certification decision includes conditions that (1) prohibit shipment of TRU waste for disposal at WIPP from any site other than the Los Alamos National Laboratory (LANL) until the EPA determines that the site has established and executed a quality assurance program, in accordance with §§ 194.22(a)(2)(i), 194.24(c)(3), and 194.24(c)(5) for waste characterization activities and assumptions (Condition 2 of appendix A to 40 CFR part 194); and (2) prohibit shipment of TRU waste for disposal at WIPP from any site other than LANL until the EPA has approved the procedures developed to comply with the waste characterization requirements of § 194.22(c)(4) (Condition 3 of appendix A to 40 CFR part 194). The EPA's approval process for waste generator sites is described in § 194.8. As part of EPA's decision-making process, the DOE is required to submit to EPA appropriate documentation of quality assurance and waste characterization programs at each DOE waste generator site seeking approval for shipment of TRU radioactive waste to WIPP. In accordance with § 194.8, EPA will place such documentation in the official Air Docket in Washington, DC, and informational dockets in the State of New Mexico for public review and comment.

EPA will perform an inspection of the TRU waste characterization activities performed by the DOE's Central Characterization Project (CCP) staff at the Savannah River Site (SRS) in accordance with Condition 3 of the WIPP certification. We will evaluate the adequacy, implementation, and effectiveness of the CCP technical activities contracted by SRS for characterization of the disposal of retrievably-stored TRU debris waste at the WIPP. The overall program adequacy and effectiveness of CCP documents will be based on the following DOE-provided documents: (1) CCP–PO–001—Revision 5, 2/05/03—CCP Transuranic Waste Characterization Quality Assurance Project Plan and (2) CCP–PO–002—Revision 5, 2/13/03—CCP Transuranic Waste Certification Plan. EPA has placed these DOE-provided documents pertinent to the SRS inspection in the public docket described in **ADDRESSES.** The documents are included in item II–A2–43 in Docket A–98–49. In accordance with 40 CFR 194.8, EPA is providing the public 30 days to comment on these documents. The inspection is scheduled to take place the week of March 24, 2003.

The EPA inspectors at SRS will evaluate the quality of the waste characterization program via testing, interviews of WC personnel, review of WC procedures, and inspection of WC equipment used to characterize retrievably-stored debris waste. The inspection will focus on the IQ3 NDA (Non-Destructive Assay) system and the AK process as implemented by the CCP at SRS. The EPA has already inspected and approved the quality assurance (QA) program at SRS regarding the CCP. This inspection was conducted in October 2002, and the details of this inspection can be found in item II–A1–41 in Docket A–98–49.

If EPA determines as a result of the inspection that the proposed CCP waste characterization processes and programs used at SRS adequately control the characterization of transuranic waste, we will notify DOE by letter and place the letter in the official Air Docket in Washington, DC, as well as in the informational docket locations in New Mexico. A letter of approval will allow DOE to ship transuranic waste from SRS to the WIPP. The EPA will not make a determination of compliance prior to the inspection or before the 30-day comment period has closed.

Information on the certification decision is filed in the official EPA Air Docket, Docket No. A–93–02 and is available for review in Washington, DC, and at three EPA WIPP informational docket locations in New Mexico. The dockets in New Mexico contain only major items from the official Air Docket in Washington, DC, plus those documents added to the official Air Docket since the October 1992 enactment of the WIPP LWA.

Dated: March 11, 2003.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 03–6462 Filed 3–17–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 030303D]

Pacific Fishery Management Council; Notice of Intent

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

ACTION: Notice of intent to prepare an environmental impact statement (EIS); request for written comments; notice of public scoping meetings.

SUMMARY: On April 16, 2002, NMFS and the Pacific Fishery Management Council (Council) announced their intent to prepare an EIS in accordance with the National Environmental Policy Act

(NEPA) of 1969 for Amendment 16 to the Pacific Coast Groundfish Fishery Management Plan (FMP). The FMP would be amended to establish procedures for periodic review and revision of rebuilding plans and to incorporate rebuilding plans for overfished groundfish species. NMFS and the Council subsequently decided to prepare two (or more) separate analyses for these actions. Establishing procedures for reviewing and revising rebuilding plans is not anticipated to result in significant environmental impacts. Therefore, an environmental assessment (EA) will be prepared for those procedural actions, which will be implemented through Amendment 16 to the FMP. An EIS will then be prepared to evaluate the environmental impacts of implementing rebuilding plans for at least four of the nine species currently declared overfished by the Secretary of Commerce pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: A public scoping meeting on the four rebuilding plans EIS is scheduled for Sunday, April 6, 2003, from 3 p.m.–5 p.m. in conjunction with the Council's April 7–11, 2003, meeting (see **SUPPLEMENTARY INFORMATION**) covering various rebuilding-plan-related issues. Written comments will be accepted no later than 5 p.m., local time on May 30, 2003. After this date, a scoping responsiveness summary document, summarizing the public's issues and alternatives to be evaluated in the EIS, will be drafted and made available on the Council's website (*www.pcouncil.org*) or by request from the address below. All parties present at the scoping meeting shall be mailed copies of the scoping responsiveness summary document once it is prepared.

ADDRESSES: Written comments on issues and alternatives for the four rebuilding plans EIS should be sent to Dr. Donald McIsaac, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220. Comments also may be sent via facsimile (fax) to 503–820–2299.

Council address: Pacific Fishery Management Council 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Matthew Harrington, NMFS, Northwest Region, 206–526–4742; fax: 206–526–6426 and email: *matthew.harrington@noaa.gov*, or Kit Dahl, Pacific Fishery Management Council, 503–820–8220 or 866–806–7204 (toll free); fax: 503–820–2299 and email: *kit.dahl@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS and the Council published a notice of intent to prepare an EIS evaluating groundfish rebuilding plans in the **Federal Register** on April 16, 2002. (That document contains additional background information on the need for rebuilding plans.) At that time, NMFS and the Council planned to prepare a single EIS evaluating the effects of two sets of alternatives that might be adopted under a single amendment (Amendment 16) to the Groundfish FMP. The first set of alternatives would address the effects of different procedures that might be followed for revising rebuilding plans. As currently developed, these alternatives, or options, cover: (1) the form and content of rebuilding plans, (2) procedures for periodic review of rebuilding plans (as required by Section 304(e)(7) of the Magnuson-Stevens Act at 16 U.S.C. 1854(e)(7)), (3) standards for evaluating stock rebuilding processes, and (4) procedures that would be followed in the event that an overfished species is listed under the Endangered Species Act. These actions are procedural, establishing a framework for the adoption of rebuilding plans. As such, no significant direct or indirect environmental effects are anticipated. Environmental effects would result from the adoption of rebuilding measures subsequent to the implementation of this procedural framework. Therefore, after further consideration, NMFS and the Council have decided to evaluate these procedural options in a separate EA and confine the EIS analysis to the impacts of rebuilding-plan-related measures.

The EIS will now evaluate the environmental impacts stemming from adoption of rebuilding plans, and in particular, the management targets that will be used to determine harvest levels. These target parameters include the target rebuilding period, the fishing mortality management strategy (e.g., constant catch versus constant fishing mortality rate) and rates associated with the strategy, and levels of probability or risk that rebuilding targets will be achieved. Rebuilding plans for at least four overfished species will be evaluated, with darkblotched rockfish, Pacific ocean perch, lingcod, and canary rockfish the most likely species for which rebuilding plans would be evaluated in this EIS. The effects of adopting rebuilding measures for the remaining five overfished species (bocaccio rockfish, cowcod, whiting, widow rockfish, and yelloweye rockfish) will be evaluated in one or more subsequent EISs or EAs.

Scoping

Because of the change in approach described above, an additional public scoping meeting is scheduled for Sunday, April 6, 2003, from 3 p.m. to 5 p.m. This scoping session will coincide with the Council meeting and will occur at the same location, the Red Lion at The Quay Hotel, 100 Columbia St., Vancouver, WA 98660 (360–694–8341). Although the primary purpose of the scoping meeting shall be to obtain the public's comments and issues with regards to the four rebuilding plans EIS, issues related to the rebuilding plan adoption framework (subject of the EA) and rebuilding measures for all overfished species (not just those species that will be covered in the EIS noticed here) may be raised at this scoping meeting. These other comments will be used to formulate the scope of those particular NEPA documents. Likewise, comments raised on the four rebuilding plans EIS will be used to focus the analysis on the real issues and concerns of the public (40 CFR part 1500.5(d) and 40 CFR part 1501.7). Public comment also may be made during the April Council meeting, under the agendum wherein the Council plans to consider these proposed actions. The agenda for this meeting is available from the Council website or by request from Council offices (*see* **ADDRESSES**), once finalized.

Written comments on the scope of issues and alternatives may be submitted as described under **ADDRESSES**.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 820–2280 at least 5 days prior to the meeting date.

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

Dated: March 12, 2003.

Richard W. Surdi,

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

[FR Doc. 03–6469 Filed 3–17–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 52
Tuesday, March 18, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. FV–03–376]

Fruit and Vegetable Industry Advisory Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: The purpose of this notice is to notify all interested parties that the Agricultural Marketing Service (AMS) will hold a Fruit and Vegetable Industry Advisory Committee (Committee) meeting that is open to the public. The U.S. Department of Agriculture (USDA) established the Committee to examine the full spectrum of issues faced by the fruit and vegetable industry and provide suggestions and ideas to the Secretary of Agriculture on how USDA can tailor its programs to meet the fruit and vegetable industry's needs. This notice sets forth the schedule and location for the meeting.

DATES: The Committee meeting, which is open to the public, will be held on Tuesday, April 1, 2003, from 8 a.m. to 5:30 p.m.

ADDRESSES: The Committee meeting will be held at the Sheraton Reston Hotel, 11810 Sunrise Valley Drive, Reston, Virginia 20191.

FOR FURTHER INFORMATION CONTACT: Robert C. Keeney, Deputy Administrator, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Room 2077-S, Stop 0235, Washington, DC 20250–0235. Telephone: (202) 720–4722. Facsimile: (202) 720–0016. E-mail: *robert.keeney@usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (FACA) (5 U.S.C. App.), the Secretary of Agriculture established the Committee to examine the full spectrum of issues faced by the fruit and vegetable industry and to provide suggestions and ideas to the Secretary on how USDA can tailor its programs to meet the fruit and vegetable industry's needs.

The Chairperson of the Committee is Maureen Marshall and Vice-Chairperson is Karen Caplan. AMS Deputy Administrator for Fruit and Vegetable Programs, Robert C. Keeney, serves as the Committee's Executive Secretary and Andrew Hatch as the Designated Federal Official. Representatives from USDA mission areas and other government agencies affecting the fruit and vegetable industry will be called upon to participate in the Committee's meetings as determined by the Committee Chairperson. AMS is giving notice of the committee meeting to the public so that they may wish to attend and present their recommendations. The meeting is scheduled from 8 a.m. to 5 p.m. on Tuesday, April 1, 2003, at the Sheraton Reston Hotel, 11810 Sunrise Valley Drive, Reston, Virginia 20191.

Topics to be discussed at the meeting will include: USDA programs that encourage increased consumption of fruits and vegetables; a pilot project to increase purchases of fresh produce for domestic feeding programs; labor issues; and the Good Agricultural Practices (GAP) and Good Handling Practices (GHP) Audit Program.

Those parties that wish to speak at the meeting should register on or before March 30, 2003. To register as a speaker or attend as an observer, please e-mail *andrew.hatch@usda.gov* or facsimile to (202) 720–0016. Registrants should include their name, address, and daytime telephone number. Depending on the number of registered speakers, time limits may be imposed on speakers. Speakers who have registered in advance will be given priority.

If you require special accommodations, such as a sign language interpreter, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.** The meeting will be recorded, and information about obtaining a transcript will be provided at the meeting.

The Secretary of Agriculture has selected a diverse group of members representing a broad spectrum of persons interested in providing suggestions and ideas on how USDA can tailor its programs to meet the fruit and vegetable industry's needs. Equal opportunity practices were considered in all appointments to the Committee in accordance with USDA policies.

Dated: March 11, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–6387 Filed 3–17–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 030123018–3018–01]

RIN 0693–ZA51

Manufacturing Extension Partnership Program; Availability of Funds

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology invites proposals from qualified organizations for funding projects that provide manufacturing extension services to small- and medium-sized manufacturers in the United States. These projects will establish Manufacturing Technology Centers under the Manufacturing Extension Partnership (MEP) Program.

Proposals are invited for the expansion of manufacturing extension service capacity within three discrete geographic areas in the United States. The first area encompasses the entirety of the state of Florida. The second area encompasses the entirety of the state of Hawaii. The third area encompasses the entirety of the state of South Dakota. All organizations meeting the eligibility requirements provided herein are invited to submit proposals. As these states had previous MEP centers, applicants are required to provide 66 ⅔% or more of the operating costs for providing these manufacturing extension services.

DATES: Proposals must be received no later than 5 p.m. Eastern Daylight Time on May 19, 2003.

ADDRESSES: Applicants must submit one signed original and two (2) copies of their proposal along with a Standard Form 424, 424–A, and 424–B (Rev 7/97), Form CD–511 (Rev 7/91), and Form CD–346 to the National Institute of Standards and Technology,

Manufacturing Extension Partnership, 100 Bureau Drive, Stop 4800, Building 301, Room C100, Gaithersburg, MD 20899–4800. Plainly mark on the outside of the package that it contains a manufacturing extension center proposal.

FOR FURTHER INFORMATION CONTACT: For information regarding this announcement, contact Diane Henderson of the Manufacturing Extension Partnership by calling (301) 975–5020; or by mailing information requests to the National Institute of Standards and Technology, Manufacturing Extension Partnership, 100 Bureau Drive, Stop 4800, Building 301, Room C100, Gaithersburg, MD 20899–4800. Information packets, which include background materials on MEP, existing centers and the necessary application forms, should be requested via a one page fax sent to (301) 963–6556. Please include name, organization, mailing address, telephone number, and fax number on this request. Information is also available on-line at *http://www.mep.nist.gov.*

SUPPLEMENTARY INFORMATION:

Authority: 15 U.S.C. 278k, as implemented in 15 CFR part 290.

Catalog of Federal Domestic Assistance Name and Number

The catalog number for the award of Manufacturing Technology Centers funds in the Catalog of Federal Domestic Assistance is 11.611.

Program Description and Objectives

NIST will provide assistance for the creation and support of manufacturing extension centers. The objective of these centers is to enhance productivity, technological performance, and strengthen the global competitiveness of small- and medium-sized U.S.-based manufacturing firms.

These manufacturing extension centers will become part of the MEP national system of extension service providers. Currently, the MEP national system consists of over 400 centers and field offices located throughout the United States and Puerto Rico. Information regarding MEP and these centers is provided in the information packet that can be obtained as explained above or on-line at *http://www.mep.nist.gov.*

The objective of the projects funded under this program is to provide manufacturing extension services to small- and medium-sized manufacturers in the United States. These services are provided through the coordinated efforts of a regionally-based manufacturing extension center and local technology resources. The management and operational structure of the manufacturing extension center is not prescribed, but should be based upon the characteristics of the manufacturers in the region and locally available resources. The center should include plans for integration into the MEP national system and linkages to appropriate national resources.

The focus of the center is to provide those manufacturing extension services required by the small- and medium-sized manufacturers in its service region using the most cost effective sources for those services. It is not the intent of this program that centers perform research and development.

Funding Availability

It is anticipated that approximately $4 million will be available to support manufacturing extension centers under this announcement. The funding level for individual awards is not prescribed. The funding requested by the applicant should be directly related to the level of activity of the center, which is a function of the number of manufacturers in the designated service region, and to the availability of applicant-provided cash and in-kind contributions to be used as cost share.

Matching Requirements

A cost sharing contribution from the applicant is required. The applicant must provide 66⅔ % or more of the total capital, operating and maintenance costs for the center, as all of these states have had previously existing MEP centers. The applicant's share of the center expenses may include cash and in-kind contributions. However, at least 50% of the applicant's total cost share (cash plus in-kind) must be in cash. The source of the cost share, both cash and in-kind, must be documented in the budget submitted in the proposal.

Funding Instrument

The formal agreement between NIST and a successful applicant will be in the form of a cooperative agreement. Under this agreement, the NIST MEP will have substantial interactions with the applicant in planning and executing this project. This will include the following:

—Assisting in developing required plans.
—Providing access to standard manufacturing extension and related tools.
—Facilitating partnering with appropriate organizations both within and outside of the MEP national system.
—Defining measures for evaluation of performance.
—Direct involvement in helping to understand, define, and resolve problems in the center's operations.

Eligibility Criteria

Manufacturing extension centers must be affiliated with a U.S.-based not-for-profit institution or organization. MEP interprets not-for-profit organizations to include universities and state and local governments. Eligible applicants may be consortia of non-profit institutions. Existing MEP manufacturing extension centers are eligible.

Award Period

The projects awarded under this program will have a budget and performance period of one year. These projects may be renewable on an annual basis subject to the review requirements described in 15 CFR 290.8. Renewal of these projects shall be at the sole discretion of NIST and shall be based upon satisfactory performance, priority of the need for the service, existing legislative authority, and availability of funds.

Evaluation Criteria

All qualified proposals will be evaluated and rated on the basis of the following criteria by an impartial review panel. Each proposal should address all four evaluation criteria, which are assigned equal weighting.

(1) *Identification of Target Firms in Proposed Region.* Does the proposal define an appropriate service region with a large enough population of target firms of small- and medium-sized manufacturers that the applicant understands and can serve, and which is not presently served by an existing center?

(i) *Market Analysis.* Demonstrated understanding of the service region's manufacturing base, including business size, industry types, product mix, and technology requirements.

(ii) *Geographical Location.* Physical size, concentration of industry, and economic significance of the service region's manufacturing base. Geographical diversity of the centers will be a factor in evaluation of proposals; a proposal for a center located near an existing center may be considered only if the proposal is unusually strong and the population of manufacturers and the technology to be addressed justify it.

(2) *Technology Resources.* Does the proposal assure strength in technical personnel and programmatic resources, full-time staff, facilities, equipment, and linkages to external sources of

technology to develop and transfer technologies related to NIST research results and expertise in the technical areas noted in the MEP regulations found at 15 CFR part 290?

(3) *Technology Delivery Mechanisms.* Does the proposal clearly and sharply define an effective methodology for delivering advanced manufacturing technology to small- and medium-sized manufacturers?

(i) *Linkages.* Development of effective partnerships or linkages to third parties such as industry, universities, nonprofit economic organizations, and state governments who will amplify the center's technology delivery to reach a large number of clients in its service region.

(ii) *Program Leverage.* Provision of an effective strategy to amplify the center's technology delivery approaches to achieve the proposed objectives as described in 15 CFR 290.3(e).

(4) *Management and Financial Plan.* Does the proposal define a management structure and assure management personnel to carry out development and operation of an effective center?

(i) *Organizational Structure.* Completeness and appropriateness of the organizational structure, and its focus on the mission of the center. Assurance of full-time top management of the center.

(ii) *Program Management.* Effectiveness of the planned methodology of program management.

(iii) *Internal Evaluation.* Effectiveness of the planned continuous internal evaluation of program activities.

(iv) *Plans for Financial Matching.* Demonstrated stability and duration of the applicants funding commitments as well as the percentage of operating and capital costs guaranteed by the applicant. Identification of matching fund sources and the general terms of the funding commitments.

(v) *Budget.* Suitability and focus of the applicant's detailed one-year budget and budget outline for years 2–5 and beyond.

Proposal Selection Process

Proposal evaluation and selection will consist of four principal phases: proposal qualification, proposal review, site visits and award determination.

a. Proposal Qualification

All proposals will be reviewed by NIST to assure compliance with the proposal content as described in 15 CFR 290.5 and other basic provisions of this notice. Proposals that satisfy these requirements will be designated as qualified proposals. Non-qualified proposals will not be evaluated and will be returned to the applicant.

b. Proposal Review

NIST will appoint an evaluation panel, consisting of one non-Federal Government employee and at least two Federal Government employees, to conduct an independent and objective review and evaluation of all qualified proposals in accordance with the evaluation criteria set forth in this notice. Based upon this review, the panel will deliberate, and each panelist will assign a numeric score based on the evaluation criteria. Proposals with an average score of 70 or higher will be deemed finalists and will receive site visits.

c. Site Visits

Finalists will be notified and a day, time, and location for a site visit will be established. The panel will review finalists again on site, based on the evaluation criteria. Subsequently, the panel will deliberate again, and each panelist may revise his or her numeric scores based on the evaluation criteria, assessing equal weight to each of the four criteria. Proposals are then ranked based on the sum of the panelists' final numeric scores. The ranked proposals are then submitted to the Director of NIST or the Director of the NIST MEP Program for final award recommendation to the NIST Grants Officer.

d. Award Determination

The Director of NIST or the Director of the NIST MEP Program shall make final recommendation of whether an award should be made to the proposing organization based on a review of the panel's adherence to program objectives and program procedures and the availability of funds. The final approval of the selected applications and award of cooperative agreements will be made by the NIST Grants Officer based on compliance with program requirements and whether the recommended applicants appear competently managed, responsible, and committed to achieving project objectives. The decision of the Grants Officer is final.

Application Forms and Kit

The proposal must, at a minimum, include the following:

A. An executive summary of the proposed project, consistent with the Evaluation Criteria stated in this notice.

B. A description of the proposed project, sufficient to permit evaluation of the proposal, in accordance with the proposal Evaluation Criteria stated in this notice.

C. A detailed budget for the proposed project that breaks out all expenses for year 1 of operation and identifies all sources of funds to pay these expenses.

D. A budget outline for annual costs and sources of funds for potential years 2 through 5 and beyond. It is expected, especially for newly created centers, that year one costs are lower because of a ramp-up of operations from start-up to the point where the center is fully operational and services are being provided. If such a ramp-up of operations is to occur, this should be reflected in the budget outline for years 2 through 5 and beyond. A detailed budget and budget narrative will be required prior to each of years 2 through 5.

E. A description of the qualifications of key personnel who will be assigned to work on the proposed project.

F. A statement of work that discusses the specific tasks to be carried out, including a schedule of measurable events and milestones.

G. A Standard Form (SF) 424, 424–A, and 424–B (Rev 7/97) prescribed by 15 CFR part 14 (OMB Circular A–110), Form CD–511, Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying, and Form CD–346, Applicant For Funding Assistance (Name Check). The SF 424 and CD series of forms will not be considered part of the page count of the proposal.

In addition, the proposal must contain the requirements identified in 15 CFR 290.5(a)(3), which are:

A. A plan for the allocation of intellectual property rights associated with any invention or copyright which may result from the involvement in the Center's technology transfer or research activities consistent with the conditions of 15 CFR 290.9.

B. A statement that provides adequate assurances that the host organization will contribute the required cost share. (Although the MEP regulation, 15 CFR 290.5(a)(3)(ii), states that applicants should provide evidence that the proposed Center will be self-supporting after six years, this requirement is no longer in effect, as indicated above.)

C. A statement describing linkages to industry, government, and educational organizations within its service region.

D. A statement defining the initial service region including a statement of the constituency to be served and the level of service to be provided, as well as outyear plans.

E. A statement agreeing to focus the mission of the Center on technology transfer activities and not to exclude companies based on state boundaries.

F. A proposed plan for the annual evaluation of the success of the Center by the Program, including appropriate criteria for consideration, and weighting of those criteria.

G. A plan to focus the Center's technology emphasis on areas consistent with NIST technology research programs and organizational expertise.

H. A description of the planned Center sufficient to permit NIST to evaluate the proposal in accordance with 15 CFR 290.6.

The proposal must not exceed 25 typewritten pages in length. The proposal must contain both technical and cost information. The proposal page count shall include every page, including pages that contain words, table of contents, executive summary, management information and qualifications, resumes, figures, tables, and pictures. All proposals shall be printed such that pages are single-sided, with no more than fifty-five (55) lines per page. Use 21.6 x 27.9 cm (8½″ x 11″) paper or A4 metric paper. Use an easy-to-read font of not more than about 5 characters per cm (fixed pitch font of 12 or fewer characters per inch or proportional font of point size 10 or larger). Smaller type may be used in figures and tables, but must be clearly legible. Margins on all sides (top, bottom, left and right) must be at least 2.5 cm. (1″). The applicant may submit a separately bound document of appendices containing other supporting information. The proposal should be self-contained and not rely on the appendices for meeting criteria. Excess pages in the proposal will not be considered in the evaluation. Applicants must submit one signed original plus two (2) copies of the proposal.

Additional Information

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917) , as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), are applicable to this solicitation.

Where Web sites are referenced within this notice, those who do not have access to the Internet websites may contact the appropriate Program official to obtain information.

Unsuccessful Applications: Unsuccessful applicants will be held in the Program Office for two years and then destroyed.

Fees and/or Profit: It is not the intent of NIST to pay fee or profit for any of the financial assistance awards that may be issued pursuant to this announcement.

Automated Standardized Application for Payment System (ASAP): The Department of Commerce is using the Department of Treasury's ASAP. In order to receive payments for services under these awards, recipients will be required to register with the Department of Treasury and indicate whether or not they will use the on-line or voice response method of withdrawing funds from their ASAP established accounts. More information regarding ASAP can be found on-line at *http://www.fms.treas.gov/asap/index.html.*

Paperwork Reduction Act: The standard forms in the application kit involve collections of information subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, SF–LLL, and CD–346 have been approved by the Office of Management and Budget (OMB) under the respective Control Numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Classification: This funding notice was determined to be ''not significant'' for purposes of Executive Order 12866.

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Applications under these programs are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Because notice and comment are not required under 5 U.S.C. 553, or any other law, for notices relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this notice, 5 U.S.C. 601 *et seq.*

Dated: March 11, 2003.

Karen H. Brown,

Deputy Director, NIST.

[FR Doc. 03–6349 Filed 3–17–03; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022703A]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Receipt of application for scientific research permits (1415 and 1419) and request for comment.

SUMMARY: Notice is hereby given that NMFS has received an application for scientific research from U.S. Fish and Wildlife Service (USFWS) in Sacramento, CA (1415) and California Departments of Fish and Game and Water Resources (CDFG/CDWR) in Oroville and Sacramento, CA (1419). These permits would affect three Evolutionarily Significant Units (ESUs) of salmonids identified in the SUPPLEMENTARY INFORMATION section below. This document serves to notify the public of the availability of the permit applications for review and comment.

DATES: Written comments on the permit applications must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific Standard Time on April 17, 2003.

ADDRESSES: Written comments on this request should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the request. Comments will not be accepted if submitted via e-mail or the Internet. The applications and related documents are available for review, by appointment. For permits 1415 and 1419: Protected Resources Division, NMFS, 650 Capitol Mall, Suite 8–300, Sacramento, CA 95814 (ph: 916–930–3600, fax: 916–930–3629). Documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 3226 (301 713 1401).

FOR FURTHER INFORMATION CONTACT: Rosalie del Rosario at phone number 916–930–3600, or e-mail: Rosalie.delRosario@noaa.gov.

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531 1543) (ESA), is based on a finding that such permits/modifications:

(1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see ADDRESSES). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

This notice is relevant to 3 federally listed salmonid ESUs: endangered Sacramento River Winter-run Chinook salmon (*Oncorhynchus tshawytscha*), threatened Central Valley spring-run Chinook salmon (*O. tshawytscha*), and threatened Central Valley steelhead (*O. mykiss*).

New Applications Received

USFWS requests a 5–year permit to conduct monitoring and research on Sacramento River winter-run Chinook salmon, Central Valley spring-run Chinook salmon, and Central Valley steelhead throughout the Central Valley of California.

CDFG/CDWR requests a 1–year permit to extend normal fish ladder operations at the Feather River Hatchery to allow for additional genetic, life history, and population assessments of wild and hatchery adult Central Valley spring-run Chinook salmon and Central Valley steelhead in the Feather River.

Dated: March 12, 2003.

Barbara Schroeder,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–6470 Filed 3–17–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031003E]

North Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings.

DATES: The meetings will be held on Monday, March 31, 2003 through Tuesday, April 8, 2003. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Anchorage Hilton Hotel, 500 W 3rd Avenue, Anchorage, AK 99501.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff, telephone: 907–271–2809.

SUPPLEMENTARY INFORMATION: The Council's Advisory Panel will begin at 8 a.m., Monday, March 31 and continue through Saturday, April 5, 2003. The Scientific and Statistical Committee will begin at 8 a.m. on Monday, March 31, and continue through Wednesday, April 2, 2003.

The Council will begin its plenary session at 8 a.m. on Wednesday, April 2 continuing through Tuesday April 8th. All meetings are open to the public except executive sessions.

Council Plenary Session: The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. Reports
(a) Executive Director's Report
(b) NMFS Management Report
(c) Alaska Department of Fish &Game (ADF&G) Management Report
(d) Coast Guard Report
(e) U.S. Fish &Wildlife Report

2. Gulf of Alaska Rationalization (GOA): Receive draft analytical outline, refine Alternatives as necessary.

3. Crab Rationalization: (a) Receive Committee reports and finalize action on trailing amendments; (b) Department of Justice opinion on anti-trust issues.

4. Steller Sea Lion (SSL) Issues: (a) Review draft response to Biological Opinion (BiOp) remand; (b) National Academy of Science SSL Report - Schedule discussion for future action; (c) Report on Aleutian Island pollock closure analysis.

5. Essential Fish Habitat (EFH): Receive progress report on Environmental Impact Statement (EIS) development, objectives, and research plan.

6. Programmatic Groundfish Supplemental Environmental Impact Statement (PGSEIS): Receive progress report.

7. Bering Sea/Aleutian Island (BSAI) Pacific Cod Allocation: Initial review of Amendment 77 (allocations among fixed gear components).

8. Improved Retention/Improved Utilization (IR/IU): (a) Review proposal for Trailing Amendment A (multi-species head & Gut (H&G) co-ops), and associated allocation issues; (b) Initial review of Trailing Amendment C (minimum retention standards); (c) Final review of Trailing Amendment D (5% exemption); and (d) Discussion of relationship of Amendment A & C.

9. Observer Program: Review timeline and analytical outline for restructuring observer program.

10. Halibut Subsistence: (a) Final action on Ninilchik inclusion; (b) Report on other potentially eligible communities.

11. Community Development Quota (CDQ) Program: Final action on ''other species'' exemption

12. Groundfish Issues: (a) Discuss future actions resulting from F40 Report; (b) Receive progress report on rockfish/non-target species management; (c) Review status of TAC-setting amendment package; (d) Review request(s) for Experimental Fishing Permits (halibut donation and salmon excluder device); (e) Recommend VIP rates for latter half of 2003; (f) SSC comments on National Standards 1 guidelines; and (g) Review research priorities.

13. Staff Tasking: Review tasking and committees and provide direction to staff.

14. Other Business.

Scientific and Statistical Committee (SSC): The SSC agenda will include the following issues:

1. C–1 GOA Rationalization
2. C–3 Steller Sea Lion
3. C–4 Essential Fish Habitat
4. C–5 PGSEIS
5. C–6 BSAI Cod Allocation
6. C–7 IR/IU
7. C–8 Observer Program
8. D–1 Groundfish Issues

Advisory Panel: The Advisory Panel will address the same agenda issues as the Council.

Although non-emergency issues not contained in this agenda may come

before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, these issues may not be the subject of formal Council action during the meeting. Council action will be restricted to those issues specifically identified in the agenda 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 action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: March 13, 2003.

Peter H. Fricke,

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

[FR Doc. 03–6472 Filed 3–17–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. 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 burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received May 19, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness)/ Military Community and Family Policy/ Educational Opportunities Directorate, ATTN: Robin Robinson, 4000 Defense Pentagon, Rm 3A119, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call Ms. Robin Robinson at (703) 602–4949 X119.

Title, Associated Form, and OMB Control Number: Application for Department of Defense Impact Aid for Children with Severe disability, SC Form 816 and SD Form 816C, OMB Control Number 0704–0425.

Needs and Uses: Department of Defense funds are authorized for local educational agencies (LEA)s that educate military dependent students with severe disabilities and meet certain criteria. Eligible LEAs are determined by their responses to the U.S. Department of Education (ED) from information they submitted on children with disabilities, when they completed the Impact Program form for the Department of Education. This application will be requested of LEAs who educate military dependent students with disabilities, who have been deemed eligible for the U.S. Department of Education Impact Aid program, to determine if they meet the criteria to receive additional funds from the Department of Defense due to high special education costs of the military dependents with severe disabilities that they serve.

Affected Public: State, Local or Tribal Government.

Annual Burden Hours: 400.

Number of Respondents: 50.

Responses per Respondent: 1.

Average Burden per Response: 400.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The National Defense Authorization Act for Fiscal Year 2001, Pub. L. 106–398, section 363, authorizes the Secretary of Defense to make payments to each local educational agency (LEA) eligible to receive a payment for a qualifying military dependent child. In order for a local education agency (LEA) to be determined eligible to receive a payment for costs incurred in providing a free appropriate public education to each military child (as described in subparagraph (A)(ii), (B)(D)(i) or (D)(ii) of section 8003(a)(1) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703(a)(1)), the LEA must provide educational and related services to two or more children with severe disabilities, and satisfy certain criteria. Payments will be made by the Department of Defense to LEAs only on behalf of each such child whose individual educational or related services cost exceeds either (a) five times the national or State average per pupil expenditure (whichever is lower) for an out-of-district special education (SPED) program, or (b) three times the State average per pupil expenditure for SPED programs offered by the district or within the district boundaries.

The Application for Department of Defense Impact Aid for Children with Severe Disabilities, SC Form 816 and SC Form 816C, provides the format for eligible LEAs to give submit information on high costs of educating military dependent children with severe disabilities. When the appropriate information is received, the Department of Defense will be able to determine eligibility and calculate payments for eligible LEAs who have high costs for educating military dependent children with severe disabilities.

Dated: March 10, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–6379 Filed 3–17–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by April 17, 2003.

Title, Form Number, and OMB Number: Department of Defense (DoD) Request for Personnel Security Investigations; DD Form 1879; OMB Number 0704–0384.

Type of Request: Reinstatement.

Number of Respondents: 32,164.

Responses per Respondent: 1.

Annual Responses: 32,164.

Average Burden Per Response: 15 minutes.

Annual Burden Hours: 8,041.

Needs and Uses: This information collection is necessary to solicit minimal personal and investigative information that will become part of a security clearance investigation. The form is used to transmit requests for security clearance investigations for access to classified information or employment in sensitive positions. The DD Form 1879 will be used by DoD civilians and military personnel in DoD Component security offices and contractor facility security officers to request a Single Scope Background Investigation (SSBI), National Agency Check with Local Agency Checks and Credits (NACLC), SSBI Peridic Reinvestigation (PR) or Special Investigative Inquiry.

Affected Public: Individuals or Households; Business or Other For-Profit.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10235, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: March 10, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 03–6380 Filed 3–17–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense; Meeting of the DoD Advisory Group on Electron Devices

AGENCY: Advisory Group on Electron Devices, Department of Defense.

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Monday, March 31, 2003.

ADDRESSES: The meeting will be held at the Hyatt Regency Tampa, 211 North Tampa Street, Tampa, FL 33602.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Carr, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense Acquisition, Technology and Logistics to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. section 10(d)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: March 10, 2003.

Patricia L. Toppings,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–6381 Filed 3–17–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Meeting of the DOD Advisory Group on Electron Devices, DOD.

AGENCY: Advisory Group on Electron Devices, Department of Defense.

ACTION: Notice.

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 1530, Wednesday, April 2, 2003.

ADDRESSES: The meeting will be held at the Hyatt Regency Tampa, 211 North Tampa Street, Tampa, FL 33602.

FOR FURTHER INFORMATION CONTACT: David Cox, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition, Technology and Logistics to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency (ARPA) and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. section 10(d)) it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: March 10, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–6382 Filed 3–17–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Change in Meeting Date of the DOD Advisory Group on Electron Devices

AGENCY: Advisory Group on Electron Devices, Department of Defense.

ACTION: Notice.

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 1300, Tuesday, April 1, 2003.

ADDRESSES: The meeting will be held at the Hyatt Regency Tampa, 211 North Tampa Street, Tampa, FL 33602.

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square

Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition, Technology and Logistics to the Director Defense Research and Engineering (DDR&E), and through the DDR&E, to the Director Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective research and development program in the field of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military proposes to initiate with industry, universities or in their laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. section 10(d)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: March 10, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–6383 Filed 3–17–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Notice of Solicitation for Cooperative Agreement Applications

AGENCY: Defense Logistics Agency, DOD.

ACTION: Announcement of solicitation for cost sharing cooperation agreement applications.

SUMMARY: The Defense Logistics Agency (DLA) has issued a solicitation for cooperative agreement applications (SCAA) to assist State and local governments and others nonprofit eligible entities in establishing or maintaining procurement technical assistance centers (PTACs) as authorized by 10 U.S.C. chapter 142. These centers help business firms market their products and services to the Department of Defense (DoD), other Federal agencies, and State and/or local government agencies. This solicitation applies to all applications from all eligible entities, including Indian Economic Enterprises and Indian Tribal Organizations. This solicitation will govern the submission of applications for calendar years 2003 through 2007, inclusive. The closing date for the submission of applications is May 6, 2003.

On December 13, 2002, a notice was published in the **Federal Register** announcing that DLA intended to issue a SCAA and made available a draft SCAA for review and comment. In response to several comments received, DLA subsequently revised the SCAA and issued a second notice that was published in the February 14, 2003, **Federal Register** which made available the revised SCAA for review and comment. No significant comments were received. Consequently, only minor additional editorial changes have been made to the draft SCAA, which DLA has now issued as a final SCAA.

The final SCAA is available on the Internet Web site: *http://www.dla.mil/db/scaa2003.pdf.*

Printed copies are not available for distribution.

Eligible entities may only submit an application as outlined in section IV of the SCAA. To submit an application and to receive an award, eligible entities must be registered in the Central Contractor Registration (CCR) and have a Commercial and Government Entity (CAGE) Code. Registration can be accomplished online at *http:www.ccr.gov.* Upon completion and acceptance of the registration information, the CCR system will provide a CAGE Code.

In order to comply with the electronic portion of the submission, applicants must obtain a log in account and password from DLA. To obtain these, applicants must furnish the Grants Officer written evidence that they meet the criteria of an eligible entity as set forth in paragraph 19 of section II of the SCAA. This information should be mailed or otherwise delivered to: HQ, Defense Logistics Agency, Small & Disadvantaged Business Utilization Office, (DB Room 1127), 8725 John J. Kingman Road, Ft. Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Diana Maykowskyj at (703) 767–1656.

Anthony J. Kuders,

Program Manager, DoD Procurement Technical Assistance Program.

[FR Doc. 03–6393 Filed 3–17–03; 8:45 am]

BILLING CODE 3620–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the U.S. Naval Academy Board of Visitors

AGENCY: Department of the Navy, DOD.

ACTION: Notice of partially closed meeting.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. During this meeting inquiries will relate to the internal personnel rules and practices of the Academy, may involve on-going criminal investigations, and include discussions of personal information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The executive session of this meeting will be closed to the public.

DATES: The open session of the meeting will be held on Monday, March 31, 2003, from 8:30 a.m. to 11:15 a.m. The closed executive session will be from 11:15 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at the U.S. Naval Academy, Annapolis, Maryland in the Bo Coppedge dining room of Alumni Hall.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Domenick Micillo, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, (410) 293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The executive session of the meeting will consist of discussions of information, which pertain to the conduct of various midshipmen at the Naval Academy and internal Board of Visitors matters. Discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. In accordance with 5 U.S.C. App. 2, section 10(d), the Secretary of the Navy has determined in writing that the special committee meeting shall be partially closed to the public because they will be concerned with matters as outlined in section 552(b)(2), (5), (6), (7) and (9) of title 5, United States Code.

Dated: March 11, 2003.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 03–6395 Filed 3–17–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.128J]

Recreational Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Program: To provide grants for recreational programs providing individuals with disabilities recreational activities and related experiences to aid in their employment, mobility, socialization, independence, and community integration.

Eligible Applicants: States, public agencies, and nonprofit private organizations.

SUPPLEMENTARY INFORMATION: Funds under this competition will be used to support projects in FY 2003. The Assistant Secretary may consider funding approved applications submitted in FY 2003 in later years.

Applications Available: March 17, 2003.

Deadline for Transmittal of Applications: May 1, 2003.

Deadline for Intergovernmental Review: July 1, 2003.

Estimated Available Funds: $985,779.

Estimated Range of Awards: $130,000–$140,000.

Estimated Average Size of Awards: $130,000.

Estimated Number of Awards: 8.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priority

This competition focuses on projects designed to meet the absolute priority and the statutory requirements in the notice of final priority for this program, published in the **Federal Register** on April 19, 2001 (66 FR 20176). Under 34 CFR 75.105(c)(3) we consider only applications that meet the priority.

Projects must provide recreational services to individuals with disabilities. Recreational services include, but are not limited to, vocational skills development, leisure education, leisure networking, leisure resource development, physical education and sports, scouting and camping, 4–H activities, music, dancing, handicrafts, art, and homemaking. Recreational services do not include the construction of facilities for aquatic rehabilitation therapy.

Projects must provide recreational services to individuals with disabilities in settings with peers who are not individuals with disabilities.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Recreational Program—CFDA No. 84.128J is one of the programs included in the pilot project. If you are an applicant under the Recreational Program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application) portion of the Grant Administration and Payment System (GAPS). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format. When you enter the e-Application system, you will find information about its hours of operation.
- You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within 3 working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

(1) Print ED 424 from the e-Application system.

(2) The institution's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.
- *Closing Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for the Recreational Program and you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of 1 business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

(1) You must be a registered user of e-Application and have initiated an e-Application for this competition; and

(2)(a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the deadline date. The Department must acknowledge and confirm these periods of unavailability before granting you an

extension. To request this extension you must contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Recreational Program at: *http://e-grants.ed.gov.*

We have included additional information about the e-Application pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

For Applications Contact: Education Publications Center (ED Pubs), PO Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs via its Web site: *http://www.ed.gov/pubs/edpubs.html.*

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.128J.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Mary E. Chambers, U.S. Department of Education, 400 Maryland Avenue, SW., room 3322, Switzer Building, Washington, DC 20202–2647. Telephone (202) 205–8435. 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 a copy of this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in the preceding paragraph.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 29 U.S.C. 775.

Dated: March 12, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–6377 Filed 3–17–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.264A]

Rehabilitation Continuing Education Programs (RCEP); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Program: To support training centers that serve either a Federal region or another geographical area and provide for a broad, integrated sequence of training activities that focus on meeting recurrent and common training needs of employed rehabilitation personnel throughout a multi-State geographical area.

Eligible Applicants: States and public or nonprofit agencies and organizations, including Indian tribes and institutions of higher education. Applications under this notice are invited for the provision of training for Department of Education Regions II, III, VI, VII, VIII, IX, and X only.

Applications Available: March 17, 2003.

Deadline for Transmittal of Applications: April 16, 2003.

Deadline for Intergovernmental Review: June 15, 2003.

Estimated Available Funds: $3,194,025.

Estimated Range of Awards: $325,000–$578,490.

Estimated Average Size of Awards: $375,000.

Maximum Awards by Rehabilitation Services Administration (RSA) Region: We will reject any application that proposes a budget exceeding the following stated maximum award amount for a single budget period of 12 months.

Maximum Level of Awards by RSA Region:

Region II–$483,700.
Region III–$578,490.
Region VI–$555,830.
Region VII–$383,350.
Region VIII–$350,473.
Region IX–$471,350.
Region X–$370,832.

Estimated Number of Awards: 7. We expect to make one award per eligible region.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 45 pages, using the following standards:

(1) A page is 8.5″ by 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

(2) Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

(3) Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86. (b) The regulations for this program in 34 CFR parts 385 and 389.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Selection Criteria: In evaluating an application for a new grant under this

competition, we use the selection criteria in 34 CFR 385.31 and 389.30. The selection criteria to be used for this competition will be provided in the application package for this competition.

Application Procedures:

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Rehabilitation Continuing Education Programs, CFDA No. 84.264A, is one of the programs included in the pilot project. If you are an applicant under the Rehabilitation Continuing Education Programs, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application) portion of the Grant Administration and Payment System (GAPS). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format. When you enter the e-Application system, you will find information about its hours of operation.
- You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within 3 working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

(1) Print ED 424 from the e-Application system.

(2) The institution's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.
- *Closing Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for the Rehabilitation Continuing Education Programs and you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of 1 business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

(1) You must be a registered user of e-Application, and have initiated an e-Application for this competition; and

(2)(a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension you must contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-Grants help desk at 1–888–336–8930.

You may access the electronic grant application for the Rehabilitation Continuing Education Programs at: *http://e-grants.ed.gov.*

We have included additional information about the e-Application pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

For Applications Contact: Education Publications Center (ED Pubs), PO Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html.*

Or you may contact ED Pubs at its e-mail address: edpubs@inet.ed.gov.

If you request an application from Ed Pubs, be sure to identify this competition as follows: CFDA number 84.264A.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Christine Marschall, U.S. Department of Education, 400 Maryland Avenue, SW., room 3325 Switzer Building, Washington, DC 20202–2649. Telephone: (202) 205–8926 or via Internet: *Christine.Marschall@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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Program Authority: 29 U.S.C. 772.

Dated: March 12, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–6378 Filed 3–17–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Thursday, April 3, 2003, 6 p.m. to 9:30 p.m.

ADDRESSES: Jefferson County Airport, Terminal Building, Mount Evans Room, 11755 Airport Way, Broomfield, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO, 80021; telephone (303) 420–7855; fax (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Presentation on cleanup and demolition plans for Building 776.
2. Discussion of long-term stewardship issues.
3. Update on plans for a Rocky Flats Cold War Museum.
4. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Public Reading Room located at the Office of the Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operations for the Public Reading Room are 8:30 a.m. to 4:30 p.m., Monday–Friday, except Federal holidays. Minutes will also be made available by writing or calling Deborah French at the address or telephone number listed above. Board meeting minutes are posted on RFCAB's web site within one month following each meeting at: *http://www.rfcab.org/Minutes.HTML.*

Issued at Washington, DC on March 13, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–6419 Filed 3–17–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, April 9, 2003, 6:30 p.m.–9 p.m.

ADDRESSES: Durango Hills Golf Club, 3501 North Durango Drive, Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Kelly Kozeliski, U.S. Department of Energy, Office of Environmental Management, PO Box 98518, Las Vegas, Nevada 89193–8513, phone: (702) 295–2836, fax: (702) 295–5300, e-mail *kozeliskik@nv.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. The CAB will update the community on their activities with a focus on the FY 2004 Environmental Management Budget Prioritization.

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kelly Kozeliski, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Kelly Kozeliski at the address listed above.

Issued at Washington, DC on March 13, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–6420 Filed 3–17–03; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[RCRA–2002–0024, FRL–7468–9]

Agency Information Collection Activities: Proposed Collection; Comment Request; 2003 Hazardous Waste Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) is revising the previous notice published on August 13, 2002 (Volume 67, Number 156, page 52720) for the EPA plan to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for the 2003 Hazardous Waste Report (EPA Form 8700–13 A/B; EPA ICR Number 0976.11; OMB Control No. 2050–0024). An agency may not conduct or sponsor a collection of information and a person is not required to respond to a collection of information unless it displays a valid OMB control number indicating OMB approval. Before submitting this ICR to OMB for review and approval, we are again asking for comments on this information collection. This notice discusses changes based on comments to the August 13, 2002 notice.

This ICR renews an ongoing information collection from hazardous waste generators and treatment, storage, or disposal facilities. This collection is done on a two-year cycle as required by Sections 3002 and 3004 of the Resource Conservation and Recovery Act (RCRA). The information is collected via a mechanism known as the Hazardous Waste Report (also known as the Biennial Report) for the required reporting year.

DATES: Comments must be submitted on or before May 19, 2003.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Dave Levy, Office of Solid Waste, Mail Code 5302W, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–8479; e-mail address: *levy.dave@epa.gov*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number RCRA–2002–0024 available for public viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.*

Please use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, or to access those documents in the public docket that are available electronically. Once in the system, select ''Search,'' and then key in the Docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 60 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *RCRA-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information otherwise restricted by statute from public disclosure. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information that is claimed as CBI or that is otherwise restricted from disclosure by statute, is not included in the official public docket and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002) or at *http://www.epa.gov/edocket.*

Affected entities: Entities potentially affected by this action are those which generate, treat, store, recycle, or dispose of hazardous waste.

Title: The 2003 Hazardous Waste Report, EPA ICR Number 0976.11 (OMB Control Number 2050–0024).

Abstract: This ICR renews an ongoing information collection from hazardous waste generators and hazardous waste treatment, storage, or disposal facilities. This collection is done on a two-year cycle as required by Sections 3002 and 3004 of the Resource Conservation and Recovery Act (RCRA). The information is collected via a mechanism known as the Hazardous Waste (Biennial)Report.

1. What Is the Hazardous Waste (Biennial) Report?

The Hazardous Waste Report (Biennial Report) is the federal data collection for information about the generation and management of hazardous waste in the United States. Sections 3002 and 3004 of the Resource Conservation and Recovery Act (RCRA) require large quantity generators (LQGs), treatment, storage, and disposal facilities (TSDFs), and recyclers of hazardous waste to report this information to the state in which they are located on a two-year cycle. The respondents' submissions (reports) describe each generated hazardous waste, the activity by which they generated the waste, and the waste quantity; the reports also list the management method by which each waste is treated, recycled, or disposed and the quantity managed.

The states forward the reports to EPA electronically; EPA enters the information into a database called RCRAInfo. You can obtain detailed information about the Biennial Report data from these EPA Internet web pages:

- The National Biennial RCRA Hazardous Waste Report for odd numbered years from 1989 to 1999, the associated Biennial Report reported data files, and other information can be found at *http://www.epa.gov/epaoswer/hazwaste/data/#br.*
- The Biennial Report data for each reporter are also available through EPA's Envirofacts by clicking on ''Queries'' under the heading ''Advanced Capabilities'' and then clicking on ''BRS'' at *http://www.epa.gov/enviro.*
- Information about RCRAInfo can be found at *http://www.epa.gov/enviro/html/rcris.*

2. How Are the Hazardous Waste Report Data Used?

EPA compiles and publishes the *National Biennial RCRA Hazardous Waste Report* based on the data for each reporting year. EPA and states have many uses for Hazardous Waste Report information, including:

- Describing the various source activities that generate hazardous waste and the generated waste types and quantities;
- Describing the management methods by which the waste is treated, disposed, or recycled and the quantities managed by each method;
- Providing information for analysis of trends in waste generation, waste treatment and disposal, recycling, and source reduction;

• Understanding how much waste a state receives from out of state or sends out of state; and

• Estimating available capacity for treating, recycling, and disposing hazardous wastes.

Additionally, EPA utilizes the Biennial Report information for planning and developing regulations; regulation development depends on descriptions and quantities of generated hazardous waste and management methods used for treatment, recycling, and disposal. The information allows the Agency to determine whether regulations are having the desired effect on the generation and management of hazardous waste; for example, the report provides information on whether the treatment of wastes has shifted from one method to another. EPA also uses the information to conduct technical assistance, plan facility inspections, and carry out regulatory enforcement. States use the information for many of the same purposes as EPA; other state uses include planning, setting waste minimization goals, assessing fees, monitoring compliance, and carrying out enforcement.

EPA and states receive requests for the information from many public and private organizations including government agencies, businesses, public interest groups, and interested citizens. Many requests come from businesses that supply chemicals, equipment, and services to hazardous waste generators and TSDFs.

3. What Changes Does EPA Plan for the 2003 Hazardous Waste Report?

As discussed in the August 13, 2002 **Federal Register** Notice, for the 2003 cycle, EPA plans to use the same Form GM, Form WR, and instructions that were used in the 2001 Hazardous Waste Report booklet with some minor changes and updates. We also plan some improvements to the RCRA Subtitle C Site Identification Form (Site ID Form) that is part of the booklet, and will clarify how to complete the form. We plan to have the 2003 Biennial Report forms and instructions booklet available to the public in midyear 2003.

EPA extensively revised the 2001 Biennial Report . EPA, however, delayed implementation of two minor changes until the 2003 cycle. The extensive 2001 revisions were developed through the Waste Information Needs/Informed (WIN) Initiative. WIN is the multi-year partnership project of the states, EPA regions, and EPA headquarters for reengineering the information that supports implementation of the RCRA hazardous waste program.

Documents about the WIN process and revisions and the 2001 Biennial Report can be found at:

http://www.epa.gov/epaoswer/hazwaste/data/brs01/icr.htm

http://www.epa.gov/epaoswer/hazwaste/data/brs01/forms.htm

Changes to Form GM and Form WR

EPA plans to incorporate the two changes that were discussed in the August 13, 2002 notice: (1) Deletion of the ''RCRA radioactive mixed'' (mixed waste) box on Form GM (Sec. 1.F) and on Form WR (H). In the 2001 Biennial Report, we included ''Mixed Waste (hazardous and radioactive) Generator'' on the RCRA Subtitle C Site Identification Form under Hazardous Waste Activities (Item 10.A.1.e). We retained the boxes on the Form GM and Form WR only for 2001 because the data were needed for required Department of Energy (DOE) facility reports that are sent to states. DOE is now using other data sources for those reports.

(2) Addition of a box for ''Country of Origin'' for waste that is imported into the United States to both the Form GM and Form WR. For 2001 and prior years, the Country of Origin was entered in the ''Off-site handler EPA ID number'' box on Form WR (Box 1.D); this did not allow identification of the actual off-site handler's EPA Identification Number. This addition will identify the off-site handler, usually the U.S. Importer, on Form WR and will provide the Country of Origin on both forms.

Revisions to the RCRA Subtitle C Site Identification Form

EPA plans to revise the RCRA Subtitle C Site Identification Form (Site ID Form) in the 2003 Hazardous Waste Report. This version of the Site ID Form will soon be implemented in the Notification of Regulated Waste Activities booklet (Notification) [EPA Form 8700–12] and the RCRA Hazardous Waste Part A Permit Application booklet (Part A Permit Application) [EPA Form 8700–23]; OMB recently approved renewals for both of these data collections. The same Site ID Form is included in all three data collections; EPA allows respondents to copy the most recently submitted Site ID Form rather than filling out the entire blank form. The respondents provide additions, deletions, or other changes since the previous report on a blank form and completes the Certification with the appropriate signature in Item 13.

The revisions to the Site ID Form are:

(1) Addition of a facsimile (fax) phone number and electronic mail (e-mail) address information for ''Site Contact Person'' (Item 8). Many businesses now communicate by fax and e-mail; these data blocks will provide space for submitting the information if the respondent would like to be contacted by fax or e-mail. This fax and e-mail information is not required for completing Item 8.

(2) Addition of address and phone number information for ''Owner and Operator'' (Item 9). The instructions advise the respondent to check with their state to determine if this information is required for that state's Hazardous Waste Report or Notification submissions.

(3) Addition to the explanation about determining the ''RCRA Site's North American Industry Classification System (NAICS) Code(s) for the Site (Item 6). The instructions advise the respondents to check with their company's business or accounting office to determine which NAICS code(s) to report. This is because the NAICS codes are used for tax reports and other business documents. The Bureau of Census made changes to the list of NAICS codes in 2002 that are reflected in a new table on their web pages; these web page references have been added.

(4) Changing the ''Regulated Waste Activities'' check boxes on the Site ID Form (Item 10) from a single box to ''Yes'' and ''No'' boxes. This change will resolve some confusion about unchecked boxes. States have commented that a number of 2001 Biennial Report respondents checked some RCRA Site activities, but failed to check the appropriate ones for other ongoing activities. States want to be sure that an activity has actually ceased if it was previously reported for a RCRA Site.

Completion of the Entire RCRA Subtitle C Site Identification Form

We plan to require respondents to complete all the items for the Site ID form for the 2003 Biennial Report. For the 2001 Biennial Report, EPA did not require the respondent to complete the ''Site Land Type'' (Item 5) or the ''Legal Owner and Operator of the Site'' (Item 9). The respondent completed the ''Hazardous Waste Activities—Generator of Hazardous'' (Item 10.A.1) as applicable for their RCRA Site; the respondent marked ''Treater, Storer, or Disposer (at your site)'' (Item 10.A.3) only if applicable for their site. States received a lot of questions about these items because respondents were unclear about what was optional.

States have said that some submitters of the 2001 Biennial Report provided the site's land type, listed owner and operator, or checked new activities in

Item 9, while failing to check ongoing activities. States commented that they had to spend a lot of time contacting respondents and correcting the information. States want to be sure that an activity has ceased if it was previously listed. This partial reporting of the Site ID information has created confusion and doubts about the quality of some of the data. Having experienced these problems with the 2001 Biennial Report submissions, states asked EPA to require that respondents complete the entire Site ID Form. The submission of the complete Site ID Form for the Biennial Report will provide the current, complete site information for approximately 22,000 LQGs and 1,300 TSDFs.

4. What Is The Estimated Reporting Burden for the 2003 Hazardous Waste Report?

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. Based on the changes discussed above, EPA estimates that the additional time for completing the Biennial Report would be less than 20 minutes; the estimated average time for completing the entire report would be about 20 hours. Based on the 2001 Biennial Report submissions, EPA estimates there will be 22,100 respondents to the 2003 Biennial Report. The average reporting burden is estimated at 17.06 hours per respondent, which includes time for reviewing instructions, gathering data, completing and reviewing the forms, and submitting the report. The average record keeping requirement is estimated at 2.49 hours per respondent, which includes the time for filing and storing the Biennial Report submission for three years.

We estimate that the 2003 Hazardous Waste Report will impose an annualized burden of 216,000 hours on the states and the regulated community and will require an annualized expenditure of $11,266,000.

5. Why Is EPA Requesting Comments?

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number, which indicates OMB approval. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. Before submitting this ICR to OMB for review and approval, we are again asking for comments on this information collection. The Agency solicits comments which will help it to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) enhance the quality, utility, and clarity of the information to be collected;

(3) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses; and

(4) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

Dated: March 12, 2003.

Robert Springer,

Director, Office of Solid Waste.

[FR Doc. 03–6463 Filed 3–17–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[RCRA–2003–0007; FRL–7468–2]

2003 Resource Conservation and Recovery Act National Meeting

AGENCY: Environmental protection agency.

ACTION: Notice of public invitation to Resource Conservation and Recovery Act National Meeting.

SUMMARY: Notice is hereby given of public invitation to the 2003 Resource Conservation and Recovery Act (RCRA) National Meeting, ''RCRA: Putting Resource Conservation into RCRA.'' The meeting will be held August 12–15, 2003. This year along with EPA, the meeting is being cosponsored by the Air & Waste Management Association (A&WMA), Solid Waste Association of North America (SWANA), International City/County Management Association (ICMA), and Association of State and Territorial Solid Waste Management Officials (ASTSWMO). In addition, the meeting will also bring together state governments and tribes. This year's National Meeting focuses on the Resource Conservation Challenge, which is a major national effort to find ways to conserve natural resources through waste reduction and energy recovery programs. The RCRA National Meeting is a great opportunity to share with, and learn from, all interested stakeholders. It promotes new EPA initiatives, fosters discussion, and provides education and information on regional, state, and tribal RCRA issues.

DATES: Again this year the entire National Meeting is open to the public. The RCRA National Meeting opens on Tuesday, August 12, 2003 and ends Friday, August 15, 2003. Admission is no longer free. Registration fees are as follows:

Registration type	Advance registration	After July 19, 2003
Full; Non-govt	$425	$525
Full; Govt (must provide valid ID)	295	395
Daily; Non-govt	250	320
Daily; Govt	175	245
Presenter; Full Conference	100	150
Student; full (must provide proof of full-time enrollment)	130	130

Presenters are entitled to a daily registration, at no charge, on the day that they are speaking. *The fee waiver is applicable only to one presenter per paper per presentation.* If a presenter wishes to register for any additional portion of the conference, the full conference registration fee is required.

ADDRESSES: The 2003 RCRA National Meeting will be held at the Hyatt Regency Washington on Capitol Hill at 400 New Jersey Avenue, NW., Washington, DC. Registration and Meeting details are available on the Internet at: *http://www.epa.gov/osw/meeting.*

SUPPLEMENTARY INFORMATION:

A. *Status:* Because seating is limited, preregistration is recommended; however, late and walk-in registration is

available between 8 a.m–9 a.m. on Tuesday, August 12, 2003. To reduce costs and minimize paper, we encourage everyone to register electronically for the meetings and at the Hyatt hotel using the meeting web site. If electronic registration is not possible, please contact William Brandes, Anita Cummings, or Jean Schwab.

B. *How Can I Get Copies of Related Information?* EPA has established an official public docket for this action under Docket ID No. RCRA–2003–0007. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the OSWER Docket Center, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20460. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding leagal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0270.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available materials through the docket facility identified in Unit B. Once in the system, select ''search,'' then key in the appropriate docket identification number.

FOR FURTHER INFORMATION CONTACT: Williams Brandes (703–308–8871), Anita Cummings (703–308–8303), or Jean Schwab (703–308–8669), Office of Solid Waste, Mail Code 5302W, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460. You may also contact them by e-mail at *brandes.william@epa.gov, cummings.anita@epa.gov,* or *schwab.jean@epa.gov.*

Dated: March 6, 2003.

Robert Springer,

Director, Office of Solid Waste.

[FR Doc. 03–6461 Filed 3–17–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7468–7]

Science Advisory Board; Notification of Public Advisory Committee Meeting; Radiation Advisory Committee (RAC) Conference Call

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA), Science Advisory Board (SAB), Radiation Advisory Committee (RAC) is announcing a planning teleconference meeting to discuss several proposed self-initiated projects for Fiscal Year 2004.

DATES: The conference call meeting will take place on Wednesday, April 2, 2003 from 10 a.m. to 12 noon eastern standard time.

ADDRESSES: Members of the public who wish to obtain the call-in number and access code to participate, must contact Ms. Mary Winston, EPA Science Advisory Board Staff Office; telephone/voice mail at (202) 564–4538 or via e-mail at *winston.mary@epa.gov* in order to register.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information about this conference call meeting should contact Dr. K. Jack Kooyoomjian, Designated Federal Officer, by telephone/voice mail at (202) 564–4557 or via e-mail at *kooyoomjian.jack@epa.gov.* General information concerning the EPA Science Advisory Board can be found on the EPA Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

1. *Summary:* The U.S. Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) is providing this notification of an upcoming teleconference call meeting of the Radiation Advisory Committee (RAC).

The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. This committee of the SAB will comply with the provisions of the Federal Advisory Committee Act (FACA) and all appropriate SAB policies and procedures.

During the public conference call meeting, to take place at the date and time noted above, the RAC will discuss its proposals for self-initiated projects to be considered by the SAB in FY 2004. Self-initiated projects are scientific and technical projects proposed outside of the normal mechanism of Agency-requested consultations, advisories, and peer reviews. Such projects are intended to address critical needs for anticipatory or cross-cutting scientific/technical advice. All SAB self-initiated projects will be evaluated by the SAB's Executive Committee (EC) during a public conference call to be announced in May 2003.

2. *Availability of Meeting Materials:* A copy of the draft agenda for the meeting that is the subject of this notice will be posted on the SAB Web site (*http://www.epa.gov/sab*) (under the AGENDAs subheading) approximately 10 days before the conference call meeting. Other materials that may be available, such as draft proposals for SAB self-initiated projects to be considered at the RAC conference call meeting will also be posted on the SAB Website in this time-frame.

3. *Providing Oral or Written Comments at SAB Meetings:* It is the policy of the EPA Science Advisory Board (SAB) to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA SAB expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For conference call meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Interested parties should contact the Designated Federal Official (DFO) at least one week prior to the meeting in order to be placed on the public speaker list for the meeting. Speakers may attend the meeting and provide comment up to the meeting time. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the

review panel for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted below in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution. Should comment be provided at the meeting and not in advance of the meeting, they should be in-hand to the DFO up to and immediately following the meeting.

Dated: March 12, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–6460 Filed 3–17–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–03–52–A (Auction No. 52); FCC 03–40]

Auction of Direct Broadcast Satellite Service Licenses Scheduled for August 6, 2003; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the auction of licenses to use the Direct Broadcast Satellite (''DBS'') service allocation and seeks comment on reserve prices or minimum opening bids and other auction procedures.

DATES: Comments are due on or before March 17, 2003, and reply comments are due on or before March 24, 2003.

ADDRESSES: Comments and reply comments must be sent by electronic mail to the following address: *auction52@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Auctions and Industry Analysis Division, WTB: *For legal questions:* Brian Carter at (202) 418–0660. *For general auction questions:* Jeff Crooks at (202) 418–0660 or Lisa Stover at (717) 338–2888. Satellite Division, IB: *For service rule questions:* Selina Khan at (202) 418–7282 or Rockie Patterson at (202) 418–1183.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 52 Comment Public Notice* released on March 3, 2003. The complete text of the *Auction No. 52 Comment Public Notice,* including the attachment, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The *Auction No. 52 Comment Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

I. General Information

1. By the *Auction No. 52 Comment Public Notice,* the Commission announces the auction of licenses to use the Direct Broadcast Satellite (''DBS'') service allocation scheduled to commence on August 6, 2003 (Auction No. 52). This auction will include 4 licenses for unassigned channels at orbital locations of 175° W.L., 166° W.L., 157° W.L., and 61.5° W.L. These licenses would be subject to the Commission's DBS service rules, including the geographic service rules at 47 CFR 25.148(c). Specifically, DBS licensees must provide DBS service to Alaska and Hawaii where such service is technically feasible from the authorized location. A complete list and description of the licenses available for Auction No. 52 is included as Attachment A of the *Auction No. 52 Comment Public Notice.*

2. The Balanced Budget Act of 1997 requires the Commission to ''ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed * * * before issuance of bidding rules, to permit notice and comment on proposed auction procedures * * *.'' Consistent with the provisions of the Balanced Budget Act and to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, the Commission seeks comment on a variety of auction-specific procedures relating to Auction No. 52. We note that the authority to establish specific procedures for Auction No. 52 has already been delegated to the Wireless Telecommunications Bureau (the ''Bureau'' or ''WTB'').

3. In addition to the enactment of the Balanced Budget Act of 1997, there have been legal developments relevant to satellite services since the Commission last conducted DBS auctions. Specifically, in 1996 the Commission adopted a *Report and Order,* 61 FR 9946 (March 12, 1996) (*''Disco I''*), that removed FCC regulatory prohibitions on the provision of various satellite services beyond the borders of the United States. In addition, in the year 2000 Congress enacted section 647 of the ORBIT Act, Public Law 106–180, 114 Stat. 48, which prohibits the Commission from using competitive bidding to assign orbital locations or spectrum used ''for the provision of international or global satellite communications services.'' In light of these regulatory and statutory actions, we believe it is appropriate to state herein our conclusion that they have not altered the Commission's authority to auction the DBS licenses included in Auction No. 52.

4. The DBS licenses that will be included in Auction No. 52 are not subject to the auction prohibition of the ORBIT Act because they are not authorizations to use spectrum ''for the provision of international or global satellite communications services.'' These licenses are for the use of DBS channels that, under the Region 2 Band Plan for Ku-band DBS satellites initially adopted in the International Telecommunication Union (''ITU'') 1983 Regional Administrative Radio Conference, have coverage patterns that are designed to—and do in fact—serve the United States almost exclusively. Thus, the technical parameters of the ITU Region 2 Band Plan provide for coverage areas for national service to the United States with incidental service to neighboring territories.

5. Moreover, neither the national coverage patterns nor the incidental international coverage patterns of the U.S. DBS satellite assignments may be expanded without further international agreement. A U.S.-licensed satellite operator at one of the orbital locations assigned to the United States cannot change, without the agreement of affected countries, any of the satellite's operations if that change will increase the interference potential to other countries' DBS satellite assignments above those levels permitted by international regulation. A change in the footprint to provide increased coverage of another country will potentially cause the modified assignment to exceed these levels. For a licensee to operate with such modified parameters, the United States, on behalf of the satellite operator, must request and obtain a modification to the Region 2 Band Plan pursuant to ITU procedures. The United States has not requested modifications for international service purposes to the Region 2 Band Plan for any of the orbital channel assignments

included in Auction No. 52. Thus, the auction will assign licenses for DBS satellites that can provide almost exclusively national service, with only incidental coverage outside the U.S. borders.

6. *DISCO I* removed FCC regulatory prohibitions on the provision of DBS service, as well as other types of satellite service, beyond the borders of the United States. However, *DISCO I* did not change the fact that the ITU Region 2 Band Plan provides for only an incidental signal outside U.S. borders. The technical parameters established under the ITU Region 2 Band Plan provide for national service to the United States, with incidental service to neighboring territories. DBS providers who operate under licenses for the eight orbital locations assigned to the United States under the Plan must comply with these technical parameters.

7. The incidental provision of transborder service does not convert an otherwise auctionable license to an unauctionable one. The legislative history of the ORBIT Act auction exemption, which consists of a House Commerce Committee Report on an earlier, unenacted bill containing an auction exemption identical to that of section 647 of the ORBIT Act, expresses concern for the effect that auctions could have on the viability and availability of global and international satellite services. The Committee indicated that an auctions exemption could help such service providers avoid financial burdens they might otherwise face if a U.S. auction regime precipitated a succession of auctions in numerous countries in which the operators might seek to provide service. The auctioning of U.S. DBS licenses that comply with the ITU Region 2 Band Plan does not implicate these concerns, given the fact that the Plan was designed to maintain the distinctly national character of the DBS service. We seek comment on these conclusions.

8. We also note that the Commission has not adopted any blanket eligibility restrictions on the licenses included in this auction. In the *Part 100 R&O,* 67 FR 51110 (August 7, 2002), proceeding, the Commission had the opportunity to address issues relating to ownership restrictions and implementation of services. The Commission considered comments filed raising such eligibility and ownership issues and declined to adopt any specific restrictions. In this regard, we note that, in some services, the Commission has used a standard for determining whether an eligibility restriction is warranted. In those cases, we have determined that an eligibility restriction may be imposed only when there is significant likelihood of substantial harm to competition in specific markets and when the restriction will be effective in eliminating that harm. This approach results in reliance on competitive market forces to guide license assignment absent a compelling showing that regulatory intervention to exclude potential participants is necessary. We seek comment as to the use of that standard for this service.

9. Nonetheless, one of the four licenses scheduled for auction authorizes the use of only two channels. The Commission has previously noted that with so few authorized channels it may be difficult for a DBS licensee to provide sufficient capacity to operate a viable system. Generally, does this concern warrant any modification of our existing open eligibility regime? We request comment on whether we should adopt any specific eligibility criteria for licenses at the 61.5§° W.L. location such as: (i) Whether the applicant should be an existing permittee at the 61.5§° W.L. location; (ii) whether the channels should be assigned to an applicant that holds no other DBS channel resources capable of serving the continental United States; and (iii) whether the applicant should be required to demonstrate an ability to launch in the near future. Should the Commission consider eligibility restrictions on particular orbital locations based on entities' market position in the provision of terrestrial multichannel video programming? Finally, we seek comment on any other proposed eligibility requirements for each of the orbital locations, including the rationale for any such requirements.

II. Auction Structure

A. Simultaneous Multiple Round (SMR) Auction Design

10. The Commission proposes to award all licenses included in Auction No. 52 in a simultaneous multiple-round auction. As described further, this methodology offers every license for bid at the same time with successive bidding rounds in which bidders may place bids. We seek comment on this proposal.

B. Upfront Payments and Initial Maximum Eligibility

11. The Bureau has delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned, taking into account such factors as the population in each geographic license area, and the value of similar spectrum. The upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on licenses. Upfront payments related to the specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction. With these guidelines in mind for Auction No. 52, the Commission proposes to set upfront payments on a license-by-license basis as follows:

UPFRONT PAYMENTS

Orbital Location	175° W.L.	166° W.L.	157° W.L.	61.5° ;W.L.
Per Channel	$50,000	$50,000	$100,000	$400,000
No. of Channels	32	32	32	2
Upfront Payment	$1,600,000	$1,600,000	$3,200,000	$800,000

Additionally, we list all licenses and the proposed upfront payment for each in Attachment A of the *Auction No. 52 Comment Public Notice.* We seek comment on this proposal.

12. The Commission further proposes that the amount of the upfront payment submitted by a bidder will determine the number of bidding units on which a bidder may place bids. This limit is a bidder's ''maximum initial eligibility.'' Each license is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 52 Comment Public Notice,* on a bidding unit per dollar basis. This number does not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific licenses. Rather, a bidder may place bids on any combination of licenses as long as the total number of bidding units associated with those licenses does not exceed the bidder's eligibility. Eligibility cannot be increased during the auction. Thus, in calculating its upfront payment amount,

an applicant should determine the maximum number of bidding units it may wish to bid on (or hold high bids on) in any single round and submit an upfront payment covering that number of bidding units. We seek comment on this proposal.

C. Activity Rules

13. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively on a percentage of their current bidding eligibility during each round of the auction rather than waiting until the end to participate. A bidder that does not satisfy the activity rule will either use an activity rule waiver (if any remain) or lose bidding eligibility for the next round.

14. The Commission proposes to divide the auction into three stages, each characterized by an increased activity requirement. The auction will start in Stage One. We propose that the auction will advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) after two consecutive rounds in which only one new high bid is placed in each round. The Bureau will notify bidders by announcement when a stage transition takes place during the auction. We also propose that the Bureau retain discretion to change stages unilaterally by announcement during the auction, and further propose that the Bureau retain the discretion not to make a transition to the next stage when the conditions described above are met. In exercising this discretion, the Bureau will consider a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentage of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. We seek comment on these proposals.

15. For Auction No. 52, we propose the following activity requirements:

Stage One: In each round of the first stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on licenses representing at least 50 percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the current round activity by two.

Stage Two: In each round of the second stage, a bidder desiring to maintain its current eligibility is required to be active on 75 percent of its current bidding eligibility. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the current round activity by four-thirds (4⁄3).

Stage Three: In each round of the third stage, a bidder desiring to maintain its current eligibility is required to be active on 100 percent of its current bidding eligibility. In this final stage, reduced eligibility for the next round will be set at current round activity. For example, if a bidder is not the standing high bidder and did not place a bid in the current round its eligibility would be reduced to zero. If it had no waivers remaining, it would be eliminated from the auction.

16. We seek comment on these proposals. Commenters that believe these activity rules should be modified should explain their reasoning and comment on the desirability of an alternative approach. Commenters are advised to support their claims with analyses and suggested alternative activity rules.

D. Activity Rule Waivers and Reducing Eligibility

17. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license. Activity rule waivers can be either proactive or automatic and are principally a mechanism for auction participants to avoid the loss of auction eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

Note: Once a proactive waiver is submitted during a round, that waiver cannot be unsubmitted.

18. The Automated Auction System assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an ''automatic waiver'') at the end of any bidding round in which a bidder's activity level is below the minimum required unless: (i) the bidder has no activity rule waivers remaining; or (ii) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements. Note: If a bidder has no waivers remaining and does not satisfy the required activity level, its current eligibility will be permanently reduced, possibly eliminating the bidder from the auction.

19. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding period by using the ''reduce eligibility'' function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described above. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

20. A bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the ''proactive waiver'' function in the bidding system) during a bidding period in which no bids or withdrawals are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids or withdrawals will not keep the auction open.

21. The Commission proposes that each bidder in Auction No. 52 be provided with three activity rule waivers that may be used at the bidder's discretion during the course of the auction. We seek comment on this proposal.

E. Information Relating to Auction Delay, Suspension, or Cancellation

22. For Auction No. 52, we propose that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureau may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureau and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. We seek comment on this proposal.

III. Bidding Procedures

A. Round Structure

23. The Commission will conduct Auction No. 52 over the Internet.

Telephonic Bidding will also be available. As a contingency, the FCC Wide Area Network will be available as well. The telephone number through which the backup FCC Wide Area Network may be accessed will be announced in a later public notice. Full information regarding how to establish such a connection, and related charges, will be provided in the public notice announcing details of auction procedures.

24. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. The simultaneous multiple round format will consist of sequential bidding rounds, each followed by the release of round results. Details regarding the location and format of round results will also be included in the qualified bidders public notice.

25. The Bureau has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors. We seek comment on this proposal.

B. Reserve Price or Minimum Opening Bid

26. The Balanced Budget Act calls upon the Commission to prescribe methods for establishing a reasonable reserve price or a minimum opening bid when FCC licenses are subject to auction, unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted. It is generally used to accelerate the competitive bidding process. Also, the auctioneer often has the discretion to lower the minimum opening bid amount later in the auction. It is also possible for the minimum opening bid and the reserve price to be the same amount.

27. In light of the Balanced Budget Act's requirements, the Commission proposes to establish minimum opening bids for Auction No. 52. We believe that a minimum opening bid, which has been utilized in other auctions, is an effective bidding tool.

28. Specifically, for Auction No. 52, the Commission proposes to set minimum opening bids on a license-by-license basis as follows:

MINIMUM OPENING BIDS

Orbital Location	175° W.L.	166° W.L.	157° W.L.	61.5° W.L.
Per Channel	$100,000	$100,000	$200,000	$800,000
No. of Channels	32	32	32	2
Minimum Opening Bid	$3,200,000	$3,200,000	$6,400,000	$1,600,000

The specific minimum opening bid for each license available in Auction No. 52 is also set forth in Attachment A of the *Auction No. 52 Comment Public Notice.* Comment is sought on this proposal.

29. If commenters believe that these minimum opening bids will result in a substantial percentage of unsold licenses, or are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid levels or formulas. In establishing the minimum opening bids, we particularly seek comment on such factors as the orbital location and the number of channels being auctioned, the size of the area being served, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of the DBS licenses. Alternatively, comment is sought on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

C. Minimum Acceptable Bids and Bid Increments

30. In each round, eligible bidders will be able to place bids on a given license in any of nine different amounts. The Automated Auction System interface will list the nine acceptable bid amounts for each license. Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. In the rounds after an acceptable bid is placed on a license, the minimum acceptable bid for that license will be equal to the standing high bid plus the defined increment.

31. Once there is a standing high bid on a license, the Automated Auction System will calculate a minimum acceptable bid for that license for the following round. The difference between the minimum acceptable bid and the standing high bid for each license will define the bid increment. The nine acceptable bid amounts for each license consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, etc.).

32. For Auction No. 52, the Commission proposes to use a 10 percent bid increment. This means that the minimum acceptable bid for a license will be approximately 10 percent greater than the previous standing high bid received on the license. The minimum acceptable bid amount will be calculated by multiplying the standing high bid times one plus the increment percentage—*i.e.*, (standing high bid) * (1.10). We will round the result using our standard rounding procedures for minimum acceptable bid calculations: results above $10,000 are rounded to the nearest $1,000; results below $10,000 but above $1,000 are rounded to the nearest $100; and results below $1,000 are rounded to the nearest $10.

33. Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. The additional bid amounts are calculated using the difference between the minimum opening bid times one plus the minimum percentage increment, rounded as described above, and the minimum opening bid. That is, I = (minimum opening bid)(1 + N){rounded} − (minimum opening bid).

Therefore, when N equals 0.1, the first additional bid amount will be approximately ten percent higher than the minimum opening bid; the second, twenty percent; the third, thirty percent; etc.

34. In the case of a license for which the standing high bid has been withdrawn, the minimum acceptable bid will equal the second highest bid received for the license. The additional bid amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid.

35. The Bureau retains the discretion to change the minimum acceptable bids and bid increments if it determines that circumstances so dictate. The Bureau will do so by announcement in the Automated Auction System. We seek comment on these proposals.

D. High Bids

36. At the end of a bidding round, the high bids will be determined based on the highest gross bid amount received for each license. A high bid from a previous round is sometimes referred to as a ''standing high bid.'' A ''standing high bid'' will remain the high bid until there is a higher bid on the same license at the close of a subsequent round. Bidders are reminded that standing high bids confer bidding activity.

37. In the event of identical high bids on a license in a given round (*i.e.*, tied bids), we propose to use a random number generator to select a high bid from among the tied bids. The remaining bidders, as well as the high bidder, will be able to submit a higher bid in a subsequent round. If no bidder submits a higher bid in a subsequent round, the high bid from the previous round will win the license. If any bids are received on the license in a subsequent round, the high bid again will be determined by the highest gross bid amount received for the license.

E. Information Regarding Bid Withdrawal and Bid Removal

38. For Auction No. 52, the Commission proposes the following bid removal and bid withdrawal procedures. Before the close of a bidding period, a bidder has the option of removing any bid placed in that round. By removing selected bids in the bidding system, a bidder may effectively ''unsubmit'' any bid placed within that round. A bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid.

39. A high bidder may withdraw its standing high bids from previous rounds using the ''withdraw function'' in the bidding system. A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payment provisions of the Commission rules. We seek comment on these bid removal and bid withdrawal procedures.

40. In the *Part 1 Third Report and Order,* 63 FR 770 (January 7, 1998), the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of efficient backup strategies as information becomes available during the course of an auction. The Commission noted, however, that, in some instances, bidders may seek to withdraw bids for improper reasons. The Bureau, therefore, has discretion in managing the auction, to limit the number of withdrawals to prevent any bidding abuses. The Commission stated that the Bureau should assertively exercise its discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular market if the Bureau finds that a bidder is abusing the Commission's bid withdrawal procedures.

41. Applying this reasoning, the Commission proposes to limit each bidder in Auction No. 52 to withdrawing standing high bids in no more than one round during the course of the auction. To permit a bidder to withdraw bids in more than one round would likely encourage insincere bidding or the use of withdrawals for anti-competitive purposes. The round in which withdrawals are utilized will be at the bidder's discretion; withdrawals otherwise must be in accordance with the Commission's rules. There is no limit on the number of standing high bids that may be withdrawn in the round in which withdrawals are utilized. Withdrawals will remain subject to the bid withdrawal payment provisions specified in the Commission's rules. We seek comment on this proposal.

F. Stopping Rule

42. The Commission has discretion ''to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time.'' For Auction No. 52, the Commission proposes to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all licenses remain open until bidding closes simultaneously on all licenses.

43. Bidding will close simultaneously on all licenses after the first round in which no new acceptable bids, proactive waivers, or withdrawals are received. Thus, unless circumstances dictate otherwise, bidding will remain open on all licenses until bidding stops on every license.

44. However, the Commission proposes that the Bureau retain discretion to exercise any of the following options during Auction No. 52:

i. Utilize a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this modified stopping rule. The Commission further seeks comment on whether this modified stopping rule should be used at any time or only in stage three of the auction.

ii. Keep the auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. The activity rule, therefore, will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver.

iii. Declare that the auction will end after a specified number of additional rounds (''special stopping rule''). If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s) only for licenses on which the high bid increased in at least one of a specified preceding number of rounds.

45. The Commission proposes that the Bureau exercise these options only in certain circumstances, such as, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising these options, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of licenses for which there is still a high level of bidding activity. We seek comment on these proposals.

IV. Conclusion

46. Comments are due on or before March 17, 2003, and reply comments are due on or before March 24, 2003. Because of the disruption of regular mail and other deliveries in Washington, DC, the Bureaus require that all comments and reply comments be filed electronically. Comments and reply comments must be sent by electronic mail to the following address: *auction52@fcc.gov*. The electronic mail containing the comments or reply comments must include a subject or caption referring to Auction No. 52 Comments. The Commission requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Copies of comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

47. In addition, the Commission requests that commenters fax a courtesy copy of their comments and reply comments to the attention of Kathryn Garland at (717) 338–2850.

48. This proceeding has been designated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–6476 Filed 3–13–03; 3:22 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–03–52–B (Auction No. 52); DA 03–793]

Auction of Direct Broadcast Satellite Service Deadlines Extended for Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document extends the comment and reply comment date to allow additional time to comment on reserve prices or minimum opening bids and other auction procedures in Auction No. 52.

DATES: Comments are due on or before March 24, 2003 and reply comments are due on or before March 31, 2003.

ADDRESSES: Comments and reply comments must be sent by electronic mail to the following address: *auction52@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Brian Carter at (202) 418–0660.

SUPPLEMENTARY INFORMATION: On March 3, 2003, the Commission released the *Auction No. 52 Comment Public Notice,* published elsewhere in this issue of the **Federal Register**, announcing the auction of licenses to use the Direct Broadcast Satellite (''DBS'') service allocation. Comments were due on or before March 17, 2003, and reply comments were due on or before March 24, 2003. By this document, the Wireless Telecommunications Bureau extends the deadline for comments to March 24, 2003, and the deadline for reply comments to March 31, 2003.

Federal Communications Commission.

Margaret Wiener,

Chief, Auctions and Industry Analysis Division, WTB.

[FR Doc. 03–6588 Filed 3–17–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Renewals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the renewal of certain FDA advisory committees by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the charters of the committees listed in the following table for an additional 2 years beyond charter expiration date. The new charters will be in effect until the dates of expiration listed in the following table. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Public Law 92–463 (5 U.S.C. app. 2)).

DATES: Authority for these committees will expire on the dates indicated in the following table unless the Commissioner formally determines that renewal is in the public interest.

Name of committee	Date of expiration
Science Board to the Food and Drug Administration	June 26, 2004
Allergenic Products Advisory Committee	July 9, 2004
Cardiovascular Drugs Advisory Committee	August 27, 2004
Endocrinologic and Metabolic Drugs Advisory Committee	August 27, 2004
Oncologic Drugs Advisory Committee	September 1, 2004
Anti-Infective Drugs Advisory Committee	October 7, 2004
Dermatologic and Ophthalmic Drugs Advisory Committee	October 7, 2004
Biological Response Modifiers Advisory Committee	October 28, 2004
Technical Electronic Product Radiation Safety Standards Committee	December 24, 2004
Antiviral Drugs Advisory Committee	February 15, 2005

FOR FURTHER INFORMATION CONTACT: Linda A. Sherman, Advisory Committee Oversight and Management Staff (HF–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1220.

Dated: March 10, 2003.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 03–6397 Filed 3–17–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Allergenic Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Allergenic Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held via videoconference and teleconference on April 8, 2003, from 1 p.m. to 3:30 p.m.

Location: Food and Drug Administration, Bldg. 29B, conference rm. A, 8800 Rockville Pike, Bethesda, MD. This meeting will be held by video and teleconference. The public is welcome to attend the meeting at the onsite location. A speaker phone will be provided for public participation.

Contact Person: William Freas or Jane Brown, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12388. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will listen to updates on FDA activities relating to allergen extract standardization.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by April 3, 2003. Oral presentations from the public will be scheduled between approximately 2:15 p.m. and 3:15 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 4, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact William Freas, or Jane Brown at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 10, 2003.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 03–6368 Filed 3–17–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

National Mammography Quality Assurance Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: National Mammography Quality Assurance Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 28, 2003, from 9 a.m. to 6 p.m.

Location: Holiday Inn, Walker/Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Charles Finder, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3332, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12397. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will receive information on the reauthorization of the Mammography Quality Standards Act (MQSA) and will discuss the potential impact of reauthorization on the current regulations particularly as it relates to personnel competency. The committee will also discuss mechanisms to recruit and retain mammography personnel as well as the latest draft and final MQSA compliance guidance changes. The committee will receive updates on approved alternative standards, the status of accreditation and certification of full field digital mammography, current inspection follow-up actions, and an overview of inspection observations. The MQSA compliance guidance documents, which are in a question and answer format, are available to the public on the Internet at http://www.fda.gov/cdrh/mammography. This guidance is being updated continually in response to questions that FDA receives from the public.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 31, 2003. Oral presentations from the public will be scheduled between approximately 9:30 a.m. and 10:30 a.m. on April 28, 2003. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 31, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Shirley Meeks, Conference Management Staff, at 301–594–1283, ext. 105, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 10, 2003.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 03–6369 Filed 3–17–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Science Board to the Food and Drug Administration; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Science Board to the Food and Drug Administration.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 9, 2003, from 8 a.m. to 4:30 p.m.

Location: Food and Drug Administration, rm. 1066, 5630 Fishers Lane, Rockville, MD 20857.

Contact Person: Susan Bond, Office of the Commissioner, Food and Drug Administration (HF–33), 5600 Fishers Lane, Rockville, MD 20857, 301–827–6687, sbond@oc.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12603. Please call the Information Line for up-to-date information on this meeting.

Agenda: The board will hear and discuss the FDA's launched initiative to improve the development and availability of innovative medical products, specifically in the area of pharmacogenomics. The board will also hear updates on the pharmaceutical manufacturing initiative.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 28, 2003. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 28, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Susan Bond at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 10, 2003.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 03–6367 Filed 3–17–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Redesignation of Contract Health Service Delivery Area

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: This notice advises the public that the Indian Health Service (IHS) is redesignating the geographic boundaries of the Contract Health Service Delivery Area (CHSDA) for the Rosebud Sioux Tribe (''The Tribe''). The Tribe's CHSDA was comprised of Bennett, SD, Cherry, NE, Mellette, SD, Todd, SD and Tripp, SD counties in South Dakota and Nebraska. These counties were designated as the Tribe's CHSDA when the IHS published its updated list of CHSDAs in the **Federal Register** of January 10, 1984 (49 FR 1291). It is proposed that the redesignated CHSDA be comprised of seven counties in the States of South Dakota and Nebraska, Bennett, SD, Cherry, NE, Mellette, SD, Todd, SD, Tripp, SD, Gregory, SD and Lyman, SD. This notice is issued under authority of 43 FR 34654, August 4, 1978.

DATES: Comments must be received on or before April 17, 2003.

ADDRESSES: Comments may be mailed to Betty Gould, Regulations Officer, Division of Regulatory and Legal Affairs, Indian Health Service, 12300 Twinbrook Parkway, Suite 450, Rockville, MD 20857, Telephone 301–443–7899 (This is not a toll-free number). Comments received will be available for inspection at the address above from 9 a.m. to 3 p.m., Monday through Friday, beginning approximately two weeks after publication.

FOR FURTHER INFORMATION CONTACT: Leslie Morris, Director, Division of Regulatory and Legal Affairs, Office of Management Support, Indian Health Service, 12300 Twinbrook Parkway, Suite 450, Rockville, MD 20857, Telephone 301–443–1116. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On August 4, 1978, the IHS published regulations establishing eligibility criteria for receipt of contract health services and for the designation of CHSDAs (43 FR 34654, codified at 42 CFR 136.22, last published in the 2002 version of the Code of Federal Regulations). On September 16, 1987, the IHS published new regulations governing eligibility for IHS services. Congress has repeatedly delayed implementation of the new regulations by imposing annual moratoriums. Section 719(a) of the Indian Health Care Amendments of 1988, Pub. L. 100–713, explicitly provides that during the period of the moratorium placed on implementation of the new eligibility regulations, the IHS will provide services pursuant to the criteria in effect on September 15, 1987. Thus, the IHS contract health services program continues to be governed by the regulations in effect on September 15, 1987. *See* 42 CFR 136.21, *et seq.* (2002).

As applicable to the Tribe, these regulations provide that, unless otherwise designated, a CHSDA shall consist of a county which includes all or part of a reservation and any county or counties which have a common boundary with the reservation (42 CFR 136.22). The regulations also provide that after consultation with the tribal governing body or bodies of those reservations included in the CHSDA, the Secretary may, from time to time, redesignate areas within the United States for inclusion in or exclusion from a CHSDA. The regulations require that certain criteria must be considered before any redesignation is made. The criteria are as follows:

(1) The number of Indians residing in the area proposed to be so included or excluded;

(2) Whether the tribal governing body has determined that Indians residing in the area near the reservation are socially

and economically affiliated with the tribe;

(3) The geographic proximity to the reservation of the area whose inclusion or exclusion is being considered; and

(4) The level of funding which would be available for the provision of contract health services.

Additionally, the regulations require that any redesignation of a CHSDA must be made in accordance with the procedures of the Administrative Procedure Act (5 U.S.C. 553). In compliance with this requirement, we are publishing this proposal and requesting public comment.

Pursuant to a Tribal Resolution 2000–32, dated March 9, 2000, the Tribe requested the IHS to redesignate their current CHSDA, which incorporates Mellette, Bennett, Todd, Trip and Cherry Counties in the State of South Dakota and Nebraska, to include Gregory and Lyman counties. In applying the aforementioned CHSDA redesignated criteria required by required by 42 CFR 136.22, the following findings are made:

(1) The Tribe enrollment and census records identify 519 tribal members residing in Gregory County and 0 tribal members residing in Lyman County.

(2) The Tribe has determined that contract health services would be available to all its members and members of other federally recognized tribes who reside in Gregory County and Lyman County having close social and economic ties with the Tribe.

(3) Gregory County is presently a CHSDA county for the Yankton Sioux Tribe. There are 159 Tribal members, of the 519 total, who are eligible for the Yankton Sioux CHS program because of close economic-social ties. The Yankton Sioux and Rosebud Sioux CHS programs will work together on the eligibility and CHS coverage on a case-by-case basis. Lyman County is presently a CHSDA county for the Lower Brule Sioux Tribe. There are 0 Tribal members who are eligible for the Lower Brule Sioux CHS program. The Lower Brule and Rosebud CHS program will work together on the eligibility and CHS coverage on a case-by-case basis if/when there are Rosebud Sioux residing within Lyman County.

(4) At this time, although Gregory County does not border the Rosebud Sioux's reservation, Gregory County was within the original boundaries of the reservation and continues to have a significant population of Rosebud Sioux. The Tribe chose to include Lyman County in the expansion even though, at the time of the analysis, there were no Rosebud Sioux tribal members residing in Lynn County. The close proximity to the original boundaries of the reservation was considered because there could be members residing in Lyman County in the future.

(5) The 519 tribal members residing in Gregory County presently utilize the Rosebud Indian Health Service facility's direct care services. Therefore, the clinical work load units will not be impacted. It is estimated that the current eligible contract health service population will be increased by 519 in Gregory County. The Rosebud CHS program has a recurring CHS funding base of $4,233,730. The formula used to determine what impact the additional 519 members, residing in Gregory County, would have on the Rosebud CHS fund is determined by using the Aberdeen Area's type of facility per capita of $327 × 519 = $169,713. The 0 number residing in Lyman County would have no impact at this time. The Rosebud Indian Health Service facility recognizes that there will be no additional CHS funding for this CHSDA expansion but they do not expect a significant impact on their present funding and support the tribe's CHSDA expansion and redesignation. The expansion and redesignation of the CHSDA to include both Gregory County and Lyman County is within the present available resources.

Accordingly, after considering the Tribe's request in light of the criteria specified in the regulations I am proposing to redesignate the CHSDA of the Tribe to consist of Bennett, SD, Cherry, NE, Mellette, SD, Todd, SD, Tripp, SD, Gregory, SD and Lyman, SD, Counties of South Dakota and Nebraska.

This notice does not contain reporting or recordkeeping requirements subject to prior approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

Dated: March 10, 2003.

Charles W. Grim,

Assistant Surgeon General, Interim Director, Indian Health Service.

[FR Doc. 03–6398 Filed 3–17–03; 8:45 am]

BILLING CODE 4160–16–M

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.

Development of a Novel High Throughput Assay To Measure Cell Infection With Vaccinia Strains Expressing Reporter Genes

Hana Golding (FDA).

U.S. Provisional Patent Application 60/429,767 filed 27 Nov 2002.

Licensing Contact: Peter Soukas; 301/435–4646; *soukasp@od.nih.gov.*

Critical to developing a vaccine against viral infections is an assay to measure the neutralizing antibody present in blood of vaccine recipients. The currently available tests are labor intensive and require 5–6 days to complete. The inventors have designed a high throughput vaccinia neutralization assay, which offers several advantages over the assays that are currently used. It is completed in as little as 24 hours, it is sensitive, highly reproducible, requires only 50 μl of plasma and uses automated readout. This assay is based on the use of recombinant vaccinia virus (vSC56) expressing a bacterial gene coding for the enzyme b-galactosidase (b-Gal) under the control of a synthetic early/late promotor. Another recombinant virus expressing an inducible reporter gene (EGFP) is also being tested in neutralization assay. These assays may be of value in the clinical trials of new smallpox vaccines, for evaluations of new vaccinia immunoglobulin (VIG) and anti-viral agents under development. The technology itself may be adapted for construction of neutralization assays for other viruses and intracellular pathogens.

Method of Separating Recombinant Immunotoxin

Hua Jiang et al. (NCI).

DHHS Reference No. E–209–2002/0–US–01 filed 07 Nov 2002.

Licensing Contact: Jonathan Dixon; 301/435–5559; *dixonj@od.nih.gov.*

Over the past several years, dsFv-immunotoxins have generated significant interest in the research and commercial communities, as they have been shown to me more useful in certain therapeutic applications over intact antibody-immunotoxins and Fv-immunotoxins. dsFv-immunotoxins are created when a single-chain variable domain-toxin conjugate is associated with the complementary single-chain variable domain via one or more disulfide bonds to form a ''disulfide-stabilized'' Fv (dsFv)-immunotoxin.

Separation of dsFv-immunotoxin from its single-chain variable domain subunits (and any other contaminants) has thus far been achieved through a low yielding and relatively expensive process. The present invention discloses a new method of purifying dsFv-immunotoxins that has shown a three-fold increase in yield while at the same time keeping costs at a commercially reasonable level. As the demand for dsFv-immunotoxins increases, this method will give companies the ability to purify sufficient quantities to support their clinical trials and make their way to the commercial marketplace.

Optimization of Cardiac Contraction by Novel Human Kinase Mediated Differential Phosphorylation of Myosin

Dr. Neal D. Epstein (NHLBI).
DHHS Reference Nos. E–261–00/0 filed 12 Sep 2000 and E–261–00/2 filed 12 Sep 2001.
Licensing Contact: Fatima Sayyid; 301/435–4521; *sayyidf@od.nih.gov.*

This invention relates to the development of drugs that provide novel therapeutic interventions to increase the efficiency of failing hearts. It describes the cloning of the active cardiac kinase which modified the cardiac stretch-activation response and myofiber tension via phosphorylation of the beta myosin light chain molecules. These molecules are differentially phosphorylated by this kinase as a function of location to produce the spatial variation in myofiber mechanics that optimize cardiac torsion. The data in this invention indicate that targeting this cardiac light chain kinase could yield novel therapeutics to increase the efficiency of hearts failing from a variety of causes. This approach represents an alternative to present day therapeutics such as calcium blocking agents or digoxin, and thus may have the added benefit of providing therapeutics that are synergistic with present treatments.

This invention is described, in part, in Davis et al., Cell 2001 Nov 30; 107(5):631–41.

Methods of Screening for Risk of Cancer Using Human Lactoferrin DNA Probe or Primer

Christina Teng and Timothy Panella (NIEHS).
U.S. Patent 5,948,613 issued 07 Sep 1999.
Licensing Contact: Marlene Shinn-Astor; 301/435–4426; *shinnm@od.nih.gov.*

While normal breast ductal epithelium and neutrophilic granulocytes contain lactoferrin, their malignant counterparts frequently do not. The NIH announces primers or probes corresponding to the human lactoferrin gene, its promoter region, and its protein product, obtained from human breast tissue. The lactoferrin primer or probes can be used to screen for malignancy arising from tissues that normally secrete lactferrin, or as a test to check the recovery of a patient from a malignancy.

Dated: March 5, 2003.

Steven M. Ferguson,

Acting Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–6366 Filed 3–17–03; 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.

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Methods for Prophylaxis and Treatment of HER–2/neu Tumors

John C. Morris, Jay A. Berzofsky, Yoshio Sakai, Jong-Myun Park, Masake Terabe (all of NCI).
Serial No. 60/422,395 filed 30 Oct 2002.
Licensing Contact: Susan S. Rucker; 301/435–4478; *ruckers@od.nih.gov.*

This application relates to methods for cancer prophylaxis and treatment. More particularly, the application relates to methods for the treatment and prophylaxis of cancers caused by the activity of the HER–2/neu/erbB–2 gene employing immunotherapy. Such cancers include breast cancers, cancers of the female genital tract and some cancers of the gastrointestinal tract.

The methods claimed involve the use of a HER–2/neu vaccine employing recombinant non-replicating adenovirus expressing a HER–2/neu/erbB–2 gene. In a preferred embodiment the vaccine comprises a recombinant non-replicating adenoviral vector encoding a HER–2/neu/erbB–2 gene that is expressed as a truncated HER–2/neu/erbB–2 protein. Antigen presenting cells, such as dendritic cells infected with the recombinant adenoviral vector, process and present the truncated HER–2/neu/erbB–2 protein, thereby stimulating an immune response. Preferred HER–2/neu/erbB–2 proteins contain regions of the extracellular domain and the transmembrane domain of the intact HER–2/neu/erbB–2 gene product and do not contain any tyrosine kinase domains.

This work has not yet been published.

gp100 Cancer Antigens

Steven A. Rosenberg et al. (NCI).
U.S. Patent 5,844,075 issued 10 Dec. 1998.
Licensing Contact: Jonathan Dixon; 301/435–5559; *dixonj@od.nih.gov.*

DHHS announces the availability of select gp100 cancer antigens for licensing. These antigens are composed of a class that fall under the following definition: gp100 P Core Peptide(s), meaning any gp100 peptide of nine (9) to fifteen (15) amino acids in length which is capable of eliciting an HLA–A2.1–restricted cytotoxic T cell response, and which comprises the formula $X_1X_2X_3PGPX_5TX_4$, where X_1 is any naturally occurring amino acid, X_2 is any hydrophobic aliphatic amino acid; X_3 is any naturally occurring amino acid; X_4 is any hydrophobic aliphatic amino acid, and X_5 is the amino acid V, C, I, L, or M.

GP100 is a tumor specific melanoma antigen. GP100 has been shown to be successful in stimulating the immune response to melanoma in humans.

Novel Cyclic Polyamines That Release Nitric Oxide in a Biphasic Manner

David Waterhouse et al. (NCI).
DHHS Reference No. E–189–2002/0 filed 07 May 2002.
Licensing Contact: Norbert Pontzer; 301/435–5502; e-mail: *np59n@nih.gov.*

Nitric oxide (NO), a simple diatomic molecule, plays a diverse and complex role in cellular physiology. Although medical research is rapidly discovering potential therapeutic uses for NO, the exogenous administration of gaseous NO is not feasible because of low solubility in physiological buffers, widespread pharmacological actions and a short half-life in the body. NCI scientists have previously produced a number of nucleophile/nitric oxide adducts (diazeniumdiolates) that spontaneously dissociate at physiological pH to release nitric oxide (NO) by stable first order kinetics. These compounds allow for the localized action of NO by, for example, having NO released from biocompatible medical devices coated with the NO-releasing compounds or polymers. The half-life of NO release from currently available compounds and polymers can vary from minutes to many hours under physiological conditions. However, it could be useful to have an initial high rate of NO release followed by a subsequent slower longer term release from a single compound. These inventors have now discovered polydiazeniumdiolated materials that, as single crystals compounds, provide the multiple multiphasic NO release necessary to accomplish that goal. They also provide medical uses of these compounds such as treatment of infection, inhibition of tumor cell growth, conjugation to antibodies, treatment of ischemia/repurfusion injury, attachment to polymers, and medical substrates such as stents coated with these compounds.

Dated: March 11, 2003.

Steven M. Ferguson,

Acting Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–6441 Filed 3–17–03; 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.

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Lepirudin Adsorbed to Catheter

McDonald Horne (CC)
DHHS Reference No. E–295–02/0
Licensing Contact: Michael Shmilovich; 301/435–5018; *shmilovichm@od.nih.gov.*

The invention is a method for preventing venous access device (VAD) thrombosis by coating the VAD catheter with lepirudin, which has been found to be readily adsorbed by the silicone rubber of the VADs, and is expected to have good retention properties. VADs typically remain in place for weeks or months and sometimes cause clotting (thrombosis) of the veins. Accordingly, the simple technique of soaking a silicone catheter in lepirudin before venous insertion is the gist of the invention. Chronically ill patients who must be catheterized for long periods of time will benefit particularly from this technique which promises to reduce swelling and pain associated with VAD-induced thrombosis.

Peptide Inhibitors of Yersinia Phosphatase (YopH) as Potential Treatments Against Plague

Terrence Burke, Jr., et al. (NCI)
DHHS Reference No. E–263–2002
Licensing Contact: Cristina Thalhammer-Reyero; 301/435–4507; *thalhamc@od.nih.gov.*

This invention pertains to compounds, i.e., peptides or pro-drugs thereof, which are useful as inhibitors of phosphotyrosine phosphatases, and in particular, as inhibitors of the Yersinia phosphatase (YopH). The invention also provides pharmaceutical compositions and a method of inhibiting the YopH enzyme as well as a method of treating plague or Black Death. The compounds may be useful as anti-bioterrorism agents, and are potentially important for therapeutic development because they may facilitate bioavailablility, given the low ionic charge of the inhibitors.

The bacterium Yersinia pestis causes bubonic, pneumonic and septicemic plague, and it is considered as a potential bioterrorism agent. Within Yersinia is a 70 kb virulence plasmid, which encodes for a system of secreted proteins, called ''Yops'', which act either as intracellular effectors or as translocators. Yersinia's Yop system represents the archetype for one of the major virulence mechanisms in various pathogenic bacteria, referred to as type III, where extracellular bacteria that are in close contact with a eukaryotic cell deliver bacterial proteins into the cytosol of the cell. Other animal pathogens with related systems include the genera Salmonella, Shigella, Pseudomonas, Chlamydia, and Bortedella, as well as E. coli.

One such effector protein, YopH, is a protein-tyrosine phosphatase (PTP) with a C-terminal catalytic domain that is essential to Yersinia's virulence, playing an antiphagocytic role by dephosphorylating focal adhesion proteins. The phosphatase activity of YopH is required for bacterial pathogenesis. This invention relates to the use of tripeptides as inhibitors of YopH, and therefore as potential treatments of plague. More in particular, the inventors have discovered that certain structural features are required to be present on those peptides in order to be inhibitory against Yersinia's YopH.

A Varicella-Zoster Virus Vaccine Mutant That Is Markedly Impaired for Latent Infection

Jeffrey Cohen (NIAID), Edward Cox (FDA), Lesley Pesnicak (NIAID)
DHHS Reference No. E–250–02/0 filed 05 Nov 2002
Licensing Contact: Peter Soukas; 301/435–4646; *soukasp@od.nih.gov.*

Chickenpox is caused by acute infection with varicella-zoster virus (VZV). The virus spreads throughout the body and enters cells of the nervous system. Latent infection occurs and the virus establishes itself in dorsal root and cranial nerve ganglia. The latent virus subsequently can reactivate and present as zoster (shingles). The current varicella-zoster virus vaccine (Oka strain) is highly effective to protect against varicella (chickenpox), but establishes a latent infection in the central nervous system and can reactivate to cause shingles. This invention relates to a mutated form of

the current Oka vaccine strain that it is markedly impaired for establishing latency. This virus may be a safer vaccine than the currently available vaccine.

Recombinant of Respiratory Syncytial Virus (RSV) Expressing Green and/or Red Fluorescent Protein

Mark Peeples (Rush Presbyterian-St. Luke's Medical Center) and Peter Collins (NIAID)
DHHS Reference No. E–038–2002/0 (Research Materials)
Licensing Contact: Susan Ano; 301/435–5515; *anos@od.nih.gov.*

The biological materials RSV expressing green and/or red fluorescent proteins are available for licensing as research tools for antiviral drug screening or for studying infection and replication of the virus in real time in cultured cells. RSV is the most important viral respiratory pathogen in infants and thus is a major target for development of antiviral agents. The fluorescent protein markers allow rapid quantification of the extent of virus infection and are easily used in conjunction with common apparatuses such as 96-well plates and fluorescence plate readers.

These viruses are produced by the reverse genetic system as described in U.S. patent 6,264,957 (issued July 24, 2001) to Dr. Peter Collins of the NIAID. This reverse genetic system is also available for licensing (DHHS Ref. E–187–1995/1), including all of the plasmids necessary to make the recombinant viruses.

This research has been described, in part, in Hallak et al., Virology 271:264–275, 2000; Zhang et al., J. Virol. 76:5654–5666, 2002; Techaarpornkul et al., Virology 294:296–304, 2002.

HIV–1 Reverse Transcriptase Expression Systems

Dr. Stephen Hughes et al. (NCI)
DHHS Reference No. E–034–91/0
Licensing Contact: Sally Hu; 301/435–5606; *hus@od.nih.gov.*

This invention describes a series of HIV–1 reverse transcriptase (RT)-based products:

(a) HIV–1 RT (66 kDa) and HIV–2 RT (68 kDa) expression plasmids. These lead to the production of homodomeric forms of these proteins.

(b) Inducible expression plasmid p66his-prot producing large amounts of HIV–1 RT (p66) and small amounts of HIV–1 protease. This leads to the production of a p66/p51 heterodimeric form of the protein. A version of this plasmid is available with 6x his tail on p66 to simplify purification of the heterodimer. Expression plasmids for wild-type RT and for numerous mutated RT, including most of the common drug resistant mutants, are available. Mutated RT forms: AZT–21; HIV–2 (His); L74V; P236L; L100I; K103N; V106A; E138K; V181I; M184V; Y188L.

(c) HIV–1 RT with a substitution C280S and a double mutant C38V/C280S that are less susceptible to oxidation than the wild-type enzyme. These mutant HIV–1 RTs have enzymatic properties that are similar to wild-type HIV–1 RT.

Those RT expression plasmids might be used both in biological and medical research such as to study various properties of the enzyme, to determine which domains of the enzyme are the most promising for directing anti-RT reagents against, and to screen RT inhibitors *in vitro.* The HIV–1 Reverse Transcriptase Expression plasmids subject of this report are available for licensing via biological material licenses (BML).

Dated: March 11, 2003.

Steven M. Ferguson,

Acting Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–6442 Filed 3–17–03; 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.

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IL–21 Critically Regulates Immunoglobulin Production

Warren J. Leonard, Katsutoshi Ozaki, and Rosanne Spolski (NHLBI)
U.S. Provisional Patent Application 60/393,215 filed 01 Jul 2002
Licensing Contact: Brenda Hefti; 301/435–4632; *heftib@od.nih.gov.*

The invention includes a mouse in which the IL–21 receptor gene is disrupted by homologous recombination, the disruption being sufficient to prevent expression of the IL–21 receptor and thus to inhibit the action of IL–21. The invention also includes a mouse in which both the IL–21 receptor gene and the IL–4 gene are simultaneously disrupted in fashions being sufficient to inhibit the action of IL–21 and the production of IL–4. In a homozygous state, these mutations produce a mouse that has diminished B cell function.

This invention also relates to the use of agents that inhibit the interaction of IL–21 with the IL–21 receptor to modulate an immune response. This invention may be used to alter B cell activity, to treat a subject with Job's disorder, to treat an allergic reaction in a subject, or prevent an allergic reaction in a subject.

Grafting of a Murine Antibody Onto a Human Framework

S. Rybak, J. Krauss, M. Arndt, and A. Martin (NCI)
U.S. Provisional Patent Application 60/390,033 filed 17 June 2002
Licensing Contact: Brenda Hefti; 301/435–4632; *heftib@od.nih.gov.*

This invention relates to humanization of antibodies specifically providing novel biophysically stable human framework sequences that can be used to humanize antibody single chain Fv (scFv) fragments. An exemplary RFB4 humanized scFv antibody was constructed using the new sequences. The novel sequences were obtained after stringent panning of a human phage display library on (irrelevant) antigen. These antibody variable domain frameworks were subsequently used as human acceptor scaffolds for grafting the murine antibody specificity. The general approach described here differs from other humanization procedures wherein appropriate human acceptor scaffolds are selected from either antibodies with solved crystal structures or (germline) sequence databases. In the current invention, human acceptor frameworks were first pre-selected for

stability. Appropriate framework sequences with high sequence identities to the murine antibody to be humanized were then chosen from the pre-selected pool of stable scaffolds. As a result, humanized scFv fragments with low immunogenic potential and high biophysical stability were generated.

In contrast to other methodologies, unusual human framework residues were identified by aligning the human variable domain sequences to several sequence reference templates from antibody repertoires. The structural role of each identified unusual residue was further examined on the basis of information of antibodies with known crystal structures. Several residues were considered critical for interfering with the structural integrity of the antigen binding site and were successively back-mutated to the murine donor sequence. As a result, a panel of three humanized scFv antibodies with nanomolar affinity constants were generated. Importantly, the introduced back-mutations did not alter the biophysical properties of the constructs.

Tumor Suppressor Gene Polypeptides and Related Nucleic Acids, Host Cells, Compositions, and Methods of Use in Inhibition of Cell Growth, Modulation of Gene Expression, and Enhancement of Immune-Response Inducing Effect of a Vaccine

Denise Simmons (NCI)
DHHS Reference No. E–052–02/0 filed 03 May 2002
Licensing Contact: Matthew Kiser; 301/435–5236; *kiserm@od.nih.gov.*

Many cell lines have specific suppressor proteins that can inhibit the proliferation of cancer cells. These regulatory proteins are crucial in maintaining the fine line between appropriate proliferation and over proliferation. It is when these regulatory suppressor proteins become inactivated or over/under expressed that uncontrolled cell growth leading to neoplasia can result.

It has been established that certain suppressor proteins can inhibit cell proliferation: tazarotene-induced gene 3 (H-TIG–3), and Hras Revertant gene 107 (H-rev107). Modification or over/under expression of these proteins can cause excessive cellular proliferation. It is now known that these proteins, as well as a candidate tumor suppressor protein, lecithin:retinol acyl transferase (LRAT) share a homologous region. The subject invention pertains to a group of short polypeptide sequences that are based on this homologous region. These short polypeptides are effective tumor suppressors.

The scope of this invention includes amino acid sequences and the corresponding nucleic acid sequences that encode the polypeptides. Modifications of the polypeptide sequences include both substitution and additions. The subject invention also applies to the method of inhibiting cell growth, a method of modulating gene expression, and a method of enhancing the immune response-inducing effect of a vaccine.

Material and Methods for Inhibiting Wip1

Dimtry V. Bulavin (NCI), Ettore Appella (NCI), Albert Fornace (NCI), Anne Kallioniemi (NCI)
DHHS Reference No. E–002–02/0 filed 22 Mar 2002
Licensing Contact: Matthew Kiser; 301/435–5236; *kiserm@od.nih.gov.*

p53 protein is an attractive cancer-therapeutics target since it is expressed in all normal cells and is important for cancer cell apoptosis (death). The p53 protein provides a cellular self-destruct signal when DNA damage has occurred. Under expression of this protein can cause damaged cells to proliferate causing cancer. A potential proto-oncogene, wild-type p53-induced phosphatase 1 (Wip1), has been implicated in the down regulation of p53. Therapeutic strategies that can block Wip1 will increase the activity of p53 thus preventing cancer cell proliferation in p53 wt tumors that over-express Wip1. The subject invention pertains to isolated and purified oligonucleotides or isolated and purified morpholino oligonucleotides with the ability to inhibit Wip1 expression. These oligomers can be used for the treatment of cancer. In addition to practical uses of the oligomers, a methodology for screening standard and morpholino oligonucleotides for Wip1 inhibition is included. Finally, a methodology to test the efficacy of standard and morpholino test oligonucleotides completes this invention.

Attenuated and Dominant Negative Variant cDNAs of STAT6: STAT6b and STAT6c

William LaRochelle, Bharvin K.R. Patel, Jacalyn H. Pierce (all of NCI)
Serial No. 09/511,625 filed 23 Feb. 2000, now U.S. Patent 6,368,828 issued 09 Apr. 2002.
Licensing Contact: Susan S. Rucker; 301/435–4478; *ruckers@od.nih.gov.*

This patent relates to signal transduction pathways. In particular, the patent relates to transcription factors. The transcription factors described in the patent are members of the family of transcription factors known as Signal Transducers and Activators of Transcription (STATs). More particularly, the patent discloses the identification, isolation, sequencing and cloning of cDNAs that encode naturally occurring variants, Stat6b and Stat6c, of the protein STAT6.

The Stat6b variant contains an NH_2 terminal deletion of naturally occurring Stat6. The Stat6c variant contains an internal deletion, within the SH2 domain, of naturally occurring Stat6. The naturally occurring variants exhibit different properties. Stat6b acts as an attenuated variant, with respect to IL–4 induced MHC class II and Fc receptor cell surface expression, promoter binding and transcriptional activation when compared to Stat6. Stat6c acts as a dominant negative variant with respect to IL–4 mediated up-regulation of the cell surface antigens CD16/CD32 and CD23. The role of both variants in mediating IL–4 activity suggests that either could be useful in developing drugs for targeting diseases involving inflammatory and cell-mediated immune responses such as asthma.

The patent includes claims to the Stat6 variant polypeptides, the nucleic acids, vectors for expression of the variants, cells into which the variants have been introduced and methods of producing the Stat6 variant polypeptides.

This work has been published in part at B.K.R. Patel *et al.*, PNAS USA 95: 175–77 (Jan. 1998).

Dated: March 12, 2003.

Steven M. Ferguson,

Acting Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–6443 Filed 3–17–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Novel Technologies for Noninvasive Detection, Diagnosis and Treatment of Cancer.

Date: April 21, 2003.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute, 6130 Executive Plaza North, Executive Blvd., Conference Room H, Rockville, MD 20852.

Contact Person: Sherwood Githens, PhD, Scientific Review Administrator, Special Review and Logistics Branch, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8068, Bethesda, MD 20892, (301) 435–1822.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 12, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–6435 Filed 3–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee A—Cancer Centers.

Date: April 14–15, 2003.

Time: 7:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: David E. Maslow, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard—Room 8117, Bethesda, MD 20892–7405, (301) 496–2330.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 12, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–6437 Filed 3–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel.

Date: March 24, 2003.

Time: 7 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Carol Pontzer, Scientific Review Administrator, National Center for Complementary and Alternative Medicine, 6707 Democracy Blvd., Bethesda, MD 20892.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel, AIDS/HIV.

Date: April 2–3, 2003.

Time: 7 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Dale Birkle, Scientific Review Administrator, NIH/NCCAM, 6707 Democracy Blvd., Democracy Two Building, Suite 401, Bethesda, MD 20892, (301) 451–6570, *birkled@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Dated: March 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–6353 Filed 3–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel, Small Grants for Pilot Research R03 Applications.

Date: April 3–4, 2003.

Time: April 3, 2003, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Time: April 4, 2003, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Samuel Rawlings, PhD, Chief, Scientific Review Branch, Division of Extramural Research, National Eye Institute, Bethesda, MD 20892, 301–451–2020.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: March 7, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–6363 Filed 3–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel HAART Cardiovascular Toxicities.

Date: May 13, 2003.

Time: 7 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Irina Gordienko, Division of Extramural Activities, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7180, MSC 7924, Bethesda, MD 20892, 301–435–0725.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–6355 Filed 3–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Sickle Cell Disease Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Sickle Cell Disease Advisory Committee.

Date: June 2, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: Discussion of program policies and issues.

Place: National Institutes of Health, 6701 Rockledge Drive, Conference Room 9100, Bethesda, MD 20892.

Contact Person: Charles M. Peterson, MD, Director, Blood Diseases Program, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, NIH, Two Rockledge Center, Room 10158, MSC 7950, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–0080.

Information is also available on the Institute's/Center's Home page: *www.nhlbi.nih.gov/meetings/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–6356 Filed 3–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Cardiovascular Reaction.

Date: April 4, 2003.

Time: 8:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Columbia, 10207 Wincopin Circle, Columbia, MD 21044.

Contact Person: Jeffrey H. Hurst, PhD, Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892, 301/435–0303.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research, 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 11, 2003.

LaVerne Y. Stingfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–6434 Filed 3–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Review of Research Program Project Grants.

Date: March 28, 2003.

Time: 8:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Aftab A. Ansari, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Review of Research Program Project Grants.

Date: March 28, 2003.

Time: 11:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Aftab A. Ansari, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: March 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–6354 Filed 3–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Review of Research Program Project Grants.

Date: April 25, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Tracy A. Shahan, PhD, Scientific Review Administrator, National Institutes of Health, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: March 5, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–6357 Filed 3–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Clinical Trial.

Date: March 24, 2003.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Mark R. Green, PhD, Chief, CEASRB, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, Room 3158, MSC 9547, 6001 Executive Boulevard, Bethesda, MD 20892–9547, (301) 435–1431.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel.

The Impact of Child Psychopathology & Childhood Interventions on Subsequent Drug Abuse.

Date: April 2–3, 2003.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Marina L. Volkov, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1433.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: March 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–6358 Filed 3–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Mental Retardation Research Subcommittee, Mental Retardation Research Subcommittee Meeting.

Date: March 12–14, 2003.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th Street, NW, Washington, DC 20007.

Contact Person: Norman Chang, Scientific Review Administrator, National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: March 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–6359 Filed 3–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Review of Unsolicited P01 Grant Application.

Date: March 31, 2003.

Time: 10 a.m. 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Roberta Binder, Scientific Review Administrator, Division of Extramural Activities, NIAID, 6700B Rockledge Drive, Rm 2155, Bethesda, MD 20892, 301–496–7966, *rb169n@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–6360 Filed 3–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Pharmacokineticist Pharmacodynamics of Antimicrobials in Animal Models.

Date: March 28, 2003.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6700 B Rockledge Drive, 2115, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Vassil St. Georgiev, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, Room 2102, 6700–B Rockledge Drive, MSC 7616, (301) 496–2550, *vg8q@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–6361 Filed 3–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial

property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Treatment Research.

Date: March 19, 2003.

Time: 10:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Mark R. Green, PhD, Chief, CEASRB, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, Room 3158, MSC 9547, 6001 Executive Boulevard, Bethesda, MD 20892–9547, (301) 435–1431.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Guidance for Behavioral Treatment Providers: Research on Knowledge and Skill Enhancement.

Date: April 2, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Kesinee Nimit, MD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1432.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: March 7, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–6364 Filed 3–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as mended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Conference Applications (R13s).

Date: April 11, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, EC 122, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: RoseAnne M McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Conference Applications (R13s).

Date: April 11, 2003.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, 122, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: RoseAnne M McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks form Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: March 7, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–6365 Filed 3–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Pediatric Critical Care.

Date: April 7, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Anne Krey, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., rm. 5E03, Bethesda, MD 30892, 301–435–6908.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: March 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–6432 Filed 3–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Services; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, MBRS 7 CT.

Date: March 31, 2003.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Room 3AN–12B, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard I. Martinez, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–12B, 45 Center Drive MSC 6200, 301–594–2849, *rm63f@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Development Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: March 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–6433 Filed 3–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of person privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Anesthesiology.

Date: April 9, 2003.

Time: 9:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Rebecca H. Johnson, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS19J, Bethesda, MD 20892, (301) 594–2771. *johnsonrh@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: March 12, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–6436 Filed 3–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1 (18) ZAA1 Review of R21 Application.

Date: April 7, 2003.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Wilco Building, 6000 Executive Boulevard, 409, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sean N. O'Rourke, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2861.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1 (15) ZAA1 Review of R21 and R01 Applications.

Date: April 11, 2003.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Wilco Building, 6000 Executive Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sean N. O'Rourke, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2861.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1 FF (17) ZAA1 Review of R21 Applications.

Date: April 14, 2003.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Wilco Building, 6000 Executive Boulevard, Suite 409, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sean N. O'Rourke, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2861.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1 CC (12) K01 Application Review.

Date: April 21, 2003.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIAAA, Wilco Bldg, 6000 Executive Blvd., Room 409, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mahadev Murthy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003, (301) 443–2860.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, RFA AA–03–004, ''Alcohol-Related HIV/AIDS in Women'' Review by ZAA1 CC (11).

Date: April 28, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Mahadev Murthy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003, (301) 443–2860.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: March 12, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–6438 Filed 3–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Other Services Applications.

Date: March 21, 2003.

Time: 8:30 am to 5:30 pm.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Martha Ann Carey, PhD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–1606, *mcarey@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; SRV Deferral.

Date: March 25, 2003.

Time: 1 pm to 2 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216 *hhaigler@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Drug Discovery.

Date: March 26–27, 2003.

Time: 9 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513 *psherida@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 12, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–6439 Filed 3–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Population Research Infrastructure Program.

Date: April 9–10, 2003.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Carla T. Walls, PhD., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 9000 Rockville Pike, MSC 7510, 6100 Building, Rom 5e03, Bethesda, MD 20892, (201) 496–1485.

(Catalog of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93,864, Population Research; 93865, Research for Mothers and Children; 93929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: March 12, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–6440 Filed 3–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Oxidative Stress and Nitric Oxide.

Date: March 21, 2003.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Shen K. Yang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6198, MSC 7804, Bethesda, MD 20892, (301) 435–1213, *yangsh@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–SB 53m Bioengineering Partnerships: Bioengineering.

Date: March 21, 2003.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Teresa Nesbitt, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, Bethesda, MD 20892, (301) 435–1172.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Tissue Engineering.

Date: March 24, 2003.

Time: 4:15 pm to 5:15 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mary Ann Guadagno, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1104, MSC 7770, Bethesda, MD 20892, (301) 451–8011.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Tissue Engineering.

Date: March 24, 2003.

Time: 4:15 p.m. to 5:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Magnetics.

Date: March 27, 2003.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Paul K. Strudler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6186, MSC 7804, Bethesda, MD 20892, (301) 435–1716, *strudlep@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SNEM–1 Substance Abuse and Mental Health Applications.

Date: March 27, 2003.

Time: 3:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ellen K. Schwartz, EDD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892, (301) 435–0681, *schwarte@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Brookhaven Protein Crystallography Resource.

Date: March 27–29, 2003.

Time: 7 p.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: Hampton Inn, 2000 North Ocean Avenue, Farmingville, NY 11738.

Contact Person: Richard Panniers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, 7842, Bethesda, MD 20892, (301) 435–1741.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 ECS (03): Aging and Vascular Stiffness.

Date: March 28, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Anshumali Chaudhari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435–1210.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Electrical Pulses.

Date: March 28, 2003.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Paul K. Strudler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6186, MSC 7804, Bethesda, MD 20892, (301) 435–1716, *strudlep@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Mechanisms of Tumor Cells Chemoresistance.

Date: March 29, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, (301) 435–1779, *riverase@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 1FCN 2 (3) Neuroendocrinology, Neuroimmunology, and Behavior.

Date: March 31, 2003.

Time: 11 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Richard Marcus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, (301) 435–1245. *richard.marcus@nih.gov*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Reviews in Conduct Disorder and Self Regulation.

Date: March 31, 2003.

Time: 11 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Anita Miller Sostek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7184, Bethesda, MD 20892, (301) 435–1260, *sosteka@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Ferrofluids.

Date: March 31, 2003.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Paul K. Strudler, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6186, MSC 7804, Bethesda, MD 20892, (301) 435–1716, *strudlep@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SNEM–1 Small Grants, Fellowships, and AREA Applications.

Date: March 31, 2003.

Time: 3:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ellen K. Schwartz, EDD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892, (301) 435–0681, *schwarte@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–6352 Filed 3–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fracture Healing.

Date: March 14, 2003.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, INF–Signaling in Oncogenesis.

Date: March 18, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverase@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 VACC 10: Small Business: Infectious Disease Vaccines.

Date: March 19, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, BM–1 Enterics Plus.

Date: March 21, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Dental Materials.

Date: March 24, 2003.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neuronal Regulation and Plasticity.

Date: March 25, 2003.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Syed Husain, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7850, Bethesda, MD 20892, (301) 435–1224, *husains@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–C (03) member reviews in Mental Disorders (Predoctoral Fellowships).

Date: March 25, 2003.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, 301–435–0902. *krausem@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Imprinted Genes and Cancer

Date: March 26, 2003.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Angela Y. Ng, PhD, MBA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, (For courier delivery, use MD 20817), Bethesda, MD 20892, 301–435–1715, *nga@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neurogenic Communicative Disorders.

Date: March 26, 2003.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Weijia Ni, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848 (for overnight mail use, room # and 20817 zip), Bethesda, MD 20892, (301) 435–1507, *niw@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, M: Psychophysiological Response and Cognition.

Date: March 27, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anita Miller Sostek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7184, Bethesda, MD 20892, 301–435–1260, *sosteka@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, MDCN Fellowship Review Group B—Physiology, Pharmacology and Molecular Structure.

Date: March 28, 2003.

Time: 8 a.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Carole L. Jelsema, PhD, Scientific Review Administrator and Chief, MDCN Scientific Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1248, *jelsemac@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Albert Einstein Center for Synchrotron Biosciences.

Date: March 30–April 1, 2003.

Time: 8 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson MacArthur Hotel, 1730 North Ocean Drive, Holtsville, NY 11742.

Contact Person: Mike Radtke, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, (301) 435–1728.

Name of Committee: Center for Scientific Review Special Emphasis Panel, EGFR Signaling in Cancer.

Date: March 31, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverase@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 07, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–6362 Filed 3–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

The National Toxicology Program (NTP) Center for the Evaluation of Risks to Human Reproduction (CERHR) Announces the Availability of the NTP–CERHR Monograph on Di-*n*-Butyl Phthalate

Summary

The CERHR announces the availability of the *NTP–CERHR Monograph on the Potential Human Reproductive and Developmental Effects of Di-n-Butyl Phthalate (DBP).* The monograph is posted electronically on the CERHR Web site: *http://cerhr/niehs/nih/gov* and a limited number of copies in printed text are available from the CERHR by contacting Dr. Michael Shelby, Director CERHR [NIEHS, 79 T.W. Alexander Drive, Building 4401, Room 103, P.O. Box 12233, MD EC–32, Research Triangle Park, NC 27709, telephone: (919) 541–3455; facsimile: (919) 316–4511; *shelby@niehs.nih.gov*].

NTP–CERHR Monographs

The monograph on DBP is the first in the NTP–CERHR monograph series. This monograph includes three parts: (1) The NTP brief, which presents the NTP's interpretation of the available data and its conclusions on the potential for DBP to cause adverse developmental and reproductive effects in humans, (2) the expert panel report, and (3) all public comments on the expert panel report. The NTP utilized information provided in the expert panel report, the public comments, as well as information from studies published since the expert panel meeting in reaching its conclusions on DBP.

The CERHR follows a formal process for the evaluation of selected chemicals that includes opportunities for public input. The NTP–CERHR monographs are the final products of those evaluations. Monographs on six additional phthalates [butyl benzyl phthalate (BBP), di(2-ethylhexyl) phthalate (DEHP), di-isodecyl phthalate (DIDP), di-isononyl phthalate (DINP),

di-*n*-hexyl phthalate (DnHP), and di-*n*-octyl phthalate (DnOP)] are in production and the NTP will make them available as soon as they are completed.

All future notifications about the availability of phthalate monographs will be provided through NTP list-server announcements and through the CERHR Web site: *http://cerhr.niehs.nih.gov.* Anyone can subscribe to the NTP list-server in several ways: (1) By registering online through the NTP Web site at *http://ntp-server.niehs.nih.gov,* select *Announcements,* (2) by sending an e-mail to *ntpmail-request@list.niehs.nih.gov* with the word *subscribe* as the body of the message, or (3) by contacting the NTP Liaison and Scientific Review Office (919–541–0530 or *liaison@starbase.niehs.nih.gov*). Individuals or groups who have already subscribed to the NTP list-server do not need to subscribe again.

Background Information about CERHR

The NTP established the NTP CERHR in June 1998 [**Federal Register**, December 14, 1998: Volume 63, Number 239, page 68782)]. The CERHR is a publicly accessible resource for information about adverse reproductive and/or developmental health effects associated with exposure to environmental and/or occupational agents. The CERHR carries out assessments of these agents following a formal, multi-step, open process that includes rigorous evaluations by independent scientific panels in public forums and opportunities for public input. This process was published in the **Federal Register** (July 16, 2001: Volume 66, Number 136, pages 37047–37048) and is available on the CERHR Web site under *About CERHR* or in printed text from the CERHR.

The CERHR invites the nomination of agents for review or scientists for its expert registry. Information about CERHR and the nomination process can be obtained from its homepage (*http://cerhr.niehs.nih.gov*) or by contacting Dr. Shelby (contact information provided above). The CERHR selects chemicals for evaluation based upon several factors, including production volume, extent of human exposure, public concern, and published evidence of reproductive or developmental toxicity.

Dated: March 7, 2003.

Kenneth Olden,

Director, NTP.

[FR Doc. 03–6444 Filed 3–17–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

The President's New Freedom Commission on Mental Health; Notice of Meeting

Pursuant to Executive Order 13263, notice is hereby given of a meeting of the President's New Freedom Commission on Mental Health in April 2003.

The meeting will be open and will consider how to accomplish the Commission's mandate to conduct a comprehensive study of the United States mental health service delivery system and make recommendations on improving the delivery of public and private mental health services for adults and children. The Commission will focus on issues relating to its final report.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the individual listed as contact below to make arrangements to comment or to request special accommodations for persons with disabilities.

Additional information and a roster of Commission members may be obtained either by accessing the Commission Web site, *http://www.mentalhealthcommission.gov,* or by communicating with the contact whose name and telephone number is listed below.

Committee Name: The President's New Freedom Commission on Mental Health.

Meeting Date/Time: Open: April 2, 2003, 8:30 a.m. to 3:30 p.m.

Place: Westin Embassy Row, 2100 Massachusetts Avenue, NW., Washington, DC 20008.

Contact: Claire Heffernan, Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 13C–26, Rockville, MD 20857. Telephone: (301) 443–1545; Fax: (301) 480–1554 and e-mail: *Cheffern@samhsa.gov.* Web site: *www.mentalhealthcommission.gov.*

Dated: March 12, 2003.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–6399 Filed 3–17–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Statement of Organization, Functions, and Delegations of Authority

Part M of the Substance Abuse and Mental Health Services Administration (SAMHSA) Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services as amended most recently at 67 FR 57830, September 12, 2002 is amended to: replace the functional statement of two divisions of the Center for Substance Abuse Prevention (CSAP), the Division of State and Community Systems Development and the Division of Knowledge Application and Systems Improvement; replace the functional statement of the Division of Prevention Education and Dissemination and rename the Division as the Division of Prevention Education. There are no changes to the Division of Workplace Programs. The changes are to update and realign CSAP organizational structure to strengthen CSAP's programs and allow CSAP to more effectively manage the mission of SAMHSA. The changes are as follows:

Section M.20, Functions is amended as follows:

Under the heading, *Division of State and Community Systems Development (MPB),* delete the functional statement and substitute the following functional Statement:

The Division of State and Community Systems Development (DSCSD) is responsible for carrying out the Center's responsibilities related to development of States and communities capacity to provide and implement effective substance abuse prevention. As such the Division (1) promotes and establishes comprehensive, long-term State and community alcohol, tobacco, and other drug abuse prevention/intervention strategies, programs, and support activities; (2) plans, develops and administers nationwide programs to enhance comprehensive and effective State and community substance abuse prevention systems, drug prevention coalitions and related health promotion systems; (3) administers the primary prevention set-aside of the Substance Abuse Prevention and Treatment (SAPT) block grant; (4) provides leadership in the transition to and implementation of Performance Partnership Grants; (5) promotes interagency collaboration with both the public and private sectors at the Federal, State and local levels; (6)

develops and integrates needs assessment and management information system data into State and community prevention systems for the improvement of planning efforts in substance abuse prevention nationally; (7) administers the Synar regulations governing youth access to tobacco products; and (8) provides overall support, training and technical assistance in integrating effective substance abuse prevention into health care systems.

Under the heading, *Division of Knowledge Application and Systems Improvement (MPC),* delete the functional statement and substitute the following functional statement:

The Division of Knowledge Application and Systems Improvement (DKASI) is responsible for carrying out the Center's science-to-services agenda. In this capacity, the Division (1) provides leadership in the identification of effective substance abuse prevention programs, practices, and strategies, and their dissemination, adoption and adaptation, and evaluation at the State and community level; (2) actively collaborates with other Federal and State and local governments to promote the adoption of science-based prevention programs and practices; (3) advances substance abuse prevention, HIV/AIDS and emergent substance abuse issues agenda; and (4) represents CSAP in the development of SAMHSA's extramural policy.

Under the heading, *Division of Prevention Education and Dissemination (MPF),* delete the functional statement, rename the Division as the Division of Prevention Education and substitute with the following functional statement:

The Division of Prevention Education (DPE) is responsible for carrying out the Center's health promotion and public education activities. The Division carries this out through (1) leadership to the Center in the development of health promotion and education publication, products, and materials as well as through information technologies such as PREVLine, and other CSAP Web-based and Internet and Intranet venues; (2) builds upon and collaborates with the efforts of other Federal or private sector prevention initiatives in developing and disseminating targeted prevention materials, products, tool kits, etc., tailored to the specific audiences and/or specific prevention topics targeted by these prevention initiatives; (3) promotes public education through the operation of the SAMHSA/CSAP National Clearinghouse for Alcohol and Drug Information, the Regional Alcohol and Drug Awareness Resource Network, and the Prevention component within the SAMHSA Conference Grant Program; (4) initiates, develops, implements, and evaluates program efforts (which may include developing materials and technologies) in support of workforce development, for both internal (CSAP staff) and external substance abuse prevention professionals; and (5) provides liaison and coordination with the SAMHSA Office of Communications, other SAMHSA Centers and Offices, and relevant DHHS components, as appropriate, on substance abuse prevention and health communications issues.

Section M.40, Delegations of Authority: All delegations and redelegations of authority to officers and employees of SAMHSA which were in effect immediately prior to the effective date of this reorganization shall continue in them.

These organizational changes are effective January 17, 2003.

Dated: February 21, 2003.

Charles G. Curie,

Administrator.

[FR Doc. 03–6456 Filed 3–17–03; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Blackstone River Valley National Heritage Corridor Commission: Notice of Meeting

Notice is hereby given in accordance with section 552b of title 5, United States Code, that a meeting of the John H. Chafee Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, April 17, 2003.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7 p.m. at Asa Waters Mansion located at 123 Elm Street, in Millbury, Massachusetts for the following reasons:

1. Approval of Minutes
2. Chairman's Report
3. Executive Director's Report
4. Financial Budget
5. Public Input

It is anticipated that about twenty-five people will be able to attend the session in addition to the Commission members. Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: Michael Creasey, Executive Director, John H. Chafee, Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895, Tel.: (401) 762-0250.

Further information concerning this meeting may be obtained from Michael Creasey, Executive Director of the Commission at the aforementioned address.

Dated:

Michael Creasey,

Executive Director, BRVNHCC.

[FR Doc. 03–6396 Filed 3–17–03; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Issuance of Permit for Incidental Take of Threatened Species for the Briargate Development, El Paso County, CO

AGENCY: Fish and Wildlife Service.

ACTION: Notice of issuance of permit for incidental take of endangered species.

SUMMARY: On November 22, 2002, and January 21, 2003, notices were published in the **Federal Register** (67 FR 70453 and 68 FR 2792, respectively), that an application had been filed with the U.S. Fish and Wildlife Service (Service) by La Plata Investments, LLC, regarding the Briargate Development, El Paso County, Colorado, for a permit to incidentally take Preble's meadow jumping mouse (*Zapus hudsonius preblei*), pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1539), as amended. The ''Environmental Assessment/Habitat Conservation Plan for the Briargate Development, located along Upper Pine Creek, Colorado Springs, El Paso County, Colorado'' accompanied the permit application. Notice is hereby given that on February 28, 2003, as authorized by the provisions of the Endangered Species Act, the Service issued a permit (TE–064967–0) to the above named party subject to certain conditions set forth therein. The permit was granted only after the Service determined that it was applied for in good faith, that granting the permit will not be to the disadvantage of the threatened species, and that it will be consistent with the purposes and policy set forth in the Endangered Species Act, as amended.

Additional information on this permit action may be requested by contacting the Colorado Field Office, 755 Parfet Street, Suite 361, Lakewood, Colorado 80215, telephone (303) 275–2370, between the hours of 7 a.m. and 4:30 p.m. weekdays.

Dated: February 28, 2003.

Ralph O. Morgenweck,

Regional Director, Denver, Colorado.

[FR Doc. 03–6391 Filed 3–17–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State compact.

SUMMARY: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of the approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Class III gaming compact between the Burns-Paiute Tribe and the State of Oregon.

EFFECTIVE DATE: March 18, 2003.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: February 14, 2003.

Aurene M. Martin,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–6350 Filed 3–17–03; 8:45 am]

BILLING CODE 4310–4N–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–931–1310–DP–NPRA]

Northwest National Petroleum Reserve-Alaska Draft Integrated Activity Plan/Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of extension of comment period.

SUMMARY: The Bureau of Land Management announces a 15-day extension of the public comment period for the Northwest National Petroleum Reserve-Alaska Draft Integrated Activity Plan/Environmental Impact Statement (IAP/EIS).

DATE: Written comments must be submitted or postmarked no later than April 2, 2003.

ADDRESSES: Comments on the document should be addressed to: NPR-A Planning Team, Bureau of Land Management, Alaska State Office (930), 222 West 7th Avenue, Anchorage, Alaska 99513–7599. Comments can also be submitted at the project Web site at *http://www.ak.blm.gov/nwnpra* or sent via e-mail to *nwnpr-acomment@ak.blm.gov.*

FOR FURTHER INFORMATION CONTACT: Curtis Wilson (907–271–5546; *CurtisWilson@ak.blm.gov*) or Mike Kleven (907–474–2317; *MikeKleven@ak.blm.gov*). They can be reached by mail at the Bureau of Land Management (930), Alaska State Office, 222 West 7th Avenue, Anchorage, Alaska 99513–7599.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management published a Notice of Availability for the IAP/EIS on January 17, 2003. That notice indicates that the public comment period for the document ends March 18, 2003. The Bureau of Land Management received requests from the public that the comment period be extended. This extension to April 2, 2003, responds to those requests.

Dated: March 11, 2003.

Don Hinrichsen,

Acting State Director.

[FR Doc. 03–6587 Filed 3–14–03; 2:27 pm]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–050–02–1610–DO–085L]

Resource Management Plan; East Alaska Planning Area

AGENCY: Bureau of Land Management; Glennallen Field Office, Interior.

ACTION: Notice of Intent to prepare a Resource Management Plan (RMP) for the East Alaska planning area and Environmental Impact Statement (EIS).

SUMMARY: This document provides notice that the Bureau of Land Management (BLM) intends to prepare an RMP with an associated EIS for the Glennallen Field Office. This planning activity encompasses approximately 7.6 million acres of BLM-administered lands. The plan will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and BLM management policies. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns. The public scoping process will identify planning issues and develop planning criteria. The public is invited to nominate potential areas of critical environmental concern and potential special management areas during the planning process. The planning area is located from the southern slopes of the Alaska Range to the Chugach Mountains, from the Talkeetna Mountains to the Wrangell Mountains, and includes an extensive area of coastline in Prince William Sound.

DATES: The public scoping process will begin on the date of this publication in the **Federal Register** and will end after 90 days. Comments on issues and planning criteria can be submitted in writing to the address listed below. All public meetings will be announced through the local news media and the BLM Web site *(http://www.glennallen.ak.blm.gov)* at least 15 days prior to the event. The minutes and list of attendees for each meeting will be available to the public and open for 30 days to any participant who wishes to clarify the views they expressed.

PUBLIC PARTICIPATION: Public meetings will be held throughout the plan scoping and preparation period. In order to ensure local community participation and input, public meetings will be held in the communities of Anchorage, Fairbanks, Valdez, Delta Junction, Paxson, Glennallen, and Slana as well as the villages of Gulkana, Tazlina, Chitina, Cantwell, Chistochina, and Copper Center. Early participation is encouraged and will help determine the future management of BLM-administered lands within the planning area. In addition to the ongoing public participation process, formal opportunities for public participation will be provided through comment on the alternatives and upon publication of the BLM draft RMP/EIS.

ADDRESSES: Written comments should be sent to: East Alaska Resource Management Planning, Bureau of Land Management, Glennallen Field Office, P.O. Box 147, Glennallen, Alaska 99588; Fax (907)–822–3120. Comments, including names and street addresses of respondents, will be available for public review at the Glennallen Field Office during regular business hours 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays, and may be published

as part of the EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION: For further information and/or to have your name added to our mailing list, contact Bruce Rogers, telephone (907) 822–3217.

SUPPLEMENTARY INFORMATION: Currently, a Management Framework Plan (MFP) completed in 1980 guides the use of these lands. A new RMP is necessary to respond to increasing tourism and recreational use in the area, and new issues that have developed since 1980. Preliminary issues and management concerns have been identified by BLM personnel, other agencies, and in meetings with individuals and user groups. They represent the BLM's knowledge to date on the existing issues and concerns with current management. The major issue themes that will be addressed in the plan effort include: How will people's uses and activities be managed; how to we protect and conserve lands having special critical or unique features or resource values; and how will the natural resources of the East Alaska planning area be managed and conserved? After gathering public comments on what issues the plan should address, the suggested issues will be placed in one of three categories: 1. Issued to be resolved in the plan; 2. Issues resolved through policy or administrative action; or 3. Issues beyond the scope of this plan.

Rationale will be provided in the plan for each issue placed in category two or three. In addition to these major issues, a number of management question and concerns will be addressed in the plan. The public is encouraged to help identify these questions and concerns during the scoping phase.

An interdisciplinary approach will be used to develop the plan in order to consider the variety of resource issues and concerns identified. Disciplines involved in the planning process will include specialists with expertise in outdoor recreation, minerals and geology, forestry, archaeology, paleontology, wildlife and fisheries, lands and realty, hydrology, soils, vegetation, sociology and economics.

K. J. Mushovic,

Glennallen Field Office, Bureau of Land Management.

[FR Doc. 03–6273 Filed 3–17–03; 8:45 am]

BILLING CODE 4310–AG–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Information Collection Activities; Proposed Collection; Comment Request; Renewal

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces that the Bureau of Reclamation (Reclamation) is seeking a renewal of the following information collection:

Diversions, Return Flow, and Consumptive Use of Colorado River Water in the Lower Colorado River Basin, OMB No. 1006–0015.

Before submitting the information collection request to the Office of Management and Budget for approval, Reclamation is soliciting comments on specific aspects of the information collection.

DATES: Comments on this notice must be received by May 19, 2003.

ADDRESSES: Address all comments concerning this notice to Nancy DiDonato, BCOO–4445, Bureau of Reclamation, P.O. Box 61470, Boulder City, Nevada 89006–1470. A copy of the information collection form can be obtained by writing to the above address or calling Nancy DiDonato at (702) 293–8532.

FOR FURTHER INFORMATION CONTACT: Nancy DiDonato, Contracts and Repayment Specialist, (702) 293–8532.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of Reclamation's functions, including whether the information will have practical use; (b) the accuracy of Reclamation's estimated time and cost burdens of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, use, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Information on water diversions is reported on four different types of forms. The base form (Form LC–72) was developed for use by respondents in the State of Nevada and variations of the form have been used by other respondents. Some respondents choose to use their own format to report diversions and return flows. Water delivery contracts regulation some respondents to supply both monthly and annual reports on the same form.

Title: Diversions, Return Flow, and Consumptive Use of Colorado River Water in the Lower Colorado River Basin.

OMB No.: 1006–0015.

Abstract: Reclamation delivers Colorado River water to water users for diversion and beneficial consumptive use in the States of Arizona, California, and Nevada. Under Supreme Court order, the United States is required, at least annually, to prepare and maintain complete, detailed, and accurate records of diversions of water, return flow, and consumptive use. This information is needed to ensure that a State or a water user within a State does not exceed its authorized use of Colorado River water. Water users are obligated to provide information on diversions and return flows to Reclamation by provisions in their water delivery contracts. Reclamation determines the consumptive use by subtracting return flow from diversions or by other engineering means. Without the information collected, Reclamation could not comply with the order of the United States Supreme Court to prepare and maintain detailed and accurate records of diversions, return flow, and consumptive use.

Description of respondents: The Lower Basin States (Arizona, California, and Nevada), local and tribal entities,

water districts, and individuals that use Colorado River water.

Frequency: Annually, or otherwise as determined by the Secretary of the Interior.

Estimated total number of respondents: 54.

Estimated hours per form:
LC–72: 54 hours.
LC72A: 30 hours.
LC72B: 78 hours.
Custom forms: 128 hours.
Estimated total burden hours: 290.

Dated: February 25, 2003.

Jayne Harkins,

Area Manager, Boulder Canyon Operations Office, Lower Colorado Region.

[FR Doc. 03–6457 Filed 3–17–03; 8:45 am]

BILLING CODE 4310–MN–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—J Consortium, Inc.

Notice is hereby given that, on February 25, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), J Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Azarkhish, Tehran, IRAN; Stephen Cory (individual member), Cambridge, UNITED KINGDOM; Mahaanta, Karnataka, INDIA; and Becca Matthews (individual member), Amarillo, TX have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and J Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On August 6, 1999, J Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 21, 2000 (65 FR 15175).

The last notification was filed with the Department on August 28, 2002. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 6, 2002 (67 FR 67648).

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 03–6389 Filed 3–17–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,824]

Fort Dearborn Company, Coldwater, MI; Notice of Revised Determination on Reconsideration

By letter dated July 11, 2002, an employee on behalf of petitioners requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on June 11, 2002, based on the finding that imports of paper labels used in the food and beverage industry did not contribute importantly to worker separations at the Coldwater plant. The denial notice was published in the **Federal Register** on June 24, 2002 (67 FR 42583).

During the period that the Department was reviewing allegations made in the request for reconsideration, a petition on behalf of the same subject firm workers for NAFTA-Transitional Adjustment Assistance was certified on the basis of increased customer imports (NAFTA–6425) for the same worker group and the same time period as that which was established in the trade adjustment assistance petition. Therefore, workers of Fort Dearborn Company, Coldwater, Michigan meet criterion (3) of section 223 of the Trade Act of 1974.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Fort Dearborn Company, Coldwater, Michigan, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

''All workers of Fort Dearborn Company, Coldwater, Michigan, who became totally or partially separated from employment on or after January 8, 2001, through two years from the date of this certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.''

Signed in Washington, DC, this 19th day of February, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–6403 Filed 3–17–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,368]

Komtek, Worcester, MA; Notice of Negative Determination Regarding Application for Reconsideration

By application of December 1, 2002, the United Steelworkers of America, District #4, Local Union No. 2936, requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on November 1, 2002 and published in the **Federal Register** on November 22, 2002 (67 FR 70460).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances: (1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous; (2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or (3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Komtek, Worcester, Massachusetts engaged in the production of forged aerospace products (such as fuel combustion swirlers, fuel nozzles, blades, vanes, and fittings) and medical devices, was denied because the ''contributed importantly'' group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The ''contributed importantly'' test is generally demonstrated through a survey of the workers' firm's customers. The Department conducted a survey of the subject firm's major customers regarding their purchases of forged aerospace products and medical devices in 2000, 2001 and January through August 2002.

None of the respondents reported increasing imports while decreasing purchases from the subject firm during the relevant period. Imports did not contribute importantly to layoffs at the subject firm.

The petitioner alleges that the company has a plant in Tunisia that supplies production to one of their major customers, and that this foreign production replaced subject plant production, leading to production declines and layoffs at the subject firm.

Further review revealed that Komtek did engage in a partnership with a Tunisian plant for the purposes of supplementing their domestic production of fuel combustion swirlers specifically to service a major customer. A review of this customer's purchasing trends revealed that the customer did begin importing competitive fuel combustion swirlers in the January through August 2002 time period. However, this customer also increased their purchases from Komtek's domestic facility in January through August of 2002 period compared to the same period in 2001. As there were no declines in purchases from the domestic subject plant in the period when imports began, there is no evidence of import impact. Further, contact with the company confirmed that the sales numbers provided by the customer in the relevant time frames of the investigation were correct. The company further stated that the subject plant continues to supply fuel combustion swirlers to this customer.

The union further appears to claim that the plant manager of the subject plant was the most knowledgeable source in regard to import impact on subject firm production, but was on vacation at the time that the company data was provided in the initial investigation. They asserted that the company official who did provide the information did not ''understand the amount of work we have lost due to the work being done in other countries.''

The plant manager was contacted in regard to this matter. In response to these allegations, he stated that the domestic plant had not been impacted by any foreign production. He asserted that the fall out of 9/11 on the aerospace industry attributed for any subsequent declines that the company had experienced. (This coincides with the period in the beginning of 2002 when layoffs actually occurred.)

In regard to the major customer supplied with fuel combustion swirlers by the Tunisian facility, the plant manager stated that, in 2002, the domestic plant actually signed an agreement to produce a larger percentage of the customer's total production needs of competitive products.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 26th day of February, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–6404 Filed 3–17–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,046]

B-W Specialty Manufacturing, Seattle, WA; Notice of Negative Determination Regarding Application for Reconsideration

By application of November 29, 2002, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on October 31, 2002, and published in the **Federal Register** on November 22, 2002 (67 FR 70460).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of B-W Specialty Manufacturing, Seattle, Washington was denied because the ''contributed importantly'' group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. The ''contributed importantly'' test is generally demonstrated through a survey of customers of the workers' firm. The survey revealed that none of the respondents increased their purchases of imported wood cores for skis.

The petitioner states layoffs are attributable to the subject firms' largest customer replacing their purchases of wood cores with those manufactured at a foreign facility. They appear to maintain that, because these ''wood ski cores are a main part of the ski'', the customer imports of skis have a direct bearing on subject firm workers' eligibility for trade adjustment assistance. They further appear to claim that the Department of Labor may have been provided the wrong information by the company, as the ''increased imports'' of skis by this customer ''directly replaced the same products we made.''

As indicated in the initial investigation, the workers produced wood cores used in the production of skis. The wood cores were sold to a customer that incorporated the wood cores into a completed ski. That customer acquired production equipment of wood cores from the subject firm for the purpose of producing the wood cores at a foreign facility. The customer incorporates these cores into a finished ski at that foreign facility. Thus, the finished ski that is imported is not the same as wood core produced at the subject firm.

In conclusion, the imports of skis is not ''like or directly competitive'' with the product produced (wood cores for skis) by the subject firm.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 19th day of February 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–6418 Filed 3–17–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,600]

Columbia Sportswear Company, Portland, OR; Notice of Negative Determination Regarding Application for Reconsideration

By application received on October 16, 2002, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Columbia Sportswear Company, Portland, Oregon was signed on September 25, 2002, and published in the **Federal Register** on September 27, 2002 (67 FR 61160).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition was filed on behalf of workers at Columbia Sportswear Company, Portland, Oregon engaged in activities related to the design services for sportswear apparel. The petition was denied because the petitioning workers did not produce an article within the meaning of section 222(3) of the Act.

The petitioner alleges that the same workers were certified in 1996, and attached a copy of a certification for the Portland facility (TA–W–31,649).

A review of this certification reveals that cutters and sewers were part of the petitioning worker group and, as such, were determined to be engaged in production of an article within the meaning of section 222(3) of the Act. Workers engaged in design services were in support of this production and were also determined to be eligible. However, in the current negative determination under reconsideration, the petitioning worker group did not include production workers, and therefore workers providing design services cannot be grouped with production workers.

The petitioner alleges that the workers are not engaged in ''bookkeeping services'' as addressed in the ''Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance''.

A review of the initial investigation indicates that the workers were engaged in design services for sportswear apparel. The TAA decision was based on the correct service function provided by the petitioning workers. The Department inadvertently referenced ''bookkeeping'' rather than ''design'' services in the decision.

Finally, the petitioner alleges that subject firm workers produced a product, and that they were not engaged in ''providing design services.''

In clarifying their job function, the petitioner states that the petitioning worker group ''were a group of technicians who made the first patterns, sized patterns and figured out how much fabric those patterns (required),'' concluding that the work was done ''on a computer system.'' The fact that the pattern-making was generated electronically and did not involve a physical product constitutes a service rather than the production of an article as established by section 222(3) of the Act.

Only in very limited instances are service workers certified for TAA, namely the worker separations must be caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers produce an article and who are currently under certification for TAA.

Further, even if the patterns generated by the petitioning worker group were considered articles, they are shipped to an affiliated offshore facility, where they are incorporated into mass produced sportswear apparel. Thus, since the company does not import patterns, there would be no evidence of import impact.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 26th day of February, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–6417 Filed 3–17–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,790]

Dura Automotive Systems, Inc., Shifters Group, Livonia, MI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 4, 2003 in response to a worker petition filed by a company official on behalf of workers at Dura Automotive Systems, Inc., Shifters Group, Livonia, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 27th day of February, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–6411 Filed 3–17–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,865]

FiberMark, Inc., Rochester, MI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 12, 2003 in response to a worker petition filed by a State agency representative on behalf of workers at FiberMark, Inc., Rochester, Michigan.

The Department issued a negative determination applicable to the petitioning group of workers on June 27, 2002 (TA–W–41,259). That petition determination covered the time period prior to and subsequent to the plant closing in April 2002. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 28th day of February, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–6412 Filed 3–17–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,136]

The Goodyear Tire & Rubber Company Stow Mold Facility, Akron/Stow Complex, Akron, OH; Notice of Negative Determination Regarding Application for Reconsideration

By application of November 29, 2002, the United Steelworkers of America, Local 2, requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on October 21, 2002 and published in the **Federal Register** on November 5, 2002 (67 FR 67419).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Goodyear Tire & Rubber Co., Stow Mold Facility, Akron/Stow Complex, Akron, Ohio engaged in the production of tire molds and associated components, was denied because the ''contributed importantly'' group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met.

The union alleges that the Departmental finding that subject firm production was shifted domestically was ''erroneous.'' The union official further states that the North Carolina facility, which was purported to have taken on subject firm production, was ''not capable of doing the work which was performed at the Stow Mold Plant prior to its closure.''

Upon further review and contact with the company, it was revealed that virtually all of the subject firm production did indeed shift to the North Carolina facility, and that it produced competitive products prior to the closure of the Stow facility. The only component that was not shifted to this facility, a tread mold that was inserted into the larger mold, was outsourced by the company to another domestic supplier.

The union also asserts that the company indicated plans to shift production to affiliated company facilities in Luxembourg and Sao Paulo, Brazil. To support this allegation, the request for reconsideration was accompanied by what appears to be a company-produced chart titled ''Reallocation Study''. This chart indicates that subject firm production would shift predominantly to Luxembourg and Sao Paulo, with the North Carolina facility receiving a very small part of the production shifted from the subject firm.

This chart was faxed to the company for their review and comment. Upon review, they stated that it was indeed a reflection of a company document, and that it was put together by the company's Facilities Planning Department. However, the study was based on tire mold production scheduled for 2002, with the premise that the Stow plant would be closed in the beginning of 2002. In fact, the Stow plant did not close until October of 2002, thus the shift did not occur in line with the study that was conducted. As a result, excess capacity existed at the North Carolina facility and was able to absorb all of the subject facility's production.

Finally, the company did affirm that competitive imports were occasionally shipped from their foreign affiliates, but clarified that, in 2002, imports constituted a very small amount of subject plant production.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 26th day of February, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–6409 Filed 3–17–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,175]

Hilti Inc., New Castle, PA; Notice of Negative Determination Regarding Application for Reconsideration

By application received on December 9, 2002, petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Hilti Inc., New Castle, Pennsylvania was signed on November 13, 2002, and published in the **Federal Register** on November 27, 2002 (67 FR 70970).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition was filed on behalf of workers at Hilti Inc., New Castle, Pennsylvania engaged in activities related to repair of machinery and fabrications. The petition was denied because the petitioning workers did not produce an article within the meaning of section 222(3) of the Act.

The petitioner alleges that the workers do not perform bookkeeping services as addressed in the ''Negative Determination Regarding Eligibility To Apply for Workers Adjustment Assistance''.

A review of the initial investigation indicates that the workers were engaged in activities related to repair of machinery and fabrications. The TAA decision was based on the correct service functions performed by the subject firm. The Department inadvertently referenced ''bookkeeping'' rather than ''repair of machinery and fabrication'' in the decision.

The petitioner also alleges that the petitioning worker group was engaged in production as ''it relates to material movement, welding repair, and other functions related to ingot production and the production of SBQ steel bar''.

Contact with the company revealed that petitioning workers were engaged in fabrication (welding) and repair service of machinery at unaffiliated steel facilities on a contract basis. These functions do not constitute production.

Only in very limited instances are service workers certified for TAA, namely the worker separations must be caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers produce an article and who are currently under certification for TAA.

In conclusion, the workers at the subject firm did not produce an article within the meaning of Section 222(3) of the Trade Act of 1974, as amended.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 27th day of February, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–6410 Filed 3–17–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,893]

J & J Forging Inc., Monaca, Pennsylvania; Notice of Negative Determination Regarding Application for Reconsideration

By application received on October 21, 2002, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of J & J Forging Inc., Monaca, Pennsylvania was signed on September 11, 2002, and published in the **Federal Register** on September 27, 2002 (67 FR 61160).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition was filed on behalf of workers at J & J Forging Inc., Monaca, Pennsylvania engaged in activities related to processing steel, titanium and copper alloy materials. The petition was denied because the petitioning workers did not produce an article within the meaning of section 222(3) of the Act.

The petitioner alleges that a nearby (unaffiliated) facility that was certified for TAA benefits produced similar products, and thus believes that workers at J & J Forging Inc. should be certified.

A review of the products produced for this nearby facility revealed that some of the production is similar to that performed at the subject facility. However, the metal processed at the certified facility is owned by the company, whereas the subject firm performs finishing work on metal owned by customers of the subject firm. J & J Forging Inc. does not sell the metal they process and therefore their function is considered a service.

Only in very limited instances are service workers certified for TAA, namely the worker separations must be caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers produce an article and who are currently under certification for TAA.

The petitioner also appears to assert that the results of the events of 9/11 increased the import impact on subject firm workers.

As the work done at the subject facility is not considered production, import impact is not relevant.

In conclusion, the workers at the subject firm did not produce an article within the meaning of section 222(3) of the Trade Act of 1974.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 27th day of February, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–6408 Filed 3–17–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,181]

Motorola Integrated Electronics Systems Sector, Automotive Communication Electronic Systems, Elma, NY; Notice of Negative Determination Regarding Application for Reconsideration

By application of November 12, 2002, the company requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on September 25, 2002 and published in the **Federal Register** on October 10, 2002 (67 FR 63159).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Motorola, Integrated Electronics Systems Sector, Automotive Communication Electronic Systems Group, Elma, New York, engaged in the production of automotive electronic modules-printed circuit board products, was denied because the ''contributed importantly'' group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The ''contributed importantly'' test is generally demonstrated through a survey of the workers' firm's customers. The Department conducted a survey of the subject firm's major customers regarding their purchases of automotive electronic modules-printed circuit board products. The respondents reported no increased imports during periods where they decreased purchases from the subject firm. The subject firm did not import automotive electronic modules-printed circuit board products.

In their initial request for reconsideration (dated November 20, 2002), the company official alleged that ''data provided by our major customer regarding increases of imports is not accurate''.

A review of the initial customer survey revealed an increase in customer imports in January through September 12, 2002 compared to 2001. However, this customer also reported that they more than doubled their purchases from the Elma facility in January through September 12, 2002 relative to 2001 (as reported in dollars). As there were no declines in purchases from the domestic subject plant in the period when imports began, there is no evidence of import impact. Further, a clarifying conversation with the company confirmed that the figures provided by the customer were in fact accurate. The company official clarified that, although they had laid off employees in anticipation of a shift in production, an unexpected increase in production orders for the Elma facility had led to a delay in the production shift.

In a follow up letter (dated December 20, 2002), the company provided figures for production at the Elma facility and a foreign facility in regard to their production for their major customer. In this table, the figures indicate a decline in production at the subject firm in calendar year 2002 over 2001 and a corresponding increase in production shifted to a foreign source for the same time periods.

When contacted about these figures, the company official clarified that the subject facility's declining production figures were inaccurate due to the unexpected increase in production demand at the subject facility. Further, the company gives no indication of increased imports relative to production at the subject facility.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 24th day of February, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–6416 Filed 3–17–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—6385]

Ameriphone, Inc., a Wholly Owned Subsidiary of Plantronics, Inc., Garden Grove, CA; Notice of Negative Determination Regarding Application for Reconsideration

By application dated October 17, 2002, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on September 11, 2002, and was published in the **FEDERAL REGISTER** on September 27, 2002 (67 FR 61160).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The NAFTA–TAA petition filed on behalf of workers at Ameriphone, Inc., a wholly owned subsidiary of Plantronics, Inc., Garden Grove, California engaged in activities related to administrative, technical, sales and distribution services in support of products for the hearing impaired and deaf communities was denied because the petitioning workers did not produce an article within the meaning of section 250 of the Trade Act, as amended.

The petitioner alleges that the subject firm workers were engaged in the final production phase. Specifically, the petitioner mentions inspection, testing and modification of products as the functions performed at the subject firm. These functions were performed on articles produced and sent from overseas to the subject firm.

With the exception of product modifications, none of the above functions constitute production in terms of eligibility for NAFTA-Transitional Adjustment Assistance, as they do not meet the eligibility of the Trade Act. Product modification accounted for a negligible portion of the work performed at the subject firm.

The petitioner also asserts that subject firm workers performed engineering functions, including prototype design and production.

Contact with the company revealed that prototype production was a rare and intermittent function that constituted a negligible percentage of work performed at the subject facility.

The petitioner alleges that the subject firm workers performed ''article upgrades'' on products that required new components.

Investigation into this matter, including contact with the company, revealed that any ''upgrades'' performed represented a negligible percentage of work performed at the subject facility.

Finally, the petitioner appears to allege that the subject firm workers are eligible because they served as a source of packaging, updated literature, fault reports and components added to the product that was shipped to their facility.

Investigation into this matter revealed that subject firm workers do not produce packaging or updated literature. Fault reports are not considered production in context with worker eligibility for NAFTA–TAA. Further, components were added either as part of repair work, or were intermittent and not significant enough to qualify subject firm worker functions as production.

Only in very limited instances are service workers certified for TAA, namely the worker separations must be caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers produce an article and who are currently under certification for NAFTA–TAA. In this case, no such certification exists.

In conclusion, the workers at the subject firm did not produce an article within the meaning of section 250(a) of the Trade Act of 1974, as amended.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 10th day of March 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–6414 Filed 3–17–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,399]

BBA Nonwovens Simpsonville Inc., Lewisburg, PA; Notice of Revised Determination on Reconsideration

By letter postmarked August 15, 2002, the Paper, Allied-Industrial, Chemical and Energy International Workers Union, Local PACE 2–1318, requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on July 1, 2002, based on the finding that imports of apparel interlinings and disposable diaper components did not contribute importantly to worker separations at the Lewisburg plant. The denial notice was published in the **Federal Register** on July 18, 2002 (67 FR 47399).

To support the request for reconsideration, the union supplied additional information to supplement that which was gathered during the initial investigation. Upon further review and contact with the company, it was revealed that the company had sold off a major product line of apparel interlinings to a manufacturer with foreign production capacity.

In addition, contact with the major declining domestic customer of this product revealed that they replaced their purchases of apparel interlinings from the subject firm with products from the foreign plant during the relevant period. The imports accounted for a meaningful portion of the subject plant's lost sales and production.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at BBA Nonwovens Simpsonville Inc., Lewisburg, Pennsylvania, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

''All workers of BBA Nonwovens Simpsonville Inc., Lewisburg, Pennsylvania, who became totally or partially separated from employment on or after March 25, 2001 through two years from the date of this certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.''

Signed in Washington, DC this 19th day of February 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–6405 Filed 3–17–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,851]

Burlington Resources, Gulf Coast Division, Houston, TX; Notice of Negative Determination Regarding Application for Reconsideration

By application received on October 10, 2002, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Burlington Resources, Gulf Coast Division, Houston, Texas was signed on September 11, 2002, and published in the **Federal Register** on September 27, 2002 (67 FR 61160).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition was filed on behalf of workers at Burlington Resources, Gulf Coast Division, Houston, Texas engaged in activities related to clerical, accounting, legal and marketing services. The petition was denied because the petitioning workers did not produce an article within the meaning of section 222(3) of the Act.

The petitioner alleges that the majority of the petitioning worker group at Burlington Resources, Gulf Coast Division, Houston, Texas were production workers.

Upon further review and company contact, it was revealed that, although the overwhelming majority of workers in the petitioning worker group were office workers, a small percentage of the group fulfilled other job functions. A review of the job descriptions of these few workers revealed that, in addition to administrative functions, they were engaged in safety and environmental assessment services, and supervisory functions. As these functions do not constitute production, the original finding established in the initial investigation remains valid.

The petitioner also cites company data that indicates increased imports in natural oil and gas with corresponding declines in domestic production. As the petitioning worker group does not produce a product, however, this information is irrelevant.

Finally, the petitioner asserted that a very similar worker group at Texaco Exploration (TA–W–41,243 and TA–W–41,243 A–G), was certified for trade adjustment assistance, and attached a copy of this certification to the request for reconsideration. The petitioner also notes that other Burlington Resources facilities have been certified in the past.

A review of the Texaco certification revealed that production workers were involved in the petitioning worker group. Although it is not indicated that similar work functions were involved in this certification, it is possible that workers performing the same functions as those in the petitioning worker group could have been part of the Texaco certification. If service workers are in direct support of petitioning or TAA certified production workers, then workers in these support functions may be eligible. In the case of the petitioning worker group in this investigation, there are no production workers represented. Similarly, past certifications for Burlington Resources involved worker groups that included production workers.

Only in very limited instances are service workers certified for TAA, namely the worker separations must be caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers produce an article and who are currently under certification for TAA.

In conclusion, the workers at the subject firm did not produce an article within the meaning of section 222(3) of the Trade Act of 1974.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 27th day of February, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–6407 Filed 3–17–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7647 and NAFTA–7647A]

Cerf Brothers Bag Co., New London, MO, Cerf Brothers Bag Co., Vandalia, MO; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on November 1, 2002, in response to a petition filed by three workers on behalf of workers at Cerf Brothers Bag Company, New London, Missouri (NAFTA–7647) and Cerf Brothers Bag Company, Vandalia, Missouri (NAFTA–7647A).

The petition has been deemed invalid. Three workers may not file on behalf of workers at another location of a firm. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 7th day of March 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–6415 Filed 3–17–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–3584]

Chevron Products Company, Roosevelt, UT; Notice of Negative Determination of Reconsideration On Remand

The United States Court of International Trade (USCIT) remanded for further investigation the Secretary of Labor's negative determination in *Former Employees of Chevron Products Company* v. *U.S. Secretary of Labor* (00–08–00409).

The Department's initial denial of the petition for employees of Chevron Products Company, Roosevelt, Utah, was issued on April 24, 2000 and published in the **Federal Register** on May 11, 2000 (65 FR 30444). The denial was based on the finding that the workers provided a service and did not produce an article within the meaning of section 250(a) of the Trade Act, as amended.

The petitioners requested administrative reconsideration of the Department's denial, citing that the low price of imported crude oil forced U.S. producers to reduce activity, and thus, contributed to the worker separations at Chevron Products Company in Roosevelt, Utah. The petitioners also cited increased company imports of Canadian crude oil. The petitioners also claimed that other trucking and non-producing entities had been certified for Trade Adjustment Assistance (TAA). Furthermore, the petitioners stated that the Department issued the determination prematurely because the State of Utah had not issued its preliminary finding.

On July 21, 2000, the Department issued a Negative Determination on Application for Reconsideration because no new information was presented that the Department had erred or misinterpreted the facts or Trade Act law. The notice was published in the **Federal Register** on August 1, 2000 (65 FR 46988).

The USCIT remanded the case to the Department for further investigation because the USCIT believed that the record did not support the findings as to the nature of the work performed by the workers of Chevron Products Company, nor did it support the finding that the workers did not produce an article but provided a service.

The petitioners described the duties of a gauger as follows: The Plant Operator (gauger) is to go to each location, a well head and or crude oil tanks, for purchase. The gauger has a number of tasks to perform before the crude is purchased—check temperature, gauge the amount of crude in the tank, take samples for gravity test and grind out for BS & W, and check the bottom of the tank for water or impurities. If the samples and all the tests pass, then a crude oil ticket is written for that tank. At that point the crude is ready for transportation to one of three locations. Drivers are dispatched to the location and load the crude oil on their truck and transport it to one of three refineries.

On remand, the Department contacted the subject firm headquarters in San Ramon, California to obtain information about the organization of the company and the work that took place at the Roosevelt, Utah location.

ChevronTexaco submitted information to the Department that in 1998 and 1999, Chevron Products Company was a division of Chevron U.S.A., Inc., a wholly owned subsidiary of Chevron Corporation, now ChevronTexaco Corporation. According to ChevronTexaco, the business purpose of Chevron Products Company was marketing, trading, supply and distribution of crude oil and products derived from petroleum, and the marketing of related technology. ChevronTexaco also established that during the same time period, the Chevron Products Company, Roosevelt, Utah, location was a transportation terminal, involved in picking up crude oil by truck at the well head, primarily at wells owned by non-Chevron producers and delivering to the Chevron Products Company's refinery in Utah or to a pipeline terminal.

The Department obtained from the company the position descriptions for the Roosevelt terminal worker group. A brief summary of the ''Plant Operator'' follows:

(a) Receives and stores bulk products from pipeline tenders. Gauges tanks before and after delivery for product and water, takes temperatures, sets lines and opens valves (where not done by Pipe Line Gauger Switchman), takes samples as prescribed; completes tests to assure product quality.

(b) Performs truck loading activities including cleanliness, loading of exchange shipments, and verification (visual or meter) of products loaded.

(c) Periodically inventories product additives and chemicals. Balances inventories and receipts.

(d) Maintains driver records, regarding miles driven, gallons delivered.

The job description for the ''Product Delivery Truck Driver'' is briefly summarized as follows:

(a) Operates motor vehicle engaged in the delivery of bulk liquid or packaged products to customers, company terminals or warehouses.

(b) Operates a variety of makes, models, sizes, capacities and types of automotive equipment, and all appurtenant metering, pumping and other mechanical devices related or incidental to transporting, loading and unloading products.

The Department also examined the job description for a gauger as defined in the Dictionary of Occupational Titles (DOT). The gauger is included in the group of occupations concerned with conveying materials, such as oil, gas, water, etc., ''Pumping and Pipeline

Transportation Occupations.'' The DOT summarizes a gauger's duties as follows: a gauger gauges and tests the amount of oil in storage tanks and regulates flow of oil and other petroleum products into pipelines. More specifically, according to the DOT, gaugers gauge the quantity of oil in storage tanks before and after delivery, using calibrated steel tape and conversion tables, including lowering a thermometer into tanks to obtain a temperature reading.

The document sources reviewed by the Department agree as to the nature of the work performed by the gauger. An official of Chevron Products Company initially described the duties performed by the worker group as ''lifting and transporting crude oil.'' That description, although true, was incomplete. Gaugers ''gauge tanks before and after delivery for product and water.''

The petitioners believe that as gaugers they should be considered directly involved in the production process for crude oil because they test and determine the quality of crude oil to be purchased and transported before the drivers arrived to transport the oil for refining. The Department disagrees.

The documents provided by the petitioners, the company's job description for the workers, and the definition of gauger from the DOT, confirms that the duties performed by the worker group subject of this petition investigation are related to the transportation of crude oil after the oil has been produced: *i.e.*, the crude oil was already out of the ground by the time the Roosevelt facility gaugers tested it. In order for the petitioning worker group to be considered producing crude oil, they must engage in the exploration or drilling of the crude oil. Therefore, the Chevron Products workers cannot be certified as production workers.

Furthermore, the Roosevelt terminal workers could only be certified as service workers if their separation was caused importantly by a reduced demand for their services by an affiliated production facility whose workers could have been certified eligible to apply for NAFTA-TAA.

One theory is that the ''production facility'' that the subject workers served was the oil wells where the crude oil was pumped out. This theory fails in one respect because the subject workers were not ''serving'' the oil wells: they were ''serving'' the adjacent oil tanks. The oil tanks cannot be considered ''production facilities'' because nothing is produced at a crude oil tank: the crude oil has already been ''produced'' by the time it is placed in a tank.

However, even if one were to consider an oil tank a production facility, the subject workers would not be considered ''service workers'' of the oil tanks for purposes of certification under the Trade Act because the tanks are not affiliated with their employer. On remand, the Department obtained the contracts from ChevronTexaco for the Chevron Products Company regarding the locations at which the Roosevelt, Utah workers gauged in 1998 and 1999. The contracts in place at that time and a statement by ChevronTexaco supports the Department's decision that the tanks that the Roosevelt terminal workers gauged the oil were not affiliated with Chevron Products Company.

Another theory is that the subject workers serviced the refinery or refineries where the oil they gauged was delivered for ''production'' as refined oil. The USCIT remand questioned that the Department relied on information supplied by the company official that the workers transported crude oil to a Chevron refinery, and failed to investigate the workers' statement that the oil that they tested was destined for one of three locations for refining. The Department obtained information that the petitioners were uncertain as to the ownership of the refineries, pumping or mixing stations for one of the three locations. The unavailability of this information, however, is not critical to the investigation.

The information is not critical because even if one assumes that the refining facilities are affiliated with Chevron Products Company, there is no possibility that the production workers of the refinery (or refineries) could have been certified for NAFTA-TAA at the relevant time period. Historically, workers at refineries are not certified eligible to apply for NAFTA-TAA or TAA because U.S. imports of refined petroleum products are low. The Department examined a statistical table regarding refined petroleum products for the time period relevant to the investigation. From 1998 to 1999, aggregate U.S. imports of refined petroleum products from Mexico and Canada decreased absolutely. The U.S. import/shipment ratio was about two percent in 1998 and about one percent in 1999. DOL considers this a negligible amount. The Department had no certification in effect for workers of Chevron Products Company, its parent company, or any other producer of refined petroleum products during the relevant time period.

The USCIT added that the Department failed to rule out the possibility that workers at one of the refineries may have independently met the statutory criteria for certification. As with this, or any petition investigation, the investigation is conducted for the appropriate division or subdivision of the firm at which the worker group was employed. In this case, the petitioners were employees of the Chevron Products Company, Roosevelt, Utah terminal, not the refineries. Moreover, the crude oil transported to a refinery is a raw material used in the output of refined petroleum products. Consequently, crude oil cannot be considered like or directly competitive with refined petroleum products.

The State of Utah, Department of Workforce Services, Rapid Response Dislocated Worker Unit, issued an affirmative preliminary finding regarding the NAFTA-TAA petition investigation conducted for the Roosevelt, Utah workers. The State's affirmative finding was based on a Trade Adjustment Assistance (TAA) certification issued for workers of Chevron U.S.A. producing crude oil at various locations in Utah, as well as information obtained from the petitioners, and a statement by the Chevron Pipeline Company in Houston, Texas, that Chevron imports crude products from Canada.

The Department's review of the State's finding, however, does not alter the Department's negative determination regarding eligibility for this worker group to apply for NAFTA-TAA. Upon the State's receipt of a NAFTA-TAA petition, the State is required to conduct an investigation collecting information about the subject firm's sales, production, employment, imports, or a shift in production to Mexico or Canada, and issue a preliminary finding. The Department is required to issue the final determination as to whether there was a shift in production from the workers' firm to Mexico or Canada, or if increased imports from those countries of articles like or directly competitive with those produced at the workers' firm occurred and contributed importantly to worker separations and to the declines in sales or production at that firm.

The State's finding that workers that produced crude oil and natural gas for Chevron Production U.S.A. during the relevant time period were certified as eligible to apply for TAA does not warrant a NAFTA-TAA certification for workers of Chevron Products Company because the worker group eligibility requirements for the TAA and NAFTA-TAA programs are different.

A NAFTA–TAA petition investigation is limited to import impact from Mexico or Canada. A NAFTA–TAA certification for the worker group may be issued if

increases in imports from Mexico or Canada of articles like or directly competitive with those produced at the workers' firm ''contributed importantly'' to the decline in sales or production and to the total or partial separation of the workers at that firm. The NAFTA–TAA also has a provision to certify a group of workers when worker separations have occurred and there has been a shift in production from the workers' firm to Mexico or Canada.

A TAA petition certification requires that increases in imports from anywhere of articles like or directly competitive with those produced at the workers' firm ''contributed importantly'' to the declines in sales or production and to the total or partial separation of the workers at that firm. (The petitioners also filed a petition for the TAA program, and, on February 17, 2000, were denied eligibility for the same reason as the NAFTA–TAA denial: the workers provided a service and did not produce an article. The petitioners filed a request for administrative reconsideration that resulted in a dismissal on March 29, 2000. To the Department's knowledge, the petitioners did not request judicial review of this decision.)

Therefore, Utah was in error when it issued an affirmative preliminary finding that was based in part on a TAA certification. The Chevron Production U.S.A. workers were certified eligible to apply for TAA using total U.S. imports of crude oil. From 1998 to 1999, aggregate U.S. imports of crude oil increased, while U.S. imports from Mexico and Canada decreased. The Chevron Products Company, Roosevelt, Utah worker group applied for NAFTA–TAA benefits and the NAFTA–TAA investigation should have focused solely on imports from Canada and Mexico or shifts in production to Canada and Mexico.

Furthermore, it was inappropriate for the State to contact Chevron Pipeline Company in Houston, Texas to obtain information about Chevron Products Company. The Chevron Pipeline Company did not employ the Roosevelt terminal workers and it is unlikely it could provide relevant information regarding the employment of Chevron Products Company's employees. Perhaps that is why the State of Utah reported that there was a lack of cooperation and that the contact person was ''very hostile.'' During the conduct of this investigation the Department found the contact person for Chevron Products to be extremely helpful, cooperative and complied with Departmental requests within the due dates requested.

The Department confirmed that Chevron Products Company did import crude oil from Canada during the time period in which the petitioners were separated from employment, but that is irrelevant due to the nature of the work being conducted by the Roosevelt facility worker group. Part of the worker group, the gaugers, tested the crude oil in tanks before the other part of the worker group, the drivers, would lift and transport the crude oil. To the extent they were service workers, they were servicing oil tanks, which are not properly considered ''production'' facilities. And, even if an oil tank qualifies as a ''production facility'', the tanks were not affiliated with their employer.

In addition, even if the subject workers were considered service workers to the refineries where the crude oil was delivered, the refineries were ''producing'' refined petroleum products, not crude oil. Crude oil cannot be considered like or directly competitive with refined petroleum products. And, as discussed previously, the importation of refined petroleum products during the relevant time period from Mexico and Canada was merely negligible. Therefore, the refinery workers could not have been certified for NAFTA–TAA benefits. Because the refinery workers could not have been certified, a worker ''servicing'' the facility (or facilities) could not be certified.

The USCIT also remanded to the Department the finding regarding the workers' status as members of a Secondarily Affected Worker Group. The USCIT does not have jurisdiction to evaluate the Department's finding on this issue because the entitlement is based on a Presidential Statement of Administrative Action rather than NAFTA or the Trade Act. Certification as a member of a Secondarily Affected Worker Group entitles an individual to benefits through the Workforce Investment Act of 1998 (which replaced the Job Training Partnership Act) rather than the Trade Act.

Regardless, the subject workers are not qualified as members of a Secondarily Affected Worker Group. In order for an affirmative finding to be made, the following requirements must be met:

(1) The subject firm must be a supplier—such as of components, unfinished or semifinished goods—to a firm that is directly affected by imports from Mexico or Canada or shifts in production to those countries; or

(2) The subject firm must assemble or finish products made by a directly-impacted firm; and

(3) The loss of business with the directly-affected firm must have contributed importantly to worker separations at the subject firm.

The Chevron Products Company worker group in Roosevelt, Utah, gauged and transported crude oil to Chevron refineries to produce refined petroleum products. Although the crude oil can be considered a component of refined petroleum product, criteria (1) and (3) are not satisfied because the crude oil gauged and transported to a refinery is not directly affected by imports from Mexico or Canada.

Criterion (2) is not satisfied because the workers of Chevron Products Company, Roosevelt, Utah, did not assemble or finish products for a directly impacted firm.

Conclusion

After reconsideration on remand, I affirm the original notice of negative determination of eligibility to apply for NAFTA–TAA for workers and former workers of Chevron Products Company, Roosevelt, Utah. My reconsideration includes review of the February 26, 2003 letter sent by the petitioner's counsel. I find the letter did not provide additional facts to consider.

Signed at Washington, DC, this 7th day of March, 2003.

Edward A. Tomchick,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–6413 Filed 3–17–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,585]

Kennametal Inc., Greenfield Tap Plant, Greefield, MA; Notice of Revised Determination on Reconsideration

By letter of October 21, 2002, the company requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on October 10, 2002, based on the finding that imports of high speed steel taps did not contribute importantly to worker separations at the Greenfield plant. The denial notice was published in the **Federal Register** on November 5, 2002 (67 FR 67421).

To support the request for reconsideration, the petitioner supplied information indicating that workers at an affiliated sister location, Kennametal Inc., Greenfield Products Group, Lyndonville, Vermont were certified for TAA under TA–W–41,616. The petitioner further indicated that the subject plant produced the same products (same size high speed steel taps) as those produced at the Lyndonville plant.

On review of the initial investigation, and further contact with the company, it has become apparent that the workers of the subject plant and the workers at the Lyndonville, Vermont facility produced products like or directly competitive and for the same customer base. The workers of Kennametal Inc., Greenfield Industrial Products Group, Lyndonville, Vermont (TA–W–41,616) were certified on September 4, 2002. That TAA certification was based on a survey of customer(s) increasing their imports of products like or directly competitive with what the subject plant produced.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Kennametal Inc., Greenfield Tap Plant, Greenfield, Massachusetts contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

''All workers of Kennametal Inc., Greenfield Tap Plant, Greenfield, Massachusetts, who became totally or partially separated from employment on or after May 14, 2001 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed in Washington, DC, this 10th day of February 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–6406 Filed 3–17–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed reinstatement of the ''National Longitudinal Survey of Youth 1979.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before May 19, 2003.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202–691–7628. (*See* **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

I. Background

The National Longitudinal Survey of Youth 1979 (NLSY79) is a representative national sample of persons who were born in the years 1957 to 1964 and lived in the U.S. in 1978. These respondents were ages 14–22 when the first round of interviews began in 1979; they will be ages 39 to 47 when the planned 21st round of interviews is conducted from January to November 2004. The NLSY79 was conducted annually from 1979 to 1994 and has been conducted biennially since 1994. The longitudinal focus of this survey requires information to be collected from the same individuals over many years in order to trace their education, training, work experience, fertility, income, and program participation.

In addition to the main NLSY79, the biological children of female NLSY79 respondents have been surveyed since 1986, when the National Institute of Child Health and Human Development began providing funding to the Bureau of Labor Statistics (BLS) to gather a large amount of information about the lives of these children. A battery of child cognitive, socio-emotional, and physiological assessments has been administered biennially since 1986 to NLSY79 mothers and their children. Starting in 1994, children who had reached age 15 by December 31 of the survey year (the Young Adults) were interviewed about their work experiences, training, schooling, health, fertility, and self-esteem, as well as sensitive topics addressed in a supplemental, self-administered questionnaire.

The BLS contracts with the Center for Human Resource Research (CHRR) of the Ohio State University to implement the NLSY79, Child, and Young Adult surveys. Interviewing of respondents is conducted by the National Opinion Research Center (NORC) of the University of Chicago. Among the objectives of the Department of Labor (DOL) are to promote the development of the U.S. labor force and the efficiency of the U.S. labor market. The BLS contributes to these objectives by gathering information about the labor force and labor market and disseminating it to policy makers and the public so that participants in those markets can make more informed and, thus, more efficient, choices. Research based on the NLSY79 contributes to the formation of national policy in the areas of education, training, employment programs, and school-to-work transitions. In addition to the reports that the BLS produces based on data from the NLSY79, members of the academic community publish articles and reports based on NLSY79 data for the DOL and other funding agencies. The survey design provides data gathered from the same respondents over time to form the only data set that contains this type of intergenerational information for these important population groups. Without the collection of these data, an accurate longitudinal data set could not be provided to researchers and policy makers, and the DOL would not have the data for use in performing its policy and report-making activities.

II. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Bureau of Labor Statistics seeks approval to conduct the round 21 interviews of the NLSY79 and the associated surveys of biological children of female NLSY79 respondents. The main NLSY79 interview has an average response time of approximately 60 minutes per respondent. The time estimate for the NLSY79 Child Survey involves three components:

• The Mother Supplement is administered to female NLSY79 respondents who live with biological children under age 15. This questionnaire will be administered to about 2,000 women, who will be asked a series of questions about each child under age 15. On average, these women each have about 1.5 children under age 15, for a total number of approximately 3,000 children.

• The Child Supplement involves aptitude testing of about 2,700 children under age 15.

• The Child Self-Administered Questionnaire is administered to approximately 1500 children ages 10 to 14.

In addition to the main NLSY79 and Child Survey, the Young Adult Survey will be administered to approximately 2,800 youths ages 15 to 20 who are the biological children of female NLSY79 respondents. These youths will be contacted for an interview regardless of whether they reside with their mothers.

During the field period, about 200 main NLSY79 interviews are validated to ascertain whether the interview took place as the interviewer reported and whether the interview was done in a polite and professional manner.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Bureau of Labor Statistics.

Title: National Longitudinal Survey of Youth 1979.

OMB Number: 1220–0109.

Affected Public: Individuals or households.

Form	Total respondents	Frequency	Total responses	Average time per response	Estimated total burden
NLSY79 Round 21 Pretest	30	Biennially	30	60 minutes	30 hours
Main NLSY79 Survey	8,000	Biennially	8,000	60 minutes	8,000 hours
Main NLSY79 Validation Reinterview	200	Biennially	200	6 minutes	20 hours
Mother Supplement	2,000	Biennially	3,000	21 minutes	1,050 hours
Child Supplement	2,700	Biennially	2,700	31 minutes	1,395 hours
Child Self-Administered Questionnaire.	1,500	Biennially	1,500	30 minutes	750 hours
Young Adult Survey	2,800	Biennially	2,800	45 minutes	2,100 hours
Totals			18,230		13,345 hours

NOTE: The number of respondents for the Mother Supplement (2,000) is less than the number of responses (3,000) because mothers are asked to provide separate responses for each of the biological children with whom they reside.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed in Washington, DC, this 7th day of March, 2003.

Jesus Salinas,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 03–6401 Filed 3–17–03; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c) (2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed reinstatement of the ''Veterans Supplement to the Current Population Survey (CPS),'' to be conducted in August 2003. A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before May 19, 2003.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202–691–7628. (*See* **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

I. Background

The CPS has been the principal source of the official Government statistics on employment and unemployment for nearly 60 years. Collection of labor force data through the CPS is necessary to meet the

requirements in title 29, United States Code, sections 1 and 2. The Veterans supplement provides information on the labor force status of disabled veterans, Vietnam-theater veterans, and recently discharged veterans. The supplement also provides information on veterans' participation in various employment and training programs. The data collected through this supplement also will be used by the Veterans Employment and Training Service and the Department of Veterans Affairs to determine policies that better meet the needs of our Nation's veteran population.

II. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Action

Office of Management and Budget clearance is being sought for the Veterans Supplement to the CPS.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Agency: Bureau of Labor Statistics.

Title: Veterans Supplement to the CPS.

OMB Number: 1220–0102.

Affected Public: Households.

Total Respondents: 14,400.

Frequency: Biennially.

Total Responses: 14,400.

Average Time Per Response: Approximately 1 minute.

Estimated Total Burden Hours: 240 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed in Washington, DC, this 5th day of March, 2003.

Jesús Salinas,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 03–6402 Filed 3–17–03; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 03–031]

NASA Advisory Council, Minority Business Resource Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Minority Business Resource Advisory Committee.

DATES: Thursday, April 3, 2003, 9 a.m. to 4 p.m., and Friday, April 4, 2003, 9 a.m. to 12 Noon.

ADDRESSES: NASA John C. Stennis Space Center, Mississippi. Building 1100, Room 135, Stennis Space Center, MS 39529.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph C. Thomas III, Code K, National Aeronautics and Space Administration, (202) 358–2088.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review of Previous Meeting,
—Office of Small and Disadvantaged Business Utilization Update of Activities,
—NAC Meeting Report,
—Overview of NASA Stennis Space Center,
—Overview of Small Business Program,
—Public Comment,
—Propulsion Directorate Update,
—IFMP Overview,
—Earth Science Applications Update,
—Committee Panel Reports,
—Status of Open Committee Recommendations,
—New Business.

Visitors will be requested to sign a visitor's register. Attendees should report to Building 1100, Stennis Space Center, where they will be asked to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information: full name; gender; date/place of birth; citizenship; visa/greencard information (number, country, expiration date); employer/affiliation information (name of institution, address, country, phone); title/position of attendee. To expedite admittance, attendees can provide identifying information in advance by contacting NASA Stennis Space Center Security Office via email at *SSC.Security.Office@ssc.nasa.gov* or by telephone at (228) 688–3580. Visitors will not be permitted to drive on Stennis Space Center; however, NASA will provide attendees with transportation from the Casino Magic Tower Hotel, Bay St. Louis, MS. Visitors will be escorted at all times. The remote location of Stennis Space Center makes leaving the Center for lunch impractical, so visitors are encouraged to bring their lunch. It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–6351 Filed 3–17–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Officer, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On January 10 and 27, 2003, the National Science Foundation published a notice in the **Federal Register** of a permit applications received. Permits were issued on March 12, 2003 to: Bruce D.

Sidell, Permit No. 2003–017; H. William Detrich, Permit No. 2003–018.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 03–6468 Filed 3–17–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Meetings; Sunshine Act

DATE: Weeks of March 17, 24, 31, April 7, 14, 21, 2003.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of March 17, 2003

Thursday, March 20, 2003

10 a.m. Briefing on status of Office of Nuclear Security and Incident Response (NSIR) Programs, Performance, and Plans (closed—Ex. 1).

2 p.m. Discussion of Management Issues (closed—Ex. 2).

Week of March 24, 2003—Tentative

Thursday, March 27, 2003

10 a.m. Briefing on status of Office of Nuclear Regulatory Research (RES) Programs, Performance, and Plans.

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Week of March 31, 2003—Tentative

There are no meetings scheduled for the week of March 31, 2003.

Week of April 7, 2003—Tentative

Friday, April 11, 2003

9 a.m. Meeting with Advisory Committee on Reactor Safeguards (ACRS) (public meeting) (contact: John Larkins, 301–415–7360).

This meeting will be webcast live at the Web address—*wow.nrc.gov.*

12:30 p.m. Discussion of Management Issues (closed—Ex. 2).

Week of April 14, 2003—Tentative

There are no meetings scheduled for the week of April 14, 2003.

Week of April 21, 2003—Tentative

There are no meetings scheduled for the week of April 21, 2003.

* 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 4–0 on March 6, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Discussion of Legislative Issues (Closed—Ex. 9)'' be held on March 6, and on less than one week's notice to the public.

By a vote of 5–0 on March 6, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of Final Rule to Standardize the Process for Allowing a Licensee to Release Part of Its Reactor Facility or site for Unrestricted Use Before NRC Has Approved Its License Termination Plan'' be held on March 7, and on less than one week's notice to the public.

By a vote of 5–0 on march 7, the Commission determined pursuant to U.S.C. 552b(E) and § 9.107(a) of the Commission's rules that ''Discussion of legislative Issues (Closed—Ed. 9)'' be held on March 7, and on less than one week's notice to the public.

* * * * *

The NRC Commission meeting schedule can be found on the Internet at: *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 220555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: March 13, 2003.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–6546 Filed 3–14–03; 11:47 am]

BILLING CODE 4590–01–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, February 21, 2003, through March 6, 2003. The last biweekly notice was published on March 4, 2003 (68 FR 10277).

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 Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By April 17, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed 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, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to 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).

[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714 (d) and paragraphs (d)(1) and (d)(2) regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714 (d), please *see* 67 FR 20884; April 29, 2002.

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* 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, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1 (TMI–1), Dauphin County, Pennsylvania

Date of amendment request: January 16, 2003

Description of amendment request: The proposed amendment would revise the TMI–1 Technical Specifications to incorporate changes associated with the Cycle 15 core reload design analysis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed Technical Specification limits (Figure 2.1–1) and reactor protection system (RPS) trip setpoints (Table 2.3–1) are developed in accordance with the methods and assumptions described in NRC-[Nuclear Regulatory Commission] approved Framatome ANP Topical Reports BAW–10179 P–A, ''Safety Criteria and Methodology for Acceptable Cycle Reload Analyses'' and BAW–10187 P–A, ''Statistical Core Design for B&W-[Babcock&Wilcox-] Designed 177 FA Plants.'' The core thermal-hydraulic code (LYNXT) and CHF [critical heat flux] correlation (BWC) have been approved for use with these methods and the Mark-B fuel type utilized at TMI Unit 1. The proposed Technical Specification requirements on Variable Low Pressure Trip (VLPT) instrument operating conditions (Table 3.5–1) and surveillances (Table 4.1–1) are consistent with the VLPT requirements that were last contained in the TMI Unit 1 Technical Specifications prior to Cycle 7. The existing flux-flow trip setpoint and power/pump monitor trip have been shown to provide adequate DNB [departure from nucleate boiling] protection for Updated Final Safety Analysis Report (UFSAR) DNB-limiting loss of coolant events.

The margin retained for penalties such as transition core effects, by imposing a Thermal Design Limit of 1.40 in all DNB analyses supporting the proposed change, has been shown to be sufficient to offset the current mixed core conditions at TMI Unit 1, where the Mark-B12 fuel design with fine mesh debris filter is co-resident with earlier, non-debris filter Mark-B fuel designs. Therefore the previous commitment to require a higher minimum RCS [reactor coolant system] flow (105.5% of design flow instead of 104.5%) to offset transition core penalties is no longer necessary.

Reload cycles are designed and operated with maximum steady-state radial-local peaking factors that are bounded by UFSAR assumptions used to determine the dose consequences from fuel handling accidents.

The proposed change to Technical Specification 3.5.2.2.a is only an administrative correction.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed Technical Specification limits (Figure 2.1–1) and reactor protection system (RPS) trip setpoints (Table 2.3–1) provide core protection safety limits and Variable Low Pressure Trip setpoints developed in accordance with NRC-approved methods and assumptions. The transition core penalty resulting from Mark-B12 fuel with fine mesh debris filters co-residing with earlier, non debris filter Mark-B fuel has been demonstrated to be sufficiently bounded by the analyses supporting the proposed amendment. Therefore the previous commitment to require a higher minimum RCS flow (105.5% of design flow instead of 104.5%) to offset transition core penalties is no longer necessary. These changes have been evaluated for their impact on the design and operation of plant structures, systems, and components. These changes do not introduce any new accident precursors and do not involve any alterations to plant configurations, which could initiate a new or different kind of accident.

The proposed change to Technical Specification 3.5.2.2.a is only an administrative correction.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed reactor protection system (RPS) trip setpoints (Table 2.3–1) ensure core protection safety limits will be preserved during power operation. The proposed safety limits and setpoints are developed in accordance with NRC-approved methods and assumptions. The margin retained for penalties such as transition core effects, by imposing a Thermal Design Limit of 1.40 in all DNB analyses supporting the proposed change, has been shown to be sufficient to offset the current mixed core conditions at TMI Unit 1. The margin available between minimum DNBR [departure from nucleate boiling ratio] results for UFSAR loss of coolant flow events and the Thermal Design Limit of 1.40 is significant and is similar to DNB margin results for the current non-SCD [Statistical Core Design] analysis.

Reload cycles are designed and operated with maximum steady-state radial-local peaking factors that are bounded by UFSAR assumptions used to determine the dose consequences from fuel handling accidents.

The proposed change to Technical Specification 3.5.2.2.a is only an administrative correction.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: 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.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: February 14, 2003.

Description of amendment request: The amendment would allow an increase in the maximum decay heat of spent fuel stored in Spent Fuel Pools (SFPs) C and D from 1.0 MBTU/hr to 7.0 MBTU/hr in Technical Specification 5.6.3.d. The amendment would also increase the allowable SFP temperatures from 140 degrees F to 150 degrees F under normal and emergency conditions other than a design-basis Loss-of-Coolant Accident (LOCA). For a LOCA, the maximum allowed SFP temperature would increase from 150 degrees F to 160 degrees F.

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:

A written evaluation of the significant hazards consideration of a proposed license amendment is required by 10 CFR 50.92. Progress Energy Carolinas, Inc. (alternately known as Carolina Power & Light Company) has evaluated the proposed amendment and determined that it involves no significant hazards consideration. According to 10 CFR 50.92, a proposed amendment to an operating license involves no significant hazards consideration if 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 determination is as follows:

Proposed Change

The change involves an increase in the maximum decay heat of spent fuel stored in Spent Fuel Pools (SFPs) C and D from 1.0 MBTU/hr to 7.0 MBTU/hr, and an increase in the allowable SFP temperatures.

Basis

This change does not involve a significant hazards consideration for the following reasons:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The license amendment only increases the heat load from the Fuel Pool Cooling and Cleanup System (FPCCS) and the maximum allowable pool temperature. The changes do not modify the design of Structures, Systems and Components (SSCs) that could initiate an accident. The FHB [Fuel Handling Building] Emergency Exhaust System mitigates the consequences of a fuel handling accident in the Fuel Handling Building. This system has been evaluated for the conditions that would exist with the higher SFP temperatures and it was found that there would be no decrease in the charcoal efficiency. As a result, there was no increase in the doses from the fuel handling accident in the FHB. Therefore, the change does not result in any increase in the probability or consequences in any accident previously analyzed.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The increase in the SFP decay heat load and the SFP temperature limit does not involve new plant components or procedures. No significant impact on any postulated accident is made due to this change since the required cooling capacity is maintained to the SFPs and the FPCCS, and the SFPs will operate within design parameters.

For the activation of SFPs C and D, Progress Energy Carolinas, Inc. performed a Probabilistic Safety Analysis (PSA) of a total loss of SFP forced cooling. That analysis concluded that the probability of spent fuel rack uncovery was not credible. That analysis remains bounding for this license amendment application.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed changes do not affect the design or operation of the barriers to fission product release (fuel cladding, reactor coolant system pressure boundary, and containment boundary). The change in the SFPs C and D decay heat load is bounded by the heat load used in the analysis of the safety-related systems for design basis accidents. Therefore, there is no impact in the margin of safety.

Based on these considerations, the proposed change does not involve a significant reduction on 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: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Allen Howe.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: February 19, 2003.

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 5.5.10, ''Steam Generator (SGs) Tube Surveillance Program.'' The proposed amendments would relocate to TS 5.5.21 the TS 5.5.10 program requirements that apply to the original SGs and would provide a new TS 5.5.10 that contains program requirements that would apply to the new SGs when they are installed.

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:

Pursuant to 10 CFR 50.91, Duke has made the determination that this amendment request does not involves a significant hazard by applying the three standards established by the NRC regulations in 10 CFR 50.92 as described below.

First Standard

The proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment will revise Technical Specification (TS) 5.5.10 to delete and clarify replacement steam generator (SG) surveillance requirements applicable to the replacement of the SGs following their installation. The proposed amendment does not result in any changes to the design or methods of operation of the facility or any of its structures, systems or components (SSC). The SG repair methods that would be deleted are not applicable to the replacement SGs due to the use of improved materials and design. Defects found during future replacement SG tube inspections that exceed the limits in the new TS 5.5.10 will be removed from service by plugging rather than being repaired. The accident analyses and assumptions made in the Updated Final Safety Analysis Report (UFSAR) Chapter 15, Accident Analyses, are not changed as a result of the proposed changes. There are no changes resulting from the new TS 5.5.10 that could affect the function of preventing or mitigating any of these accidents. The proposed change does not increase the likelihood of the malfunction of an SSC that may increase the probability or consequences of an accident. The relocated surveillance requirements for the current steam generators will not change as a result of the proposed TS changes. Therefore, the proposed change will not result in a significant increase in the probability or consequences of an accident previously evaluated.

Second Standard

The proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the SG tube surveillance TS will delete or modify surveillance requirements that would otherwise not be applicable to the replacement steam generators. SG Tubes found to exceed the plugging limit criteria of TS 5.5.10 for continued

service will be removed from service by plugging rather than being repaired. The plugging limit is unchanged by the proposed amendment. These changes will not introduce any adverse changes to the facilities' design bases or postulated accidents resulting from potential tube degradation. The proposed amendment does not affect the design of SGs, their method of operation, or primary coolant chemistry controls. In addition, the proposed amendment does not impact any other SSC. Surveillance requirements for the current SGs will not change prior to their removal from service as a result of the proposed changes. Therefore, the proposed changes do not create the possibility of a new or different type of accident from any accident previously evaluated.

Third Standard

The proposed amendment would not involve a significant reduction in the margin of safety.

Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. These barriers are unaffected by the changes proposed in this LAR. The steam generator tubes are an integral part of the reactor coolant pressure boundary. Repairing SG tubes by previously approved methods of sleeving or rerolling are considered to be an equivalent boundary to plugging a steam generator tube as has also been previously approved. Therefore, the margin of safety is not reduced by the changes proposed in this license amendment request.

Conclusion

Based upon the proceeding evaluation, performed pursuant to 10 CFR 50.92, Duke Energy Corporation has concluded that approval and implementation of this license amendment request at the Oconee Nuclear Station will not involve a significant hazards consideration. The proposed changes revise the steam generator surveillance requirements to be consistent with the replacement steam generators. Following implementation of the changes proposed in this license amendment request, the Oconee steam generators will continue to be operated in a safe and conservative manner.

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: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005.

NRC Section Chief: John A. Nakoski.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: January 29, 2003.

Description of amendment request: The proposed amendment would change the spent fuel pool loading restrictions by redefining the regions, inserting Metamic® poison panels in a portion of the spent fuel pool, and increasing the minimum boron concentration.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Most accident conditions will not result in an increase in K-effective (K_{eff}) of the fuel stored in the rack. However, there are accidents that can be postulated to increase reactivity. For these accident conditions, the double contingency principle of ANS [American Nuclear Society] N16.1–1975 is applied. This states that it is unnecessary to assume two unlikely, independent, concurrent events to ensure protection against a criticality accident. Therefore, for accident conditions, the presence of soluble boron in the storage pool water can be assumed as a realistic initial condition since its absence would be a second unlikely event.

A vertical drop accident condition directly upon a cell will cause damage to the racks in the active fuel region. The proposed >2000 ppm [parts per million] TS [technical specification] limit will insure that K_{eff} does not exceed 0.95. A fuel assembly dropped on top of the rack will not deform the rack structure such that criticality assumptions are invalidated. The rack structure is such that [after rack deformation] an assembly positioned horizontally on top of the rack is more than eight inches away from the upper end of the active fuel region of the stored assemblies. This distance precludes interaction between the dropped assembly and the stored fuel. An inadvertent drop of an assembly between the outside periphery of the rack and the pool wall is bounded by the worst case fuel misplacement accident condition of 825 ppm. The distance between all the rack modules and the pool walls is [nominally] less than the width of a fuel assembly.

The fuel assembly misplacement accident was considered for all storage configurations. An assembly with high reactivity is assumed to be placed in a storage location which requires restricted storage based on initial U–235 [Uranium-235] loading and burnup. The presence of boron in the pool water assumed in the analysis has been shown to substantially offset the worst case reactivity effect of a misplaced fuel assembly for any configuration. The boron requirement of 825 ppm is less than the proposed >2000 ppm minimum boron TS limit. Therefore, a five percent subcriticality margin can be easily met for postulated accidents since any reactivity increase will be much less than the negative worth of the dissolved boron.

For fuel storage applications, water is present. An ''optimum moderation'' accident is not a concern in spent fuel pool storage racks because the rack design prevents the preferential reduction of water density between the cells of a rack (*e.g.*, boiling between cells).

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes will define a portion of the current Region 2 as Region 3. The new region will contain Metamic® poison panel inserts and will allow unrestricted storage of fuel assemblies with various enrichments and burnup. To support the proposed change, a new criticality analysis was performed. The analysis resulted in new loading restrictions in Region 1 and Region 2. The presence of boron in the pool water assumed in the analysis is less than the proposed ANO–2 [Arkansas Nuclear One, Unit 2] TS minimum concentration of >2000 ppm. Therefore, a five percent subcriticality margin can be easily met for postulated accidents since any reactivity increase will be much less than the negative worth of the dissolved boron.

No new or different types of fuel assembly drop scenarios are created by the proposed change. During the installation of the Metamic® panels, the possible drop of a panel is bounded by the current fuel assembly drop analysis. No new or different fuel assembly misplacement accidents will be created. Administrative controls currently exist to assist in assuring that fuel misplacement does not occur.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

With the presence of a nominal boron concentration, the SFP [spent fuel pool] storage racks are designed to assure that fuel assemblies of less than or equal to five weight percent U–235 enrichment when loaded in accordance with the proposed loading restrictions will be maintained within a subcritical array with a subcritical margin of

five percent. This has been verified by criticality analyses.

Credit for soluble boron in the SFP water is permitted under accident conditions. The proposed change that will allow insertion of Metamic® poison panels does not result in the potential of any new misplacement scenarios. Criticality analyses have been performed to determine the required boron concentration that would ensure that the maximum K_{eff} does not exceed 0.95. By increasing the minimum boron concentration to >2000 ppm, the margin of safety currently defined by taking credit for soluble boron will be maintained.

The structural analysis of the spent fuel racks along with the evaluation of the SFP structure showed that the integrity of these structures will be maintained with the addition of the poison inserts. All structural requirements were shown to be satisfied, so all the safety margins were maintained.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: December 17, 2002.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 5.5.10, ''Ventilation Filter Testing Program,'' to adopt the requirements of the American Society for Testing and Materials Standard (ASTM) D3803–1989, ''Standard Test Method for Nuclear-Grade Activated Carbon.'' The proposed TS revisions are in response to Nuclear Regulatory Commission (NRC) Generic Letter (GL) 99–02, ''Laboratory Testing of Nuclear-Grade Activated Charcoal.'' The NRC had previously published a notice of consideration on December 12, 2001 (66 FR 64292) regarding a similar proposal from the licensee in response to GL 99–02. However, in response to a request for additional information from the NRC dated March 29, 2002, the licensee has now revised its proposed amendment. In addition to withdrawing the prior request to change the maximum control room ventilation system (CRVS) differential pressure in TS 5.5.10.d, the proposed amendment would revise the TSs: (1) To provide a CRVS methyl iodide removal efficiency of greater than or equal to 95.5% and remove the notation that there is a 1-inch charcoal bed depth; (2) to allow for the continued use of the existing CRVS through Refueling Outage 13, in order to design, fabricate, and install a 2-inch charcoal filter bed; (3) to add a note in the TS requiring a demonstration of charcoal efficiency of 93% when changing the charcoal in the existing CRVS bed prior to any fuel movement in the upcoming Refueling Outage 12 and every 6 months thereafter until the new beds are installed. The proposed amendment also seeks an exception from the factor of safety of two for the Containment Fan Cooler Units due to the plant's design.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: The proposed license amendment adopts the new test method and acceptance criteria of ASTM D3803–1989 for activated charcoal filters. The changes require laboratory performance testing of adsorber carbon that yields a more accurate result than the testing currently required by the TS. The proposed change to delete non-conservative TS requirements for testing of adsorber carbon is not a plant accident initiator as described in the Final Safety Analysis Report (FSAR). The proposed amendment does not change the function of any structure, system or component (SSC). The function of the ventilation systems is filtration of radiological releases during postulated accidents. The proposed changes will provide greater assurance that this function is provided. The revised TS requirements are for laboratory tests that are currently in place to address Generic Letter 99–02, with one exception to the safety factor of 2, and accommodate the change of the Control Room Ventilation System (CRVS) charcoal beds to two inches. The change only affects the TS testing requirements since the modification to the CRVS will be accomplished separately from the TS change. The TS changes will not result in any changes to the efficiency assumed in accident analysis. The changes do not alter, degrade or prevent actions described or assumed in an accident described in the FSAR. Therefore, the proposed amendment does not change the possibility of an accident previously evaluated or significantly increase the consequences of an accident previously evaluated.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: The proposed license amendment adopts the new test method and acceptance criteria of ASTM D3803–1989 for activated charcoal filters. The change does not involve any modifications to the plant but will accommodate the planned modification of the CRVS to change the charcoal beds from 1 inch to 2 inches. The change will not require changes to how the plant is operated nor will it affect the operation of the plant. The changes require laboratory performance testing of adsorber carbon that yields a more accurate result than the testing currently required by the TS. The proposed changes to delete non-conservative TS requirements for testing of adsorber carbon is not a plant accident initiator as described in the Final Safety Analysis Report (FSAR). The proposed amendment does not change the function of any structure, system or component (SSC). The function of the ventilation systems is filtration of radiological releases during postulated accidents. The proposed changes will provide greater assurance that this function is provided. The revised TS requirements are for laboratory tests that are currently in place to address Generic Letter 99–02, with one exception to the safety factor of 2, and accommodate the change of the Control Room Ventilation System (CRVS) charcoal beds to two inches. The change only affects the TS testing requirements since the modification to the CRVS will be accomplished separately from the TS change. The TS changes will not result in any changes to the efficiency assumed in accident analysis. The changes do not alter, degrade or prevent actions described or assumed in an accident described in the FSAR. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed license amendment involve a significant reduction in a margin of safety?

Response: The proposed license amendment adopts the new test method and acceptance criteria of ASTM D3803–1989 for activated charcoal filters. The proposed license amendment does not reduce the margin of safety but enhances it by requiring more accurate testing. The proposed test change will require the use of a current and improved ASTM standard to ensure that the carbon ability to adsorb radioactive material will remain at or above the capability credited in our accident analysis.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Section Chief: Richard J. Laufer.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: January 23, 2003.

Description of amendment request: The proposed amendment would modify the Pilgrim Nuclear Power Station Technical Specification (TS) requirements for the Emergency Core Cooling System (ECCS) during shutdown conditions. The proposed amendment would change the Core Spray and Low Pressure Coolant Injection System's TS requirements to be applicable during the Run, Startup, and Hot Shutdown Modes. The proposed change would also modify the High Drywell Pressure Instrumentation TSs to require the instrumentation to be Operable during the Run, Startup and Hot Shutdown Modes. The proposed change would also remove unnecessary TS requirements based on the plant's operating Mode. Other proposed changes are administrative in nature.

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. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change involves modifications to the TS operability requirements for the ECCS during shutdown conditions. The ECCS is designed to mitigate the release of radioactive materials to the environment following a Loss of Coolant Accident (LOCA). The modifications remove certain ECCS TS requirements during shutdown conditions and includes additional requirements for the Cold Shutdown or Refuel Modes when the availability of the ECCS is most likely to be needed. The additional requirements are more restrictive and are proposed to reduce the probability or consequences of potential accidents. The requirements proposed to be removed are unnecessary due to the associated plant conditions and other changes are administrative in nature. No increase in the probability or consequences of an accident previously evaluated has been identified for these changes. The ECCS is not an initiator of any accidents previously evaluated and the proposed change does not increase the amount of radioactive materials available to be released for a previously evaluated accident. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change involves modifications to the TS operability requirements for the ECCS during shutdown conditions. The modifications remove unnecessary ECCS TS requirements during shutdown conditions and includes additional requirements for the Cold Shutdown or Refuel Modes when the availability of the ECCS is most likely to be needed. In addition, the proposed change makes administrative changes. The proposed change does not involve any physical alteration of ECCS equipment and does not create a new mode of system operation. In addition, no new or different types of ECCS equipment will be installed as a result of the proposed change. The proposed change will allow the installation of modifications on the reference and variable legs of the instrument racks that support the ECCS and Feedwater level instrumentation. No other types of accidents or accident initiators associated with the proposed change or modifications have been identified. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The ECCS is designed to mitigate the release of radioactive materials to the environment following a LOCA. The long-term cooling analysis following a design basis LOCA demonstrates that only one low-pressure ECCS injection/spray subsystem is required, post LOCA, to maintain adequate reactor vessel water level. The proposed change includes an additional requirement that two low-pressure injection/spray subsystems be Operable for the Cold Shutdown or Refuel Modes. The requirements proposed to be removed are unnecessary due to the associated plant conditions and other proposed changes are administrative in nature. No scenario has been identified that, as a result of the proposed change, would create a single component failure which prevents the automatic initiation of the ECCS. The proposed change will not modify the method by which any safety-related system performs its function and ECCS operation and testing will remain consistent with current safety analysis assumptions. 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 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. M. Fulton, Esquire, Assistant General Counsel, Pilgrim Nuclear Power Station, 600 Rocky Hill Road, Plymouth, Massachusetts 02360–5599.

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: December 20, 2002.

Description of amendment request: The proposed amendments would remove technical specification requirements for reactor protection system Function 5, main steam isolation valve closure, and Function 10, turbine condenser vacuum low, when in startup.

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 changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the Dresden Nuclear Power Station (DNPS) Units 2 and 3 Technical Specifications (TS) revise the applicability of TS 3.3.1.1, ''Reactor Protection System (RPS) Instrumentation,'' Function 5 (*i.e.*, Main Steam Isolation Valve—Closure) and Function 10 (*i.e.*, Turbine Condenser Vacuum—Low) to eliminate the requirement for these functions to be operable while in Mode 2 with reactor pressure ≥600 psig. The proposed changes also delete Required Action F.2 of TS 3.3.1.1 to align with the revised applicability for Functions 5 and 10.

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 proposed changes will not involve an increase in the probability of an accident previously evaluated.

Additionally, these proposed changes will not increase the consequences of an accident previously evaluated because the proposed changes do not adversely impact structures, systems, or components. These changes will not alter the operation of equipment assumed to be available for the mitigation of accidents or transients by the plant safety analysis. Functions 5 and 10 are currently required in Mode 2 with reactor pressure ≥600 psig to ensure that the reactor is shut down to prevent an overpressurization transient due to closure of main steam isolation valves or turbine stop valves. The existing scram logic is the result of experience gained during the startup of an early vintage boiling water reactor in 1966 when operators had difficulty controlling reactor power above approximately 600 psig without pressure control. Experience on later plant startups indicates that the early experience may not be inherent to the boiling water reactor design. As such, General Electric subsequently recommended that the scram requirement be eliminated. In Mode 2, the heat generation rate is low enough so that the

other diverse RPS functions provide sufficient protection from an overpressurization transient. Furthermore, there will be no change in the types or significant increase in the amounts of any effluents released offsite.

For these reasons, 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 accident previously evaluated.

The proposed changes revise the applicability for Functions 5 and 10 of TS 3.3.1.1. The RPS is not an initiator of any accident. Rather, the RPS is designed to initiate a reactor scram when one or more monitored parameters exceed their specified limits to preserve the integrity of the fuel cladding and the reactor coolant pressure boundary and minimize the energy that must be absorbed following an accident. The proposed changes do not alter the applicability for RPS functions during plant conditions in which an overpressurization transient is assumed to occur. Therefore, the proposed changes do 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 a margin of safety.

Margins of safety are established in the design of components, the configuration of components to meet certain performance parameters, and in the establishment of setpoints to initiate alarms and actions. The proposed changes revise the applicability for Functions 5 and 10 of TS 3.3.1.1. The proposed changes do not alter the applicability for RPS functions during plant conditions in which an overpressurization transient is assumed to occur. In addition, the proposed changes do not affect the probability of failure or availability of the affected instrumentation. Furthermore, the proposed changes will reduce the probability of test-induced plant transients and equipment failures. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–412, Beaver Valley Power Station, Unit 2, Beaver County, Pennsylvania

Date of amendment request: February 4, 2003.

Description of amendment request: The proposed amendment would extend the surveillance interval of the slave relay in the Engineered Safety Feature Actuation System instrumentation from 92 days to 12 months. The proposed amendment includes changes to surveillance requirement (SR) 4.3.2.1.1 and the related Bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. The proposed change to the slave relay test interval reduces the potential for spurious actuation of equipment, and therefore does not increase the probability of any accident previously analyzed. The proposed change to the slave relay test interval does not change the response of the unit to any accidents and has an insignificant impact on the reliability of the engineered safety feature actuation system (ESFAS) signals. The ESFAS will remain highly reliable and the proposed change will not result in a significant increase in the risk of plant operation. This is demonstrated by showing that the impact on plant safety as measured by the change in core damage frequency (CDF) is less than 1.0E–06 per year and the change in large early release frequency (LERF) is less than 1.0E–07 per year. The change meets the acceptance criteria in Regulatory Guide 1.174. Therefore, since the ESFAS will continue to perform its function with high reliability as originally assumed, and the increase in risk as measured by the change in CDF and LERF is within the acceptance criteria of existing regulatory guidance, there will not be a significant increase in the consequences of any accidents.

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility or the manner in which the unit is operated and maintained. The proposed change does not alter or prevent the ability of structures, systems, and components (SSCs) from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change does not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Further, the proposed change does not increase the types or amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures. The proposed change is consistent with the safety analysis assumptions and resultant consequences.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No. The proposed change does not result in a change in the manner in which the EFSAS provides unit protection. The EFSAS will continue to have the same setpoints after the proposed change is implemented. There are no design changes associated with the proposed change. The change to the slave relay test interval does not change any existing accident scenarios, nor create any new or different accident scenarios.

The change does not involve a physical alteration to the unit (*i.e.*, no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the change does not impose any new or different requirements or eliminate any existing requirements. The change does not alter assumptions made in the safety analysis. The proposed change is consistent with the safety analysis assumptions and current unit operating practice.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No. The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not impacted by this change. Redundant ESFAS trains are maintained, and diversity with regard to the signals that provide engineered safety features actuation is also maintained. All signals credited as primary or secondary, and all operator actions credited in the accident analysis will remain the same. The proposed change will not result in unit operation in a configuration outside the design basis. The calculated impact on risk is insignificant and meets the acceptance criteria contained in Regulatory Guide 1.174. The proposed slave relay test interval change will result in a reduced potential for spurious equipment actuations associated with testing.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary O'Reilly, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Richard J. Laufer.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of amendment request: June 10, 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 June 10, 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: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

Nuclear Management Company, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: February 28, 2003.

Description of amendment request: The proposed amendment would change the Technical Specifications (TSs) to relocate the numerical values and curves for the pressure and temperature (P/T) limits for the reactor coolant system (RCS). The numerical values and curves would be relocated from the TS to a licensee-controlled document, the Pressure and Temperature Limits Report (PTLR) pursuant to Nuclear Regulatory Commission (NRC) Generic Letter (GL) 96–03, ''Relocation of the Pressure Temperature Limit Curves and Low Temperature Overpressure Protection System Limits,'' dated January 31, 1996, as modified by NRC Improved Standard TS, TS Task Force (TSTF) change package number 419, Revision 0. Specifically, a definition for the PTLR would be added to TS 1.0, ''Definitions;'' administrative controls for the generation and reporting requirements associated with the PTLR would be added to TS 5.6, ''Administrative Controls—Reporting Requirements; '' TSs 3.4.9 and 4.4.9 would be modified by removing the numerical values and curve (Figure 3.4.9–1) for the various P/T limits (which the licensee has updated using an NRC-approved methodology) and replacing them with a reference to the PTLR.

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 amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The P/T limits are not derived from Design Basis Accident (DBA) analyses. They are prescribed by the ASME [American Society of Mechanical Engineers Boiler and Pressure Vessel] Code and 10 CFR [Part] 50 Appendi[ces] G and H as restrictions on normal operation to avoid encountering

pressure, temperature, and temperature rate of change conditions that might cause undetected flaws to propagate and cause non-ductile failure of the reactor coolant pressure boundary. Thus, they ensure that an accident precursor is not likely. Hence, they are included in the TS as satisfying Criterion 2 of 10 CFR 50.36(c)(2)(ii). The relocation of the numerical value of these limits to a licensee-controlled document does not remove the existing TS requirement that the limits be met. The new TS administrative controls for the PTLR will ensure that only NRC-approved methods are used to calculate the actual limits to be applied. Thus, this relocation will not increase the probability of any accident previously evaluated.

The proposed changes do not alter the design assumptions, conditions, or configuration of the facility or the manner in which the facility is operated or maintained. The proposed changes will not affect any other System, Structure or Component (SSC) designed for the mitigation of previously analyzed events. The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of any accident previously evaluated. Thus, the proposed relocation of the existing numerical values and the updated figure for the RCS P/T limits based upon an NRC-approved methodology, to a licensee-controlled document (*i.e.*, the PTLR), with all the requisite TS restrictions placed upon it by NRC Generic Letter 96–03, as modified by TSTF–419, Rev. 0, will not increase the consequences of any previously evaluated accident.

(2) The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve a physical alteration of the plant (*i.e.*, no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements or eliminate any existing requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice. We are merely requesting to move the existing numerical values and the updated figure for the RCS P/T limits based upon an NRC-approved methodology, from the TS to a licensee-controlled document (*i.e.*, the PTLR), with all the requisite TS restrictions placed upon it by NRC Generic Letter 96–03, as modified by TSTF–419, Rev. 0.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

(3) The proposed amendment will not involve a significant reduction in a margin of safety.

The proposed changes do not alter the manner in which Safety Limits, Limiting Safety System Settings or Limiting Conditions for Operation are determined. The setpoints at which protective actions are initiated are not altered by the proposed changes. Sufficient equipment remains available to actuate upon demand for the purpose of mitigating an analyzed event. We are merely requesting to move the existing numerical values and the updated figure for the RCS P/T limits based upon an NRC-approved methodology, from the TS to a licensee-controlled document (*i.e.*, the PTLR), with all the requisite TS restrictions placed upon it by NRC Generic Letter 96–03, as modified by TSTF–419, Rev. 0. Thus, the proposed changes will not significantly reduce any margin of safety that currently exists.

Based upon the above, NMC [Nuclear Management Company] has determined that the proposed amendment will 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: Mr. Alvin Gutterman, Morgan Lewis, 1111 Pennsylvania Avenue NW Washington, DC 20004.

NRC Section Chief: L. Raghavan.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: January 27, 2003.

Description of amendment request: The proposed amendment would make administrative and editorial changes to the Fort Calhoun Station (FCS) Technical Specifications (TS) 1.3 Basis (1); 2.7(1)a; 2.7(1)b; 2.7(1)d; 2.7(1)i; 2.7 Basis; 3.0.2; Table 3–5, Item 11; and 3.5(3)ii. The proposed changes consist primarily of editorial and typographical changes or corrections.

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 correction of typographical errors and clarification of specifications is not an initiator of any previously evaluated accident. The frequency or periodicity of performance of those surveillances affected by this change are not an initiator of any previously evaluated accident. The proposed changes will not prevent safety systems from performing their accident mitigation function as assumed in the safety analysis.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change only affects the technical specifications and does not involve a physical change to the plant. Modifications will not be made to existing components nor will any new or different types of equipment be installed. The proposed change corrects typographical errors, provides clarification as to applicable equipment and modifies the frequency of surveillances performed once per shift from 8 hours to 12 hours. This change will not alter assumptions made in safety analysis and licensing bases.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change corrects typographical errors, provides clarification as to applicable equipment, and modifies the frequency of surveillances performed once per shift from 8 hours to 12 hours. The decrease in frequency or periodicity of performance of these surveillances will also permit more efficient and more safely managed plant operations and can help reduce the risk associated with changing plant equipment or operating modes in order to obtain some of these readings.

Therefore, this technical specification 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: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: January 27, 2003.

Description of amendment request: The proposed amendment would delete the allowance to perform the surveillance test of Table 3–2, Item 20 (Recirculation Actuation Logic Channel Functional Test) under administrative controls, while components in excess of those allowed by Conditions a, b, d, and e of Technical Specification 2.3(2) are inoperable provided they are returned to operable status within one hour. This allowance was granted in Amendment No. 206 issued April 19, 2002, on an exigent basis and applies only for the remainder of the current cycle. Omaha

Public Power District committed to submit a permanent resolution to this allowance and this license amendment request constitutes this permanent resolution.

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.

Deleting the requirement to perform the quarterly surveillance test of Table 3–2, Item 20 (Recirculation Actuation Logic Channel Functional Test) under administrative controls is acceptable since the performance of the recirculation actuation logic channel functional test is not identified as the initiator of any analyzed event. The proposed change will still require that the surveillance test be performed and the required ECCS [emergency core cooling system] systems to be available. This change will not alter assumptions relative to the mitigation of an accident or transient event. The performance of this activity has no effect on any accident scenario. Therefore, the proposed change does not involve a significant increase in the 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 accident previously evaluated.

This change only removes a short term allowance to utilize administrative controls in the performance of the recirculation actuation logic channel functional test. These proposed changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or change the methods governing plant operation. The proposed change does not involve any physical changes to plant systems, structures or components (SSCs) or the manner in which these SSCs are operated, maintained, modified or inspected. Therefore, these changes do 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 a margin of safety.

The minimum numbers of ECCS components required by the FCS [Fort Calhoun Station] accident analyses will remain available. The proposed change to delete the short term allowance to utilize administrative controls in the performance of the recirculation actuation logic channel functional test will not significantly impact the availability or reliability of the plant's systems or their ability to respond to plant transients and accidents. The performance of this activity has no effect on any accident scenario. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: January 27, 2003.

Description of amendment request: The proposed amendment would authorize the revision of the Fort Calhoun Station, Unit No. 1 Updated Safety Analysis Report (USAR). Section 14.16 and Figures 14.16–1 through 14.16–4 of the USAR will be revised to reflect the use of the GOTHIC, version 7.0, computer code and the results associated with the updated containment pressure analyses for a loss-of-coolant accident and main steam line break. In addition, GOTHIC will be used for the analysis of future plant upgrades associated with containment response and will be maintained consistent with other NRC-approved Omaha Public Power District methodologies.

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 changes will not increase the probability or consequence of any accident based on the following:

The proposed changes to Section 14.16 of the Updated Safety Analysis Report (USAR) and replacements for Figures 14.16–1 through 14.16–4 is required due to using GOTHIC, version 7.0 and the updated containment pressure analyses. Demonstrating that containment pressure is maintained less than the containment design pressure is required by Fort Calhoun Station (FCS) design basis. Additionally, the analyses credit all modes of heat transfer defined by Reference 10.5. Therefore, the updated containment pressure analyses using GOTHIC, version 7.0 is in compliance with FCS design basis. Changes to the containment pressure analyses for either a loss-of-coolant accident or main steam line break will be controlled by 10 CFR 50.59. Therefore, the probability or consequence of any accident is not increased.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed revision does not change any equipment required to mitigate the consequences of an accident. The continued use of the same USAR administrative controls prevents the possibility of a new or different kind of accident. Since the proposed changes do not involve the addition or modification of equipment nor alter the design of plant systems, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The changes proposed do not change how design basis accident events are postulated nor do the changes themselves initiate a new kind of accident or failure mode with a unique set of conditions (proposed administrative controls). Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The use of GOTHIC, version 7.0 is in compliance with FCS design basis. Additionally, GOTHIC has been benchmarked to the current analysis of record for a loss-of-coolant accident and main steam line break using the NRC approved computer code CONTRANS. These benchmark models demonstrate that GOTHIC provides similar results to CONTRANS. Future updates of the containment pressure analyses will be conducted under the 10 CFR 50.59 process. The analyses will credit all available modes of heat transfer defined by Reference 10.5. Additionally, the main steam line break containment evaluation model considers the leakage past the broken steam generator main feed isolation valve of 2.45% of full power flow or approximately 195 gpm. Therefore, the proposed changes do not involve a significant reduction to 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: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: January 27, 2003.

Description of amendment request: The proposed amendment revises Technical Specifications (TS) 2.1.6, 3.2

(Table 3–5), and 5.9.1c. For TS 2.1.6(1), Omaha Public Power District (OPPD) has proposed to increase the ''as-found'' pressurizer safety valve (PSV) lift setting tolerance band of ±1% to +1%/–3% to allow for normal setpoint variance for Modes 1 and 2. The Basis of TS 2.1.6 will be revised to clarify that the PSVs are still operable and capable of performing their safety function with the wider tolerance band. The remaining revisions to TS 2.1.6 are administrative in nature to change defined terms to upper case text. OPPD has also proposed to revise (1) item 3 in Table 3–5 of TS 3.2 to require an ''as-left'' PSV lift setting tolerance band of ±1%, and (2) TS 5.9.1c to remove the requirement to provide a statement in the Monthly Operating Report (MOR) concerning failures or challenges to power operated relief valves (PORV) or safety valves.

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 changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The design basis event for RCS over-pressure protection is the Loss of Load accident. The Loss of Load event was previously evaluated assuming the PSVs lift up to 6% above their setpoint. While the proposed amendment widens the tolerance band for installed PSVs, only the lower end of the band is changed; therefore, there is no adverse affect on the over-pressure protection analysis.

The proposed amendment does not change the tolerance band currently required at the conclusion of PSV surveillance testing each refueling outage. As with the current specification, the PSVs will continue to be set to within a tolerance band of ± 1% using ASME Code test methods. As a result, the anticipated performance of the valves over the course of the subsequent operating cycle is not changed. In other words, the potential for setpoint variance exists regardless of whether the TSs are changed. The PSVs will begin each operating cycle after having been set to open within a lift setting tolerance band of ± 1%. Therefore, the probability or consequences of potential setpoint variance during an operating cycle does not change. The remaining changes provide supporting statements for the wider PSV lift setting tolerance band in the Basis of TS 2.1.6, are administrative in nature, or are in accordance with GL 97–02.

The changes in the case of the defined terms and elimination of the TS 5.9.1c Monthly Operating Report concerning failures or challenges to PORVs or safety valves are administrative changes which do not affect the initiator of an event or prevent safety systems from performing their accident mitigation functions as assumed in the safety analysis.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Widening the lift setting tolerance band for installed PSVs does not create the possibility of a new or different type of accident from any previously evaluated.

The accident analyses address the lift setting tolerance band of the PSVs, and the proposed tolerance band does not adversely affect the over-pressure protection function and will not compromise RCS integrity during power operation. No physical changes to the plant are involved.

The proposed amendment does not change the tolerance band that must be met at the conclusion of PSV surveillance testing each refueling outage. As with the current Technical Specifications, the PSVs will continue to be set at a tolerance band of ± 1% using ASME Code test methods. As a result, the anticipated performance of the valves over the course of the subsequent operating cycle is not changed. The remaining changes provide supporting statements for the wider PSV lift setting tolerance band in the Basis of TS 2.1.6, are administrative in nature, or are in accordance with GL 97–02 and thus do not create the possibility of a new or different type of accident from any previously evaluated.

The changes in the case of the defined terms and elimination of the TS 5.9.1c Monthly Operating Report concerning failures or challenges to PORVs or safety valves are administrative changes which only affect the technical specifications and do not involve a physical change to the plant. Therefore these changes do not alter assumptions made in the safety analysis and licensing basis.

3. The proposed change does not involve a significant reduction in a margin of safety.

Widening the lift setting tolerance band for installed PSVs does not involve a significant reduction in a margin of safety. The tolerance band of the PSVs is addressed in the accident analyses, and the proposed tolerance band does not adversely affect the over-pressure protection analysis. No physical changes to the plant are involved.

The proposed amendment does not change the tolerance band that must be met at the conclusion of PSV surveillance testing each refueling outage. As with the current Technical Specifications, the PSVs will continue to be set to a tolerance band of ± 1% using ASME Code test methods. As a result, the anticipated performance of the valves over the course of the subsequent operating cycle is not changed. The remaining changes provide supporting statements for the wider PSV lift setting tolerance band in the Basis of TS 2.1.6, are administrative in nature, or are in accordance with GL 97–02.

The changes in the case of the defined terms and elimination of the TS 5.9.1c Monthly Operating Report concerning failures or challenges to PORVs or safety valves are administrative changes which only affect the technical specifications and reporting frequency.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: February 19, 2003.

Description of amendment request: The proposed amendments delete requirements from the technical specifications (TS) and other elements of the licensing bases to maintain a Post Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, ''Clarification of TMI [Three Mile Island] Action Plan Requirements,'' and Regulatory Guide 1.97, ''Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident.'' Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the TS for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

The changes are based on NRC-approved Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–413, ''Elimination of Requirements for a Post Accident Sampling System (PASS).'' The NRC staff issued a notice of opportunity for comment in the **Federal Register** on December 27, 2001 (66 FR 66949), on possible amendments concerning TSTF–413, 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 March 20, 2002 (67 FR 13027). The licensee affirmed the applicability of the following NSHC determination in its application dated February 19, 2003.

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 PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any 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 elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radioisotopes within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Section Chief: Allen G. Howe.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: December 13, 2003.

Description of amendment request: The proposed amendment would allow the use of Westinghouse leak-limiting Alloy 800 sleeves to repair defective steam generator tubes as an alternative to plugging the tube.

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 in accordance with the three standards set forth in 10 CFR 50.92(c), which are presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The Westinghouse Alloy 800 leak-limiting repair sleeves are designed using the applicable American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code and, therefore, meet the design objectives of the original steam generator tubing. The applied stresses and fatigue usage for the repair sleeves are bounded by the limits established in the ASME Code. Mechanical testing has shown that the structural strength of repair sleeves under normal, upset, emergency, and faulted conditions provides margin to the acceptance limits. These acceptance limits bound the most limiting (three times normal operating pressure differential) burst margin recommended by NRC's Regulatory Guide 1.121, ''Bases for Plugging Degraded PWR Steam Generator Tubes.'' Burst testing of sleeve/tube assemblies has demonstrated that no unacceptable levels of primary-to-secondary leakage are expected during any plant condition.

The Alloy 800 repair sleeve depth-based structural limit is determined using the NRC guidance and the pressure stress equation of ASME Code, Section III with additional margin added to account for configuration of long axial cracks. A bounding detection threshold value has been conservatively identified and statistically established to account for growth and determine the repair sleeve/tube assembly plugging limit. A sleeved tube is plugged on detection of degradation in the sleeve/tube assembly.

Evaluation of the repaired steam generator tube testing and analysis indicates no detrimental effects on the sleeve or sleeved tube assembly from reactor system flow, primary or secondary coolant chemistries, thermal conditions or transients, or pressure conditions as may be experienced at Watts Bar Unit 1. Corrosion testing and historical performance of sleeve/tube assemblies indicates no evidence of sleeve or tube corrosion considered detrimental under anticipated service conditions.

The implementation of the proposed amendment has no significant effect on either the configuration of the plant or the manner in which it is operated. The consequences of a hypothetical failure of the sleeve/tube assembly is bounded by the current steam generator tube rupture (SGTR) analysis described in Watts Bar Unit 1 Updated Final Safety Analysis Report. Due to the slight reduction in diameter caused by the sleeve wall thickness, primary coolant release rates

would be slightly less than assumed for the steam generator tube rupture analysis and; therefore, would result in lower total primary fluid mass release to the secondary system. A main steam line break or feedwater line break will not cause a SGTR since the sleeves are analyzed for a maximum accident differential pressure greater that that predicted in the Watts Bar Unit 1 safety analysis. The minimal repair sleeve/tube assembly leakage that could occur during plant operation is well within the Technical Specification leakage limits when grouped with current alternate plugging criteria calculated leakage values.

Therefore, TVA has concluded that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The Alloy 800 leak-limiting repair sleeves are designed using the applicable ASME Code as guidance; therefore, it meets the objectives of the original steam generator tubing. As a result, the functions of the steam generators will not be significantly affected by the installation of the proposed sleeve. The proposed repair sleeves do not interact with any other plant systems. Any accident as a result of potential tube or sleeve degradation in the repaired portion of the tube is bounded by the existing SGTR accident analysis. The continued integrity of the installed sleeve/tube assembly is periodically verified by the Technical Specification requirements and the sleeved tube plugged on detection of degradation.

The implementation of the proposed amendment has no significant effect on either the configuration of the plant, or the manner in which it is operated. Therefore, TVA concludes that this proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The repair of degraded steam generator tubes with Alloy 800 leak-limiting repair sleeves restores the structural integrity of the degraded tube under normal operating and postulated accident conditions and thereby maintains current core cooling margin as opposed to plugging the tube and taking it out of service. The design safety factors utilized for the repair sleeves are consistent with the safety factors in the ASME Boiler and Pressure Vessel Code used in the original steam generator design. The portions of the installed sleeve/tube assembly that represent the reactor coolant pressure boundary can be monitored for the initiation of sleeve/tube wall degradation and affected tube plugged on detection. Use of the previously identified design criteria and design verification testing assures that the margin to safety is not significantly different from the original steam generator tubes.

Therefore, TVA concludes that the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Allen G. Howe.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: December 13, 2002.

Description of amendment request: The proposed amendment would revise the Watts Bar Nuclear Plant, Unit 1, Technical Specifications to add two new Sections, 3.7.16, ''Shutdown Board Room Air Conditioning System,'' and 3.7.17, ''Elevation 772.0 480 Volt Board Room Air Conditioning Systems.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration in accordance with the three standards set forth in 10 CFR 50.92(c), which are presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

[No.] The proposed revision to the [Watts Bar Nuclear Plant] TS will provide formalized operational guidance for coping with partial or complete unavailability of SDBR [shutdown board room] and 480V board room air conditioning (AC) equipment for limited periods of time. The change does not impact the frequency of an accident because failure of either the SDBR or the 480V board room AC systems is not an initiator of any accident scenario. The change does not modify any plant hardware including the air conditioning systems, and none of their automatic control features or redundant systems currently credited in failure analyses are being deleted, modified, or otherwise replaced by operator actions as a result of the proposed change.

The proposed TS revision changes current plant operating practice and WBN Final Safety Analysis Report (FSAR) assumptions by allowing continued power operation with both trains of SDBR air conditioning concurrently inoperable and two 480V board room AC systems of the same unit to be concurrently inoperable for a limited duration, up to 12 hours. This condition is acceptable based on the low probability of the occurrence of postulated accidents resulting in core damage concurrent with multiple inoperable systems or trains of cooling equipment during this timeframe, and based on analyses which demonstrate that peak temperatures in each room served by these systems remain below mild environment temperature limits during this time period. Consequently, there is no significant adverse impact on the ability of required safety-related electrical equipment to continue to operate and perform their required functions, during both normal operation and during design basis events. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

[No.] The proposed change does not modify any plant hardware including the subject air conditioning systems. The change provides specific operational guidance for coping with partial or complete unavailability of SDBR and 480V board room air conditioning equipment. No new accident or event initiators are created by allowing multiple air conditioning systems to be unavailable for the limited time period of 12 hours. The supported electrical equipment remains capable of performing its intended function both during normal operations and post accident. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

[No.] The proposed TS revision changes current FSAR assumptions by allowing continued power operation with both trains of SDBR air conditioning concurrently inoperable and allowing two 480V board room air conditioning systems of the same unit to be inoperable for a limited duration, up to 12 hours. This condition does not significantly reduce the margin of safety due to the low probability of the occurrence of a postulated accident resulting in core damage concurrent with multiple inoperable systems or trains of cooling equipment during the limited time period. In addition, transient temperature analyses demonstrate that peak temperatures in each room served by these systems remain below mild environment temperature limits for a period of 24 hours assuming a complete loss of air conditioning to all rooms served by the SDBR and 480V board room AC systems concurrently. The analysis is bounding for normal operational conditions. Consequently, there is no significant adverse impact on the ability of required safety-related electrical equipment to continue to operate and perform their required functions during both normal operation and during design basis events. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Allen G. Howe.

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, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

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 application for amendments: September 20, 2002.

Brief description of amendments: These amendments adopt the generic changes approved by Technical Specification Task Force (TSTF) change travelers TSTF–349, Revision 1, and TSTF–361, Revision 2, for NUREG–1430, Revision 1, ''Standard Technical Specifications, Babcock and Wilcox Plants,'' dated April 1995, and incorporated into NUREG–1430, Revision 2, dated June 2001. Specifically, Section 3.9.5, ''Shutdown Cooling (SDC) and Coolant Circulation—Low Water Level,'' is revised to add two notes to allow operational changes in the shutdown cooling system.

Date of issuance: February 25, 2003.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 256 and 233.

Renewed Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 29, 2002 (67 FR 66007).

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated February 25, 2003.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: February 5, 2002, as supplemented January, 14, 2003.

Brief description of amendment: The amendment revises the surveillance requirements associated with the Containment Isolation Valves (CIVs), Reactor Building Closed Cooling Water (RBCCW) System, and Service Water (SW) System to remove redundant testing requirements that are already addressed by the Inservice Testing Program. Additional changes remove the post maintenance testing requirements associated with the CIVs, revise the wording of the RBCCW and SW Systems Limiting Conditions for Operation, and increase the allowed outage times for the RBCCW and SW Systems.

Date of issuance: February 13, 2003.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 273.

Facility Operating License No. DPR–65: This amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 16, 2002 (67 FR 18644). The January 14, 2003, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 13, 2003.

No significant hazards consideration comments received: No.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: May 14, 2002, as supplemented by letter dated December 20, 2002.

Brief description of amendment: The amendment changes administrative Technical Specification 5.5.13 regarding the Containment Integrated Leak Rate Testing (ILRT) to allow a one-time extension of the interval (to 15 years) for performance of the next ILRT.

Date of issuance: March 5, 2003.

Effective date: As of the date of issuance and shall be implemented 30 days from the date of issuance.

Amendment No.: 131.

Facility Operating License No. NPF–47: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 25, 2002 (67 FR 42823).

The December 20, 2002, supplemental letter provided clarifying information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 5, 2003.

No significant hazards consideration comments received: No.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: December 10, 2002, as supplemented on January 20, 2003.

Brief description of amendment: The Technical Specification (TS) amendment request changes the diesel fuel specification to a more current revision in TS 4.10.C. The changes also

make administrative revisions to reflect generic position titles in TS 6.0; correct page numbers and titles in the Table of Contents; and to delete the General Table of Contents. Bases pages were also revised to reflect the fuel specification revision, as well as to make administrative changes to provide clarity and correct a misspelling.

Date of Issuance: February 27, 2003.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 214.

Facility Operating License No. DPR–28: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 21, 2003 (68 FR 2802).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated February 27, 2003.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: September 27, 2002.

Brief description of amendments: The amendments change Appendix B, ''Environmental Protection Plan,'' of the licensee by removing a parenthetical reference to a superseded section of 10 CFR part 51.

Date of issuance: February 20, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 157/143

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the Environmental Protection Plan.

Date of initial notice in ***Federal Register:*** October 29, 2002 (67 FR 66009).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 20, 2003.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Beaver County, Pennsylvania

Date of application for amendments: August 7, 2002.

Brief description of amendments: The amendments: (1) Revised the surveillance frequency for air or smoke flow testing of containment spray nozzles, as specified in surveillance requirements (SRs) 4.6.2.1.d and 4.6.2.2.f, from, ''once per 10 years,'' to, ''following maintenance which results in the potential for nozzle blockage as determined by engineering evaluation;'' (2) allowed the use of a visual examination in lieu of an air or smoke flow test; (3) relocated the SR 4.6.2.2.e.3 criteria for the river/service water flow rate through the recirculation spray system heat exchangers to the Updated Final Safety Analysis Report; and (4) made minor clarifying changes to the text in TS 3.3.1.1.

Date of issuance: February 24, 2003.

Effective date: As of date of issuance and shall be implemented within 60 days.

Amendment Nos.: 252 and 132.

Facility Operating License Nos. DPR–66 and NPF–73: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 15, 2002 (67 FR 63694).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 24, 2003.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Beaver County, Pennsylvania

Date of application for amendments: March 14, 2002.

Brief description of amendments: The amendments revised the Technical Specifications (TSs) by extending the allowed outage time (AOT), or completion time, associated with an inoperable emergency core cooling system (ECCS) accumulator. In addition to the AOT extension, other changes were incorporated to make the ECCS TSs consistent with NUREG–1431, ''Standard Technical Specifications—Westinghouse Plants.'' Format and editorial changes were included as necessary to facilitate the revision of the TS text to conform to the current TS page format.

Date of issuance: February 25, 2003.

Effective date: As of date of issuance and shall be implemented within 60 days.

Amendment Nos.: 253 and 133.

Facility Operating License Nos. DPR–66 and NPF–73: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 30, 2002 (67 FR 21289).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 25, 2003.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Beaver County, Pennsylvania

Date of application for amendments: October 31, 2002, as supplemented by letters dated December 2, 2002, and January 24, 2003.

Brief description of amendments: The amendments revised the Technical Specifications to allow extending the Type A containment integrated leak rate test interval from 10 years to 15 years on a one-time basis.

Date of issuance: March 5, 2003.

Effective date: As of date of issuance and shall be implemented within 60 days.

Amendment Nos.: 254 and 134.

Facility Operating License Nos. DPR–66 and NPF–73: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 10, 2002 (67 FR 75877).

The December 2, 2002, and January 24, 2003, supplemental letters did not change the initial no significant hazards consideration determination or expand the amendment beyond the scope of the initial notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 5, 2003.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of application for amendment: December 9, 2002.

Brief description of amendment: Pursuant to 10 CFR 50.67, this amendment approves the use of Alternative Source Term radiological calculations to update the design bases analysis for the Fuel Handling Accident as described in the Updated Safety Analysis Report. Regulatory Guide 1.183, ''Alternative Radiological Source Terms for Evaluating Design-Basis Accidents at Nuclear Power Reactors,'' was used in the application.

Date of issuance: March 4, 2003.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 122.

Facility Operating License No. NPF–58: This amendment revised the Updated Safety Analysis Report.

Date of initial notice in ***Federal Register:*** January 7, 2003 (68 FR 804).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 4, 2003.

No significant hazards consideration comments received: No.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of application for amendments: August 16, 2002.

Brief description of amendments: The proposed amendments modified Technical Specification (TS) Surveillance Requirement Section 4.0.3 to extend the delay time for completion of a missed surveillance to 24 hours or up to the surveillance frequency, whichever is greater. Additionally the proposed change would add a TS Bases Control Program.

Date of issuance: March 3, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos: 222 and 217.

Facility Operating License Nos. DPR–31 and DPR–41: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 24, 2002 (67 FR 78521).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 3, 2003.

No significant hazards consideration comments received: No.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of application for amendments: October 21, 2002, as supplemented by letters dated February 11, 2003, and March 3, 2003.

Brief description of amendments: The amendments will reduce the minimum time required for reactor subcriticality prior to removing irradiated fuel from the reactor vessel from 100 hours to 72 hours, as specified in Technical Specification 3/4.9.3 ''Refueling Operations, Decay Time.''

Date of issuance: March 4, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos: 223 and 218.

Facility Operating License Nos. DPR–31 and DPR–41: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 12, 2002 (67 FR 68738).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 4, 2003.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: April 11, 2002, as supplemented November 11, 2002.

Brief description of amendments: The amendments would revise the Surveillance Requirements for containment leakage rate testing in Technical Specification 4.6.1.2 to allow a one-time extension of the interval between integrated leakage rate tests from 10 to 15 years.

Date of issuance: February 25, 2003.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 274 and 254.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 14, 2002 (67 FR 34488).

The supplemental letter contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 25, 2003.

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: February 28, 2001, as supplemented by letters dated February 26, September 13 and 27, and November 25, 2002 (2).

Brief description of amendment: The amendment consists of changes to the design-basis accidents dose assessment methodology and Operating License Condition 2.C.(6).

Date of issuance: February 21, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 196.

Facility Operating License No. DPR–46: Amendment revised the final safety analysis report and Operating License Condition 2.C.(6).

Date of initial notice in ***Federal Register:*** September 19, 2001 (66 FR 48289).

The supplemental letters provided clarifying information that was within the scope of the original **Federal Register** notice (66 FR 48289) and did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 21, 2003.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: February 3, 2003.

Brief description of amendment: The amendment changed Technical Specifications Surveillance Requirement 3.6.1.7.2 for suppression chamber-to-drywell vacuum breaker 2ISC*RV36B to allow an exception to the periodic functional testing requirements for the remainder of Cycle 9.

Date of issuance: February 21, 2003.

Effective date: As of the date of issuance to be implemented within 7 days.

Amendment No.: 108.

Facility Operating License No. NPF–69: Amendment revises the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: Yes. The Nuclear Regulatory Commission published a public notice of the proposed amendment, issued a proposed finding of no significant hazards consideration and requested that any comments on the proposed no significant hazards consideration be provided to the staff by the close of business on February 20, 2003. The notice was published in the Syracuse, NY, *The Post-Standard,* on February 11, 2003.

No significant hazards consideration comments received: No.

The Commission's related evaluation of the amendment, finding of exigent circumstances, consultation with the State of New York, and final no significant hazards consideration determination are contained in a Safety Evaluation dated February 21, 2003.

Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: April 22, 2002, as supplemented September 16, 2002.

Brief description of amendment: The amendment changes the Technical Specifications by revising the curves for minimum pressure-temperature for the reactor pressure vessel. The P–T curves addressed by this amendment were

developed in accordance with (1) the 1989 edition of the American Society of Mechanical Engineers (ASME) Code, section Xl, appendix G, (2) 10 CFR part 50, appendix G, and (3) ASME Code Case N–640, ''Alternative Reference Fracture Toughness for Development of P–T Limit Curves.''

Date of issuance: February 24, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 133.

Facility Operating License No. DPR–22. Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 3, 2002 (67 FR 56323).

The September 16, 2002, supplemental letter provided additional clarifying information that was within the scope of the original application, did not change the NRC staff's initial no significant hazards consideration determination, and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 24, 2003.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: March 1, 2002, as supplemented November 7, 2002.

Brief description of amendment: The amendment revises the testing frequency for the containment spray nozzles specified in Technical Specification Surveillance Requirement 3.6.6.9. The testing frequency for the containment spray nozzles is changed from 10 years to ''following maintenance which could result in nozzle blockage.''

Date of issuance: February 24, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 211.

Facility Operating License No. DPR–20. Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 15, 2002 (67 FR 63696).

The November 7, 2002, supplemental letter provided additional clarifying information that was within the scope of the original application, did not change the NRC staff's initial no significant hazards consideration determination, and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 24, 2003.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: October 8, 2002.

Brief description of amendment: The amendment relocates the requirements of TS 3.5(5) for testing prestressed concrete containment tendons to the Fort Calhoun Station, Unit No. 1 Updated Safety Analysis Report. The amendment adds the requirement for a Containment Tendon Testing Program (TS 5.21) consistent with that presented in Section 5.5 of NUREG–1432, ''Improved Standard Technical Specification (ITS) for Combustion Engineering Plants.''

Date of issuance: February 26, 2003.

Effective date: February 26, 2003, and shall be implemented within 120 days from the date of issuance, including the incorporation of the containment tendons testing requirements into the Updated Safety Analysis Report.

Amendment No.: 216.

Facility Operating License No. DPR–40: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 12, 2002 (67 FR 68741).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 26, 2003.

No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: October 16, 2001, as supplemented August 23, 2002, November 8, 2002, and January 20, 2003.

Brief description of amendments: These amendments revised the technical specifications (TSs) to incorporate seven industry-proposed Technical Specification Task Force changes (TSTFs) made to NUREG–1433, Revision 1, ''Standard Technical Specifications for General Electric Plants (BWR/4),'' that have been approved by the Nuclear Regulatory Commission.

Date of issuance: February 25, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 209 and 183.

Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 12, 2001 (66 FR 64300). The supplements dated August 23, 2002, November 8, 2002, and January 20, 2003 provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 25, 2003.

No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket No. 50–388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of application for amendments: July 17, 2002, as supplemented by letters dated October 30, 2002, December 18, 2002, and January 28, 2003.

Brief description of amendments: The amendment revised the values of the Safety Limit for Minimum Critical Power Ratio in the Unit 2 Technical Specifications (TSs) 2.1.1.2, clarified fuel design features in TS 4.2.1, and updated the references used to determine the core operating limits in TS 5.6.5.b.

Date of issuance: March 4, 2003.

Effective date: As of the date of issuance and shall be implemented upon startup following the Susquehanna Steam Electric Station, Unit 2 eleventh refueling and inspection outage.

Amendment Nos.: 184.

Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 20, 2002 (67 FR 53988).

The supplements dated October 30, 2002, December 18, 2002, and January 28, 2003, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 4, 2003.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: December 2, 2002.

Brief description of amendments: The amendments revised Technical Specification Surveillance Requirement 3.6.4.1.2 to require that only one access door in each opening of the secondary containment be closed.

Date of issuance: February 28, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 236/178.

Renewed Facility Operating License Nos. DPR–57 and NPF–5: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 7, 2003 (68 FR 812).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 28, 2003.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–260, Browns Ferry Nuclear Plant, Unit 2, Limestone County, Alabama

Date of application for amendments: October 25, 2002, as supplemented December 20, 2002, and February 11 and 21, 2003.

Description of amendment request: The amendment updated the values of the Safety Limit Minimum Critical Power Ratio in Technical Specification 2.1.1.2 for Cycle 13 operation.

Date of issuance: February 28, 2003.

Effective date: Date of issuance, to be implemented within 60 days.

Amendment No.: 280.

Facility Operating License No. DPR–52: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 10, 2002 (67 FR 75885). The supplemental letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the scope of the original request.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 28, 2003.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–327, Sequoyah Nuclear Plant, Unit 1, Hamilton County, Tennessee

Date of application for amendment: March 29, 2002, as supplemented on October 10, 2002.

Brief description of amendment: The proposed amendment deletes several of the Unit 1 Technical Specification (TS) Surveillance Requirements (SR) contained in TS 3/4.4.5, ''Steam Generators'' (SGs), associated with the voltage-based SG alternative repair criteria. In addition the proposed changes would delete License Condition 2.C.9.d which references commitment letters associated with SG inspection activities.

Date of issuance: March 4, 2003.

Effective date: As of the date of issuance and shall be implemented during the 2003 Cycle 12 Refueling Outage.

Amendment No.: 282.

Facility Operating License No. DPR–77: Amendment revises the TSs.

Date of initial notice in ***Federal Register:*** August 6, 2002 (67 FR 50960). An October 10, 2002 submittal revised some of the information, so a revised notice was published October 29, 2002 (67 FR 66014).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 4, 2003.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 10th day of March, 2003.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–6286 Filed 3–17–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25956; 812–12274]

JNL Series Trust, *et al.*; Notice of Application

March 12, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(a) of the Act and rule 18f-2 under the Act, as well as from certain disclosure requirements.

SUMMARY OF APPLICATION: The requested order would permit certain registered open-end management investment companies to enter into and materially amend subadvisory agreements without shareholder approval and grant relief from certain disclosure requirements.

APPLICANTS: Jackson National Asset Management, LLC (the ''Manager''), JNL Series Trust (''Series Trust''), JNL Investors Series Trust (''Investors Series Trust''), and JNL Variable Fund LLC, JNL Variable Fund III LLC, JNL Variable Fund V LLC, JNLNY Variable Fund I LLC and JNLNY Variable Fund II LLC (collectively, the ''Variable Funds'').

FILING DATES: The application was filed on September 22, 2000 and amended on December 27, 2001 and March 6, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 7, 2003, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609; Applicants, c/o Keith J. Rudolf, Esq., Jorden Burt LLP, 1025 Thomas Jefferson Street, NW., Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at (202) 942–0527 and Annette M. Capretta, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Series Trust and the Investors Series Trust, Massachusetts business trusts, and the Variable Funds, each a Delaware limited liability company, are registered under the Act as open-end management investment companies and have one or more series (each a ''Fund'' and, together, the ''Funds''). Each of the

Funds has its own investment objectives, policies and restrictions.[1]

2. Shares of the Funds of Series Trust and the Variable Funds are offered through registered separate accounts as funding vehicles for variable annuity contracts issued by insurance companies and may be offered as funding vehicles for variable life insurance contracts. Shares of the Funds of Series Trust may be offered for sale to qualified pension plans. Shares of Investors Series Trust will be sold directly to the public and through banks, trust companies and investment advisers.

3. The Manager, a Michigan limited liability company and wholly owned subsidiary of Jackson National Life Insurance Company, is registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). The Funds have each entered into an investment advisory and management agreement (each a ''Management Agreement''), pursuant to which the Manager serves as the investment adviser to the Funds. Each Management Agreement was approved by, in the case of Series Trust and Investors Series Trust, a majority of its board of trustees, and in the case of each of the Variable Funds, a majority of its board of managers (each a ''Board'' and together the ''Boards''), including a majority of the trustees or managers (the ''Directors'') who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Directors''), of the Funds or the Manager, as well as by each Fund's shareholders.[2] Under the terms of the Management Agreements, the Manager, subject to oversight by the Boards, has supervisory responsibility for the investment program of each Fund.

4. The Manager has entered into separate sub-advisory agreements (''Advisory Agreements'') with each sub-adviser (an ''Adviser'') to each Fund. Under the Advisory Agreements, each Adviser, subject to general supervision by the Manager and the Board, has discretionary authority to invest the portion of the Fund's assets allocated to it by the Manager. Each Adviser is, and any future Adviser will be, registered under the Advisers Act. Advisers are recommended to the Board by the Manager and selected and approved by the Board, including a majority of the Independent Directors. Each Adviser's fees are, and will be, paid by the Manager out of the management fees received by the Manager from the respective Fund.

5. The Manager monitors the Funds and the Advisers and makes recommendations to the Board regarding allocation, and reallocation, of assets between Advisers and is responsible for recommending the hiring, termination and replacement of Advisers. The Manager recommends Advisers based on a number of factors used to evaluate their skills in managing assets pursuant to particular investment objectives.

6. Applicants request an order to permit the Manager, subject to the oversight of the Board, to enter into and materially amend Advisory Agreements without shareholder approval. The requested relief will not extend to an Adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Funds or the Manager, other than by reason of serving as an Adviser to one or more of the Funds (an ''Affiliated Adviser'').

7. Applicants also request an exemption from the various disclosure provisions described below that may require each Fund to disclose fees paid by the Manager to the Advisers. Each Fund will disclose (both as a dollar amount and as a percentage of a Fund's net assets): (a) Aggregate fees paid to the Manager and any Affiliated Advisers; (b) aggregate fees paid to Advisers other than Affiliated Advisers; and (c) separate disclosure of advisory fees paid to any Affiliated Adviser (''Aggregate Fee Disclosure'').

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of the company's outstanding voting securities. Rule 18f-2 under the Act provides, in relevant part, that each series or class of stock in a series company affected by a matter must approve the matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 15(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 (''Exchange Act''). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fees,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Form N–SAR is the semi-annual report filed with the Commission by registered investment companies. Item 48 of Form N–SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Advisers.

5. Regulation S–X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require that investment companies include in their financial statements information about investment advisory fees.

6. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that their requested relief meets this standard for the reasons discussed below.

7. Applicants assert that the shareholders are relying on the Manager's experience to select one or more Advisers best suited to achieve a Fund's desired investment objectives. Applicants assert that, from the perspective of the shareholders, the role of the Advisers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants contend that requiring

[1] Applicants request that any relief granted pursuant to the application also apply to all future series of Series Trust, Investors Series Trust and the Variable Funds and any other registered open-end management investment companies and their series that in the future (a) are advised by the Manager or an entity controlling, controlled by, or under common control with the Manager (with the Manager, the ''Manager''); (b) are managed in a manner consistent with this application; and (c) comply with the terms and conditions in the application (each, a ''Fund'' and together with the Funds, the ''Funds.''). Series Trust, Investors Series Trust and the Variable Funds are the only existing investment companies that currently intend to rely on the requested order. Applicants state that if the name of any Fund contains the name of an Adviser (as defined below), the name of the Adviser will be preceded by the name of the Manager or the name ''JNL,'' which is an abbreviation of the name ''Jackson National Life Insurance Company,'' the parent of the Manager.

[2] The term ''shareholders'' includes variable contract owners, as applicable.

shareholder approval of each Advisory Agreement would impose costs and unnecessary delays on the Funds, and may preclude the Manager from acting promptly in a manner considered advisable by the Board. Applicants note that the Management Agreements will remain subject to section 15(a) of the Act and rule 18f-2 under the Act.

8. Applicants assert that many Advisers use a ''posted'' rate schedule to set their fees. Applicants state that while Advisers are willing to negotiate fees lower than those posted in the schedule, particularly with large institutional clients, they are reluctant to do so where the fees are disclosed to other prospective and existing customers. Applicants submit that the nondisclosure of the individual Adviser's fees is in the best interests of the Funds and their shareholders, where the disclosure of such fees would increase costs to shareholders without offsetting benefit to the Funds and their shareholders.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

Conditions Applicable to All Funds Relying on the Requested Order

1. Before a Fund may rely on the requested order, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities or, in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder(s) before the shares of the Fund are offered to the public.

2. Each Fund will disclose in its prospectus the existence, substance and effect of any order granted pursuant to the application. In addition, each Fund will hold itself out to the public as employing the management structure described in this application. Each Fund's prospectus will prominently disclose that the Manager has ultimate responsibility (subject to oversight by the Board) to oversee the Advisers and recommend their hiring, termination and replacement.

3. Within 90 days of the hiring of any new Adviser, the Manager will furnish shareholders of the affected Fund all information about the new Adviser that would be included in a proxy statement, except as modified by the order to permit Aggregate Fee Disclosure. This information will include the Aggregate Fee Disclosure and any change in such disclosure caused by the addition of the new Adviser. The Manager will satisfy this condition by providing shareholders with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act, except as modified by the order to permit Aggregate Fee Disclosure.

4. The Manager will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of each Fund's securities portfolio, and, subject to review and approval by the Board will: (a) Set the Fund's overall investment strategies; (b) evaluate, select, and recommend Advisers to manage all or part of a Fund's assets; (c) allocate and, when appropriate, reallocate a Fund's assets among Advisers; (d) monitor and evaluate the performance of Advisers; and (e) implement procedures reasonably designed to ensure that the Advisers comply with each Fund's investment objectives, policies, and restrictions.

5. The Manager will not enter into an Advisory Agreement with any Affiliated Adviser without that Advisory Agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

6. When a change in Adviser is proposed for a Fund with an Affiliated Adviser, the Board, including a majority of the Independent Directors, will make a separate finding, reflected in the Board minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Manager or the Affiliated Adviser derives an inappropriate advantage.

7. At all times, a majority of each Board will be Independent Directors, subject only to the suspension of this requirement for the death, disqualification or bona fide resignation of directors as provided in rule 10e-1 under the Act, and the nomination of new or additional Independent Directors will be at the discretion of the then-existing Independent Directors.

8. No director or officer of a Fund or director or officer of the Manager will own directly or indirectly (other than through a pooled investment vehicle over which such person does not have control) any interest in an Adviser except for: (a) Ownership of interests in the Manager, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either an Adviser or an entity that controls, is controlled by or is under common control with an Adviser.

Additional Conditions Applicable to Funds Relying on the Aggregate Fee Disclosure Relief of the Requested Order

9. Each Fund will disclose in its registration statement the respective Aggregate Fee Disclosure.

10. Independent legal counsel knowledgeable about the Act and the duties of Independent Directors, will be engaged to represent the Independent Directors. The selection of such counsel will be within the discretion of the then-existing Independent Directors.

11. The Manager will provide the Board, no less frequently than quarterly, with information about the Manager's profitability for each Fund relying on the relief requested in the application. This information will reflect the impact on profitability of the hiring or termination of any Adviser during the applicable quarter.

12. Whenever an Adviser to a particular Fund is hired or terminated, the Manager will provide the applicable Fund's Board with information showing the expected impact on the Manager's profitability.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–6431 Filed 3–17–03; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 4311]

Bureau of Political-Military Affairs: Directorate of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to sections 36(c) and 36(d) and in compliance with section 36(f) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: As shown on each of the nine letters.

FOR FURTHER INFORMATION CONTACT: Mr. Robert W. Maggi, Deputy Assistant Secretary for Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202 663–2700).

SUPPLEMENTARY INFORMATION: Section 36(f) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: March 11, 2003.

Robert W. Maggi,

Deputy Assistant Secretary, Defense Trade Controls, Bureau of Political-Military Affairs, Department of State.

U.S. Department of State

Washington, DC 20520
January 23, 2003.
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transactions contained in the attached certification concern future commercial activities with Russia related to the Proton Space Launch Vehicle beyond the period specified in DTC 147–02 dated July 26, 2002; DTC 182–02 dated June 27, 2002; DTC 124–02 dated May 22, 2002; DTC 022–02 dated May 1, 2002; DTC 038–01 dated April 30, 2001; DTC 046–01 dated April 2, 2001; DTC 034–01 dated March 1, 2001; DTC 014–00 dated March 7, 2000; DTC 098–99 dated August 5, 1999; and DTC 039–98 dated March 19, 1998.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 001–03.

U.S. Department of State

Washington, DC 20520
January 23, 2003.
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transactions contained in the attached certification concern future commercial activities with Russia, Ukraine and Norway related to the launch of commercial satellites from the Pacific Ocean utilizing a modified oil platform beyond the period specified in DTC 148–02 dated July 26, 2002; DTC 183–02 dated June 27, 2002; DTC 123–02 dated May 22, 2002; DTC 023–02 dated May 1, 2002; DTC 048–01 dated April 30, 2001; DTC 026–00 dated May 19, 2000; DTC 124–99 dated November 10, 1999; DTC 006–99 dated April 16, 1999; and DTC 016–97 dated July 25, 1997.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 002–03.

U.S. Department of State

Washington, DC 20520
January 23, 2003.
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification concerns exports of technical data and defense services for cooperation in the co-development of Japan's Galaxy Express (formerly J–1) space launch vehicle program beyond the period specified in DTC 019–02.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 003–03.

U.S. Department of State

Washington, DC 20520
February 12, 2003.
The Honorable Richard G. Lugar,
Chairman, Committee on Foreign Relations, United States Senate.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles or defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense services, technical data and defense articles to Italy to support the manufacture and assembly of four B767 Tanker Transport Aircraft with associated spares and support equipment for the Italian Ministry of Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 284–02.

U.S. Department of State

Washington, DC 20520
February 13, 2003.
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to the United Arab Emirates of technical data, defense services, and defense articles related to establishment of a depot level maintenance capability for hydraulic, pneumatic, fuel, instrument, landing gear and oxygen systems for the F–16 Block 60, C–130 and AH–64A aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 213–02.

U.S. Department of State

Washington, DC 20520
February 13, 2003.
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement involving the manufacture of significant military equipment abroad.

The transaction described in the attached certification involves the export to Norway of technical data, assistance and defense articles for the manufacture and assembly of small diameter unguided sounding rockets for end-

use in Belgium, Denmark, France, Greece, Italy, Luxembourg, The Netherlands, Norway, Poland, Portugal, Spain, United Kingdom, United States, Finland, Austria, Ireland, Lithuania, Sweden and Switzerland.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 285–02.

U.S. Department of State

Washington, DC 20520
February 13, 2003.
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles that are firearms controlled under category I of the United States Munitions List sold commercially under a contract in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of pistols, revolvers and associated spare parts to Belgium for commercial re-sale in Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Italy, Ireland, Luxembourg, The Netherlands, Norway, Portugal, Poland, Spain, Sweden, Switzerland and the United Kingdom.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 004–03.

U.S. Department of State

Washington, DC 20520
February 14, 2003.
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of major defense equipment and defense articles in the amount of $25,000,000 or more.

The transaction contained in the attached certification involves the export to Japan of one PHALANX close-in weapon system to support the Japan Maritime Self Defense Force.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 286–02.

U.S. Department of State

Washington, DC 20520
February 14, 2003.
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction described in the attached certification involves the transfer of technical data, assistance and manufacturing know-how to Japan for the production of AN/AQH–4(v)2 Acoustic Data Recorders and DCR–105 Digital Cassette Mission Recorders for the Japan Defense Agency (JDA) for use on P–3C aircraft and SH–60K helicopters for anti-submarine warfare.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 287–02.

[FR Doc. 03–6446 Filed 3–17–03; 8:45 am]
BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

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 extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 20, 2002, on pages 70104–05.

DATES: Comments must be submitted on or before April 17, 2003. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

1. *Title:* Repair Station Certification.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0010.

Form(s): FAA Form 8310–3.

Affected Public: A total of 1,100 repair station operators.

Abstract: Information is collected from applicants who wish to receive repair station certification. Applicants submit Form 8310–3 to the appropriate FAA district office for review. If the application is satisfactory, an onsite inspection is conducted. When all the requirements have been met, an air agency certificate and repair station operations specifications with appropriate ratings and limitations are issued.

Estimated Annual Burden Hours: An estimated 304,647 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

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 estimates of the burden 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 March 11, 2003.

Judith D. Street,

FAA Information Collection Clearance Officer, Standards and Information Division, APF–100.

[FR Doc. 03–6427 Filed 3–17–03; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice annouces that the Information Collection Requests (ICR) abstracted below have been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collections. The ICR describes the nature of the information collection and the expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collections of information was published on October 16, 2002, pages 63955–63956.

DATES: Comments must be submitted on or before April 17, 2003. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

1. Title: Domestic and International Flight Plans.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0026.

Forms(s): FAA Forms 7233–1, 7233–4.

Affected Public: A total of 631,762 certified aircraft operators.

Abstract: Title 49 USC, paragraph 40103(b) authorizes regulations governing the flight of aircraft. 14 CFR 91 prescribes requirements for filing domestic and international flight plans. The information is collected to provide services to aircraft in flight and protection of persons and property on the ground.

Estimated Burden Hours: A total of 293,072 hours annually.

2. Title: Part 135 Operating Requirements: Commuter and on-Demand operations and Rules Governing Persons on Board Such Aircraft.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 2120–0039.

Forms(s): FAA Form 8070–1.

Affected Public: A total of 2,765 air carriers and commercial operators.

Abstract: Title 49 USC, Section 44702, authorizes the issuance of air carrier operating certificates. 14 CFR part 135 prescribes requirements for Air Carrier/Commercial Operators. The information collected shows compliance and applicant eligibility for certification.

Estimated Annual Burden Hours: An estimated 1,164,091 hours annually.

3. Title: Recording of Aircraft Conveyances and Security Documents.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0043.

Forms(s): FAA Form 8050–1.

Affected Public: A total of 55,968 aircraft owners.

Abstract: Approval is required for security conveyances such as mortgages submitted by the public for recording against aircraft, engines, propellers, and spare parts locations.

Estimated Annual Burden Hours: An estimated 55,968 hours annually.

4. Title: Part 135 Operating Requirements: Commuter and on-Demand operations and Rules Governing Persons on Board Such Aircraft.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0608.

Form(s): NA.

Affected Public: A total of 7 commercial space travel licensees.

Abstract: The required information will be used to determine if the applicant's proposals for conducting commercial space launches can be accomplished in a safe manner according to the regulations and license orders issued by the Office of the Associate Administrator for Commercial Space Transportation. Respondents are applying for licenses to authorize launch activities.

Estimated Annual Burden Hours: An estimated 1,138 hours annually.

5. Title: Changes in Permissible stage 2 Airplane Operations.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–00652.

Form(s): NA.

Affected Public: A total of 100 aircraft owners.

Abstract: This information will be used to issue special flight authorization for non-revenue operations of Stage 2 airplanes at US airports. Only a minimal amount of data is requested to identify the affected parties and determine whether the purpose for the flight is one of those enumerated by law.

Estimated Annual Burden Hours: An estimated 25 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

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 estimates of the burden 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 March 11, 2003.

Judith D. Street,

FAA Information Collection Clearance Officer, Standards and Information Division, APF–100.

[FR Doc. 03–6426 Filed 3–17–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2003–14246]

Airport Privatization Pilot Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of extension of comment period for final application of new Orleans Lakefront Airport, New Orleans, Louisiana; notice of public meeting.

SUMMARY: On January 16, 2003, the Federal Aviation Administration (FAA) published a notice in the **Federal Register** (68 FR 2391) seeking information and comments from interested parties on the final application by the Orleans Levee District for participation of New Orleans Lakefront Airport (NEW) in the Airport Privatization Pilot Program. The deadline for submitting comments was March 12, 2003. The comment period has now been extended until May 23, 2003, to allow the public more time to examine and comment on the final application. A public meeting will be held on May 10, 2003, to receive comments from airport users and interested parties.

DATES: Comments must be received by May 23, 2003. The public meeting will be held on Saturday, May 10, 2003 from 10 a.m. to 1 p.m.

ADDRESSES: The public meeting will be held in the administration building, New Orleans Lakefront Airport, 6001 Stars and Stripes Boulevard, New

Orleans, Louisiana, telephone number, (504) 243–4000. The NEW final application is available for public review in the Dockets Office, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington DC 20590–0001. The documents have been filed under FAA Docket Number 2003–14246. The Dockets Office is open between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office 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.*

The Orleans Levee District, the airport sponsor, has also made a copy of the application available at the following locations:

Circulation Desk at the Earl K. Long Library, University of New Orleans, 2000 Lakeshore Drive, New Orleans, Louisiana 70148.

The documents are available for review: Monday through Thursday, 7:45 a.m. to 11 p.m. Friday, 7:45 a.m. and 8 p.m. Saturday, 10 a.m. and 6 p.m. Sundays, 12 noon and 8 p.m. The Library is closed on all legal holidays. Library personnel will require presentation of picture identification.

Administration Building, New Orleans Lakefront Airport, 6001 Stars and Stripes Boulevard, New Orleans, Louisiana 70126.

The Administration Building is open weekdays from 9 a.m. and 4 p.m. with the exception of legal holidays. The contact person is Max L. Hearn who may be reached at (504) 243–4000.

Comments on the NEW final application must be delivered or mailed, in duplicate, 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 Docket No. 2003–14246 at the beginning of your comments. Commenters wishing the FAA to acknowledge receipt of their comments must include a preaddressed, stamped postcard on which the following statement is made:'' ''Comments to FAA Docket No. 2003–14246. The postcard will be date stamped and mailed to commenter. You may also submit comments through the Internet to *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kevin C. Willis, Compliance Specialist (AAS–400), (202–267–8741) Airport Compliance Division, Office of Airport Safety and Standards, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION: Title 49 of the U.S. Code section 47134 authorizes the Secretary of Transportation, and through delegation, the FAA Administrator, to exempt a sponsor of a public use airport that has received Federal assistance from certain Federal requirements in connection with the privatization of the airport by sale or lease to a private party. Specifically, the Administrator may exempt the sponsor from all or part of the requirements to use airport revenues for airport-related purposes (upon approval of 65 percent of the air carriers serving the airport and having 65 percent of the landed weight), to pay back a portion of Federal grants upon the sale of an airport, and to return airport property deeded by the Federal Government upon transfer of the airport. The Administrator is also authorized to exempt the private purchaser or lessee from the requirement to use all airport revenues for airport-related purposes, to the extent necessary to permit the purchaser or lessee to earn compensation from the operations of the airport. (No air carrier approval is necessary for the latter exemption.)

On September 16, 1997, the FAA issued a notice of procedures to be used in applications for exemption under the Airport Privatization Pilot Program (62 FR 48693). The application procedures are available for review on the FAA Web site *www2.faa.gov/arp/publications/fedreg.cfm?arpnav=fedr.*

On March 2, 2000, Orleans Levee District submitted a preliminary application for the participation of the New Orleans Lakefront Airport in the Airport Privatization Pilot Program. On May 17, 2000, the FAA informed the Orleans Levee District that additional information was needed in order for the FAA to accept the application for further review. On January 19, 2001, the Orleans Levee District completed its submittal of all information previously requested by the FAA.

On March 8, 2001, the FAA informed the Orleans Levee District that it had accepted New Orleans Lakefront Airport's preliminary application for further review. This action permitted the Orleans Levee District to select a private operator, negotiate an agreement and submit a final application to the FAA for exemption. The filing date of the Orleans Levee District preliminary application was January 19, 2001; the date the FAA received a completed preliminary application. On April 23, 2002, the Orleans Levee District filed the final application.

The proceeds from the sale of lease of airport property are considered airport revenue and must be used in accordance with the requirements of 49 U.S.C. 47107(b) and 47133. In its final application, the Orleans Levee District requested an exemption under 49 U.S.C. 47134(b)(1) from 49 U.S.C. 47107(b) and 47133, to permit the Orleans Levee District to use compensation from the lease of airport property for non-airport purposes, forgo the repayment of Federal grants, and allow American Airports Lakefront, LLC to earn compensation from the operation of the airport.

The final application provides that American Airports Lakefront will operate the airport under a 50 year lease and pay the Orleans Levee District $300,000 in annual rental payments for the first three years. In the fourth year, American Airports Lakefront will pay $300,000 in annual rental payments or 11 percent of the airport's gross income not to exceed $3,000,000 plus 30 percent of the airport's gross income over $3,000,000.

On July 2, 2002, in an effort to clarify certain parts of the application, FAA staff requested responses to 26 questions. Three of the questions posed to the American Airports Lakefront required it to utilize confidential business or financial information in its response. In accordance with the airport privatization pilot program application procedures, 62 F.R. 48693, 48706 (September 16, 1997), the private operator has requested confidential treatment of this information. As a result, the three questions and their responses have been redacted and will not be available for public comment. Copies of the 26 questions and the 23 responses available for public view and comment are included in the sponsor's application for public review.

On November 7, 2002, the FAA requested responses to four additional questions. The questions and the responses are included in the docket for public review.

The FAA has determined that the application is substantially complete. As part of its review of the NEW final application, the FAA has extended the comment period until May 23, 2003.

The purpose of the public meeting scheduled for Saturday, May 10, 2003, is to accept public comments on the NEW final application for inclusion in Docket No. 2003–14246. The FAA will answer general questions on the Airport Privatization Pilot Program and how FAA requirements will apply to private airport operators generally. However, because the NEW final application is presently before the agency for a decision, the FAA will not be able to discuss the application or the pending agency decision. Individuals wishing to address the FAA panel can sign up at

the airport administration building beginning at 9 am on the day of the public meeting. The FAA panel will begin accepting comments at 10 am.

Issued in Washington, DC, on March 10, 2003.

David L. Bennett,

Director, Office of Airport Safety and Standards.

[FR Doc. 03–6475 Filed 3–17–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Blue Grass Airport, Lexington, 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 Blue Grass Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before April 17, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: 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. Michael A. Gobb, Executive Director of the Lexington-Fayette Urban County Airport Board at the following address: 4000 Versailles Road, Lexington, Kentucky 40510.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Lexington-Fayette Urban County Airport Board under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Tommy L. Dupree, Program Manager, Memphis Airports District Office, 3385 Airways Boulevard, Suite 302, Memphis, Tennessee 38116–3841, (901) 544–3495, Extension 215. 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 Blue Grass Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On March 7, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by Lexington-Fayette Urban 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 June 26, 2003.

The following is a brief overview of the application.

PFC Application No.: 03–5–C–00–LEX.

Level of the proposed PFC: $4.50.

Proposed charge effective date: September 1, 2003.

Proposed charge expiration date: March 1, 2025.

Total estimated net PFC revenue: $53,671,204.

Brief description of proposed project(s): Air Carrier Ramp Expansion, Security Upgrades, Concourses ''B'' & ''C'' Stairwells, Runway Safety Area Improvements, Taxiway ''A'' Rehabilitation, Terminal Interior Modifications, Concourse Gate Additions, Runway 8/26 Rehabilitation, Air Carrier Ramp Rehabilitation, PFC Application Development, and PFC Program Administration.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: The Board intends to request that those air carriers operating under Part 135, non-scheduled, whole-plane-charter basis, *i.e.,* Air Taxi/Commercial Operators (''ATCO'') which file FAA Form 1800–31, at the Airport to be exempt from collecting the PFC.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Lexington-Fayette Urban County Airport Board.

Issued in Memphis, Tennessee, on March 7, 2003.

LaVerne F. Reid,

Manager, Memphis Airports District Office, Southern Region.

[FR Doc. 03–6474 Filed 3–17–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Notice and Request for Comments

AGENCY: Federal Railroad Administration, 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 Requirement (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on January 16, 2003 (68 FR 2393).

DATES: Comments must be submitted on or before April 17, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292), or Ms. Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On January 16, 2003, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 68 FR 2393.

FRA received three comments after issuing this notice. The first comment or letter that FRA received was from the Brotherhood of Railroad Signalmen (BRS). The BRS supports the proposed study and remarked: ''The BRS contends that the Work Schedules and Sleep Patterns of Railroad Signalmen, OMB No. 2130–NEW, study will help the FRA and the rail industry to develop an understanding of the work schedule-related fatigue issues that affect

signalmen. Once this study is complete, the BRS will continue to work with the FRA and the rail industry in order to promote work schedules that will reduce the fatigue level of railroad signalmen. The BRS also hopes that after this study is completed, the FRA diligently moves forward in their effort to examine the effects of fatigue on other non-operating crafts, such as, but not limited to: track maintenance personnel, locomotive and car repair personnel; and telecommunications personnel.''

The second comment or letter that FRA received came from the American Train Dispatchers Department (ATDD). The ATDD also supports the proposed study and observed: ''The ATDD applauds the efforts of the Federal Railroad Administration and supports them in proposing a study, which will focus on the cause and effect of fatigue issues that influence the performance of duties and responsibilities of signalmen. Their analysis of data can only contribute to the understanding of this most important issue, which will benefit not only signalmen, but many other non-operating crafts as well.''

The third and final comment or letter that FRA received came from the Brotherhood of Maintenance of Way Employees (BMWE). The BMWE too supports the proposed study and stated the following: ''Fatigue continues to be a factor for the non-operating crafts within the rail industry, especially in view of working conditions, expanded territories, frequent changes in workweek and starting times, erratic call schedules, etc. Members of the BRS, like those of the BMWE, are subject to a number of work schedule-related factors which can lead to fatigue induced accident and incidents. As such, we support the study contemplated in the above-referenced notice to assist FRA and the rail industry in understanding the impact of work schedules, territory size, call schedules, working conditions, and other factors which may contribute to BRS employee fatigue. Based on the anticipated success of the BRS study, BMWE believes FRA should systematically and individually examine the cause and effect of fatigue on other non-operating crafts, inclusive of BMWE.'' None of these three comments addressed the issue of burden hour estimates or burden cost estimates. After carefully reviewing these comments, DOT announces that these information collection activities have been reevaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)-(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden, and are being submitted for clearance by OMB as required by the PRA.

Title: Work Schedules and Sleep Patterns of Railroad Signalmen.

OMB Control Number: 2130–NEW.

Type of Request: New collection.

Affected Public: Rail workers.

Abstract: In a continuing effort to improve rail safety and to reduce the number of injuries and fatalities to rail workers, FRA and the rail industry have recently focused on the issue of fatigue among train and engine crew personnel. Because railroading is an around-the-clock, seven-days-a-week operation and because a wide array of workers are needed to both operate and to maintain the nation's railroads, other crafts—besides train and engine crews—can also be subject to fatigue. The non-operating crafts, including locomotive and car repair, track maintenance, signal system maintenance and telecommunications, fall into this second category. FRA is proposing a study which will focus on signalmen, one of the non-operating crafts. FRA seeks to develop an understanding of the work schedule-related fatigue issues that affect signalmen. The proposed study has two primary purposes: (1) It aims to document and characterize the work/rest schedules and sleep patterns of the signalmen; and (2) It intends to examine the relationship between these schedules and level of alertness/fatigue for the individuals who work these schedules. Subjective ratings from participants of their alertness/sleepiness on both work and non-work days will be an integral part of this study. The data will be collected through the use of a daily diary or log, as well as a brief background questionnaire for each participant. Analysis of the diary data will allow FRA to assess whether or not there are any work-related fatigue issues for signalmen.

Annual Estimated Burden Hours: 850 hours.

Addressee: Send comments regarding this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC, 20503, Attention: FRA Desk Officer.

Comments are invited on the following: 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 burden 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.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on March 13, 2003.

Kathy A. Weiner,

Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 03–6424 Filed 3–17–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No. FRA–2003–14363

Applicant: Union Pacific Railroad Company, Mr. Phil Abaray, Chief Engineer—Signals, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000.

The Union Pacific Railroad Company (UP) seeks approval of the proposed reduction to the limits of the traffic control system on the single main track between C.P. F910, milepost 10.1, and C.P. F909, milepost 8.5, near Milpitas, California, on the Milpitas Subdivision, Roseville Area. The proposed changes include removal of northbound signal 506L and southbound signal 101 at C.P. F910, removal of southbound signal 504R at C.P. F909, and installation of ''Entering CTC,'' ''Leaving CTC,'' and ''End of Block'' signs at milepost 8.5.

The reasons given for the proposed changes are that the signal system is no longer required in the yard area and presently inhibits switching operations, the affected area is no longer used for through trains, and the track will be used for switching moves, service to local industries, and the storage of cars.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on March 7, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–6422 Filed 3–17–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No. FRA–2003–14364

Applicant: Union Pacific Railroad Company, Mr. Phil Abaray, Chief Engineer—Signals, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000.

The Union Pacific Railroad Company (UP) seeks approval of the proposed discontinuance and removal of the automatic block signal system between milepost 4.1, and milepost 8.3 near Warm Springs, California, on the Warm Springs Subdivision, Roseville Area. The proposed changes include removal of northbound signals 53, 65, and 83, removal of southbound signals 40, 52, and 64, and installation of ''End of Block,'' ''Entering ABS,'' and ''Leaving ABS'' signs at milepost 4.1 and milepost 8.3.

The reasons given for the proposed changes are that the signal system is no longer required in the yard area and presently inhibits switching operations; the track will be used for switching movements, arrival and departures from the Warm Springs and Milpitas yards, service to local industries, and the storage of cars.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on March 7, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–6423 Filed 3–17–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2003–14691]

Notice of Request for the Extension of Currently Approved Information Collections

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to extend the following currently approved information collections: 49 U.S.C. section 5312(a) Research, Development, Demonstration and Training Projects.

DATES: Comments must be submitted before May 19, 2003.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the United States Department of Transportation, Central Dockets Office, PL–401, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 10 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: Mr. Henry Nejako, Office of Research,

Demonstration and Innovation, (202) 366–0184.

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of these information collections, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB reinstatement of this information collection.

Title: 49 U.S.C. section 5312(a) Research, Development, Demonstration and Training Projects. OMB Number: 2132–0546.

Background: 49 U.S.C. section 5312(a) authorizes the Secretary of Transportation to make grants or contracts for research, development, and demonstration projects that will reduce urban transportation needs, improve mass transportation service, or help transportation service meet the total urban transportation needs at a minimum cost. In carrying out the provisions of this section, the Secretary is also authorized to request and receive appropriate information from any source.

The information collected is submitted as part of the application for grants and cooperative agreements and is used to determine eligibility of applicants. Collection of this information also provides documentation that the applicants and recipients are meeting program objectives and are complying with FTA Circular 6100.1B and other federal requirements.

Respondents: FTA grant recipients.

Estimated Annual Burden on Respondents: Approximately 56 hours for each of the 250 respondents.

Estimated Total Annual Burden: 13,940 hours.

Frequency: Annual.

Issued: March 11, 2003.

Timothy B. Wolgast,

Acting Associate Administrator for Administration.

[FR Doc. 03–6428 Filed 3–17–03; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2003–14690]

Notice of Request for the Extension of Currently Approved Information Collections

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to extend the following currently approved information collections:

Reporting of Technical Activities by FTA Grant Recipients

DATES: Comments must be submitted before May 19, 2003.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the United States Department of Transportation, Central Dockets Office, PL–401, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 10 a.m. to 5 p.m., *e.t.,* Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: Ms. Candace Noonan, Office of Planning, (202) 366–1648.

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of these information collections, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB reinstatement of this information collection.

Title: Reporting of Technical Activities by FTA Grant Recipients (*OMB Number: 2132–0549)*

Background: 49 U.S.C. sections 5303 and 5313(a) and (b) authorize the use of Federal funds to assist metropolitan planning organizations (MPOs), states, and local public bodies in developing transportation plans and programs to serve future transportation needs of urbanized areas and nonurbanized areas throughout the nation. As part of this effort, MPOs are required to consider a wide range of goals and objectives and to analyze alternative transportation system management and investment strategies. These objectives are measured by definable activities such as planning certification reviews and other related activities.

The information collected by these forms is used to report annually to Congress, the Secretary, and to the Federal Transit Administrator on how grantees are responding to national emphasis areas and congressional direction, and allows FTA to track grantees' use of Federal planning and research funds.

Respondents: FTA grant recipients.

Estimated Annual Burden on Respondents: 3 hours for each of the 50 respondents.

Estimated Total Annual Burden: 150 hours.

Frequency: Annual.

Dated: March 11, 2003.

Timothy B. Wolgast,

Acting Associate Administrator for Administration.

[FR Doc. 03–6429 Filed 3–17–03; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2003–14689]

Notice of Request for the Extension of Currently Approved Information Collections

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to extend the following currently approved information collections:

(1) Nondiscrimination as it Applies to FTA Grant Programs.

(2) Title VI as it Applies to FTA Grant Programs.

DATES: Comments must be submitted before May 19, 2003.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the United States Department of Transportation, Central

Dockets Office, PL–401, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 10 a.m. to 5 p.m., e.t., Monday through Friday, except federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: Mr. Akira Sano, Office of Civil Rights, (202) 366–4018.

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of these information collections, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB reinstatement of this information collection.

Title: Nondiscrimination as it Applies to FTA Grant Programs (*OMB Number:* 2132–0542).

Background: All entities receiving federal financial assistance from FTA are prohibited from discriminating against any employee or applicant for employment because of race, color, creed, sex, national origin, age or disability. To ensure that FTA's equal employment opportunity (EEO) procedures are followed, FTA requires grant recipients to submit written EEO plans to FTA for approval. FTA's assessment of this requirement shows that the formulating, submitting, and implementing of EEO programs should minimally increase costs for FTA applicants and recipients.

To determine a grantee's compliance with applicable laws and requirements, grantee submissions are evaluated and analyzed based on the following criteria. First, an EEO program must include an EEO policy statement issued by the chief executive officer covering all employment practices, including recruitment, selection, promotions, terminations, transfers, layoffs, compensation, training, benefits, and other terms and conditions of employment. Second, the policy must be placed conspicuously so that employees, applicants, and the general public are aware of the agency's EEO commitment.

The data derived from written EEO and affirmative action plans will be used by the Office of Civil Rights in monitoring grantees' compliance with applicable EEO laws and regulations. This monitoring and enforcement activity will ensure that minorities and women have equitable access to employment opportunities and that recipients of Federal funds do not discriminate against any employee or applicant because of race, color, creed, sex, national origin, age, or disability.

Respondents: FTA grant recipients.

Estimated Annual Burden on Respondents: 25 hours for each of the 93 EEO submissions.

Estimated Total Annual Burden: 2,325 hours.

Frequency: On occasion, every 3 years, annually.

Title: Title VI as It Applies to FTA Grant Programs (*OMB Number: 2132–0542*).

Background: Section 601 of Title VI of the Civil Rights Act of 1964 states: ''No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.'' This information collection is required by the Department of Justice (DOJ) Title VI Regulation, 28 CFR part 42, subpart F (section 42.406), and DOT Order 1000.12. FTA policies and requirements are designed to clarify and strengthen these regulations. This requirement is applicable to all applicants, recipients, and subrecipients receiving federal financial assistance. Experience has demonstrated that a program requirement at the application stage is necessary to assure that benefits and services are equitably distributed by grant recipients. The requirements prescribed by the Office of Civil Rights accomplish that objective while diminishing possible vestiges of discrimination among FTA grant recipients. FTA's assessment of this requirement indicated that the formulation and implementation of the Title VI program should occur with a decrease in costs to such applicants and recipients.

All FTA grant applicants, recipients, and subrecipients are required to submit applicable Title VI information to the FTA Office of Civil Rights for review and approval. If FTA did not conduct pre-award reviews, solutions would not be generated in advance and program improvements could not be integrated into projects. FTA's experience with pre-award reviews for all projects and grants suggests this method contributes to maximum efficiency and cost effectiveness of FTA dollars and has kept post-award complaints to a minimum. Moreover, the objective of the Title VI statute can be more easily attained and beneficiaries of FTA funded programs have a greater likelihood of receiving transit services and related benefits on a nondiscriminatory basis.

Respondents: FTA grant recipients.

Estimated Annual Burden on Respondents: 45 hours for 114 Title IV programs. 1 hour for 202 Title VI programs (General).

Estimated Total Annual Burden: 5,332 hours.

Frequency: Annual.

Issued: March 11, 2003.

Timothy B. Wolgast,

Acting Associate Administrator for Administration.

[FR Doc. 03–6430 Filed 3–17–03; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Ex Parte No. 333]

Sunshine Act Meeting

TIME & DATE: 9:30 a.m., Friday, March 21, 2003.

PLACE: The Board's Hearing Room, Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

STATUS: The Board will meet to discuss among themselves the following agenda items. Although the conference is open for public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED: STB Docket No. 42054, *PPL Montana, LLC* v. *The Burlington Northern and Santa Fe Railway Company.*

STB Docket No. 42056, *Texas Municipal Power Agency* v. *The Burlington Northern and Santa Fe Railway Company.*

STB Docket No. 42069, *Duke Energy Corporation* v. *Norfolk Southern Railway Company.*

STB Docket No. 42070, *Duke Energy Corporation* v. *CSX Transportation, Inc.*

STB Ex Parte No. 589, *Calculation of Variable Costs in Rate Complaint Proceedings Involving Non-Class I Railroads.*

STB Section 5a Application No. 118 (Sub-No. 2), *EC-Mac Motor Carriers Service Association, Inc.,* et al.

Embraced Cases:

Section 5a Application No. 22 (Sub-No. 8), *Pacific Inland Tariff Bureau, Inc.—Renewal of Agreement.*

Section 5a Application No. 25 (Sub-No. 9), *The New England Motor Rate Bureau, Inc.*

Section 5a Application No. 34 (Sub-No. 10), *Middlewest Motor Freight,—Renewal of Agreement.*

Section 5a Application No. 45 (Sub-No. 16), *Niagara Frontier Tariff Bureau, Inc.*

Section 5a Application No. 46 (Sub-No. 21), *Southern Motor Carriers Rate Conference, Inc.*

Section 5a Application No. 55 (Amendment No. 2), *Motor Carriers Traffic Association—Agreement.*

Section 5a Application 58 (Sub-No. 4), *Machinery Haulers Association Inc.—Agreement.*

Section 5a Application 60 (Sub-No. 11), *Rocky Mountain Tariff Bureau, Inc.*

Section 5a Application 63 (Sub-No. 4), *Nationwide Bulk Trucking Association, Inc.—Agreement.*

Section 5a Application No. 70 (Sub-No. 12), *Western Motor Tariff Bureau, Inc.—Agreement.*

STB Section 5a Application Agreement No. 116 (Sub-No. 1), *Willamette Tariff Bureau, Inc.—Renewal of Agreement.*

Section 5a Application No. 61 (Sub-No. 6), *National Classification Committee—Agreement.*

STB Finance Docket No. 34276, *Massachusetts Port Authority-Acquisition Exemption-Certain Assets of Boston and Maine Corporation.*

Embraced Case:

STB Docket No. AB–32 (Sub-No. 92), *Boston and Maine Corporation-Abandonment-in Suffolk County, MA.*

STB Finance Docket No. 34210, *Sunflower Rail Company, LLC-Construction and Operation Exemption-Finney County, KS.*

STB Finance Docket No. 34305, *The Burlington Northern and Sante Fe Railway Company-Construction and Operation-Merced County, CA.*

FOR FURTHER INFORMATION CONTACT: A. Dennis Watson, Office of Congressional and Public Services, Telephone: (202)565–1596. FIRS: 1–800–877–8339.

Dated: March 14, 2003.

Vernon A. Williams,

Secretary.

[FR Doc. 03–6571 Filed 3–14–03; 2:17 pm]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket Nos. AB–565 (Sub–No. 13X) and AB–55 (Sub–No. 628X)]

New York Central Lines, LLC—Abandonment Exemption—in Bronx County, NY; CSX Transportation, Inc.—Discontinuance of Service Exemption—in Bronx County, NY

New York Central Lines, LLC (NYC) and CSX Transportation, Inc. (CSXT) have filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service* for NYC to abandon and CSXT to discontinue service over an approximately 1.5-mile line of railroad between milepost QVP 0.0 at Melrose Avenue and milepost QVP 1.5 near the southernmost edge of the tunnel at Southern Boulevard in Bronx County, NY. The line traverses United States Postal Service Zip Codes 10454, 10455, and 10456.

NYC and CSXT have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to these exemptions, any employee adversely affected by the abandonment or discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, these exemptions will be effective on April 17, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by March 28, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 7, 2003, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicants' representative: Natalie S. Rosenberg, Counsel, CSX Transportation, Inc., 500 Water Street, J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemptions are void *ab initio.*

Applicants have filed an environmental report which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. SEA will issue an environmental assessment (EA) by March 21, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NYC shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NYC's filing of a notice of consummation by March 18, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

Decided: March 11, 2003.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemptions' effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemptions' effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–6283 Filed 3–17–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 10, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 17, 2003 to be assured of consideration.

Bureau of the Public Debt (PD)

OMB Number: 1535–0136.

Form Number: PD F 5410.

Type of Review: Extension.

Title: Application for Refund of Purchase Price of United States Savings Bonds for Organizations.

Description: Used by an organization to request refund of purchase price of United States Savings Bonds.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 5,000.

Estimated Burden Hours Per Respondent: 6 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 500 hours.

Clearance Officer: Vicki S. Thorpe (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 03–6385 Filed 3–17–03; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 10, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before April 17, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1499.

Revenue Procedure Number: Revenue Procedure 96–52.

Type of Review: Extension.

Title: Acceptance Agents.

Description: Revenue Procedure 96–52 describes application procedures for becoming an acceptance agent and the requisite agreement that an agent must execute with IRS.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 12,825.

Estimated Burden Hours Per Respondent: 3 hours, 12 minutes.

Estimated Total Reporting Burden: 41,006 hours.

OMB Number: 1545–1805.

Form Number: IRS Form 8880.

Type of Review: Extension.

Title: Credit for Qualified Retirement Savings Contributions.

Description: Form 8880 is used to allow qualifying taxpayers to take a nonrefundable credit for contributions made to their qualified retirement accounts. These accounts can be IRA's, Roth IRA's, or qualified employer sponsored retirement plans.

Respondents: Individual or household.

Estimated Number of Respondents/Recordkeepers: 1,000,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—19 min.
Learning about the law or the form—9 min.
Preparing the form—29 min.
Copying, assembling, and sending the form to the IRS—20 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 1,310,000 hours.

OMB Number: 1545–1807.

Form Number: IRS Form 8885.

Type of Review: Revision.

Title: Health Insurance Credit for Eligible Recipients.

Description: Form 8885 is used to allow a qualifying individual to take a credit for health insurance premiums paid either by them or their behalf on their tax return.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 300,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—13 min.
Learning about the law or the form—9 min.
Preparing the form—18 min.
Copying, assembling, and sending the form to the IRS—20 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 303,000 hours.

Clearance Officer: Glenn Kirkland (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 03–6386 Filed 3–17–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

President's Commission on the United States Postal Service

AGENCY: Department of the Treasury, Departmental Offices.

ACTION: Notice of meeting.

SUMMARY: Notice is given of a meeting of the President's Commission on the United States Postal Service.

DATES: The meeting will be held on Friday, April 4, 2003, from 8:30 a.m. to approximately 12:30 p.m. p.s.t.

ADDRESSES: The meeting will be held in the Concourse Ballroom (2nd floor) of The Westin Hotel Los Angeles Airport, 5400 West Century Boulevard, Los Angeles, California 90045.

FOR FURTHER INFORMATION CONTACT: Roger Kodat, Designated Federal Official, 202–622–7073.

SUPPLEMENTARY INFORMATION: At the public meeting, the Commission will examine the current and potential role of the private sector in the mail delivery system through outsourcing, worksharing, and retail partnerships. The Commission will also examine the issue of Postal Service competition with the private sector. Witnesses will testify at the invitation of the Commission. At the meeting, the Private-Sector Partnership Subcommittee will report to the Commission. Seating is limited.

Dated: March 13, 2003.

Roger Kodat,

Designated Federal Official.

[FR Doc. 03–6400 Filed 3–17–03; 8:45 am]

BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–CAP

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 1099–CAP, Changes in Corporate Control and Capital Structure.

DATES: Written comments should be received on or before May 19, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. 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 Carol Savage, (202) 622–3945, or through the internet (*carol.a.savage@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Changes in Corporate Control and Capital Structure.

OMB Number: 1545–1814.

Form Number: 1099–CAP.

Abstract: Any corporations that undergoes reorganization under Regulation section 1.6043–4T with stock, cash, and other property over $100 million must file Form 1099–CAP with IRS shareholders.

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: Business or other for-profit organizations, and individuals.

Estimated Number of Responses: 350.

Estimated Time Per Response: 18 minutes.

Estimated Total Annual Burden Hours: 105.

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: March 11, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–6464 Filed 3–17–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue (MLI) Committee Will Be Conducted (Via Teleconference)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue (MLI) Committee will be conducted (via teleconference).

DATES: The meeting will be held Friday, April 11, 2003.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Multilingual Initiative Issue Committee will be held Friday, April 11, 2003 from 1 p.m. EST to 2 p.m. EST via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: March 10, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–6465 Filed 3–17–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Tuesday, April 22, 2003.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227, or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, April 22, 2003 from 11 a.m. EST to 12 p.m. EST via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write Marisa Knispel, TAP Office, 10 Metrotech Center, 625 Fulton Street, Brooklyn, NY 11021, or post comments to the Web site: *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: March 10, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–6466 Filed 3–17–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Amended notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be conducted (via teleconference).

DATES: The meeting will be held Wednesday, March 19, 2003.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227, or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be held Wednesday, March 19, 2003 from 3 p.m. e.s.t. to 4 p.m. e.s.t. via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write Marisa Knispel, TAP Office, 10 Metrotech Center, 625 Fulton Street, Brooklyn, NY 11021, or post comments to the Web site: *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: March 11, 2003.

Deryle Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–6467 Filed 3–17–03; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Tuesday,
March 18, 2003

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Designations and Nondesignations of Critical Habitat for 42 Plant Species From the Island of Molokai, Hawaii; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH08

Endangered and Threatened Wildlife and Plants; Final Designations and Nondesignations of Critical Habitat for 42 Plant Species From the Island of Molokai, HI

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 41 of 51 listed species known historically from the Hawaiian island of Molokai. A total of approximately 9,843 hectares (24,333 acres) of land on Molokai fall within the boundaries of the 88 critical habitat units designated for these 41 species. This critical habitat designation requires the Service to consult 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. This rule also determines that designating critical habitat would not be prudent for one species, *Pritchardia munroi.* 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.

DATES: This rule becomes effective on April 17, 2003.

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 U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., Room 3–122, P.O. Box 50088, Honolulu, HI 96850–0001.

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

In the List of Endangered and Threatened Plants (50 CFR 17.12), there are 51 plant species that, at the time of listing, were reported from the island of Molokai (Table 1).

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF 51 SPECIES FROM MOLOKAI

Species (common name)	Island distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	N.W. Isles, Kahoolawe, Niihau
Adenophorus periens (pendant kihi fern)	C	H	C	R	R	C	
Alectryon macrococcus (mahoe)	C	C	C	.....	C	.....	
Bidens wiebkei (kookoolau)	.....	.....	C	.....	.....	.....	
Bonamia menziesii (No common name)	C	C	H	C	C	C	
Brighamia rockii (pua ala)	.....	.....	C	H	H	.....	
Canavalia molokaiensis (awikiwiki)	.....	.....	C	.....	.....	.....	
Centaurium sebaeoides (awiwi)	C	C	C	C	C	.....	
Clermontia oblongifolia ssp. *brevipes* (oha wai)	.....	.....	C	.....	.....	.....	
Ctenitis squamigera (pauoa)	H	C	C	C	C	H	
Cyanea dunbarii (haha)	.....	.....	C	.....	.....	.....	
Cyanea grimesiana ssp. *grimesiana* (haha)	.....	C	C	C	C	.....	
Cyanea mannii (haha)	.....	.....	C	.....	.....	.....	
Cyanea procera (haha)	.....	.....	C	.....	.....	.....	
Cyperus trachysanthos (puukaa)	C	C	H	H	.....	.....	Ni (C)
Diellia erecta (asplenium-leaved diellia)	C	C	C	H	C	C	
Diplazium molokaiense (No common name)	H	H	H	H	C	.....	
Eugenia koolauensis (nioi)	.....	C	H	.....	.....	.....	
Flueggea neowawraea (mehamehame)	C	C	H	.....	C	C	
Hedyotis mannii (pilo)	.....	.....	C	C	C	.....	
Hesperomannia arborescens (No common name).	.....	C	C	H	C	.....	
Hibiscus arnottianus ssp. *immaculatus* (kokio keokeo).	.....	.....	C	.....	.....	.....	
Hibiscus brackenridgei (mao hau hele)	H	C	H	C	C	C	Ka (R)
*Ischaemum byrone*Hilo ischaemum)	R	.....	C	.....	C	.....	
Isodendrion pyrifolium (wahine noho kula)	H	H	H	H	H	C	Ni (H)
Labordia triflora (kamakahala)	.....	.....	C	.....	.....	.....	
Lysimachia maxima (No common name)	.....	.....	C	.....	.....	.....	
Mariscus fauriei (No common name)	.....	.....	C	H	.....	C	
Marsilea villosa (ihi ihi)	.....	C	C	.....	.....	.....	Ni (H)
Melicope mucronulata (alani)	.....	.....	C	.....	C	.....	
Melicope munroi (alani)	.....	.....	H	C	.....	.....	
Melicope reflexa (alani)	.....	.....	C	.....	.....	.....	
Neraudia sericea (No common name)	.....	.....	C	H	C	.....	Ka (H)
Peucedanum sandwicense (makou)	C	C	C	.....	C	.....	
Phyllostegia mannii (No common name)	.....	.....	C	.....	H	.....	
Phyllostegia mollis (No common name)	.....	C	H	.....	C	.....	
Plantago princeps (laukahi kuahiwi)	C	C	C	.....	C	H	
Platanthera holochila (No common name)	C	H	C	.....	C	.....	
Pritchardia munroi (loulu)	.....	.....	C	.....	.....	.....	
Pteris lidgatei (No common name)	.....	C	H	.....	C	.....	
Schiedea lydgatei (No common name)	.....	.....	C	.....	.....	.....	

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF 51 SPECIES FROM MOLOKAI—Continued

Species (common name)	Island distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	N.W. Isles, Kahoolawe, Niihau
Schiedea nuttallii (No common name)	C	C	C		R		
Schiedea sarmentosa (No common name)			C				
Sesbania, tomentosa (ohai)	C	C	C	H	C	C	Ni (H), Ka (C), NW Isles (C)
Silene alexandri (No common name)			H				
Silene lanceolata (No common name)	H	C	C	H		C	
Solanum incompletum (popolo ku mai)	H		H		H	H	C
Spermolepis hawaiiensis (No common name)	C	C	C	C	C	C	
Stenogyne bifida (No common name)			C				
Tetramolopium rockii (No common name)			C				
Vigna o-wahuensis (No common name)		H	C	C	C	C	Ni (H), Ka (C)
Zanthoxylum hawaiiense (ae)	C		C	H	C	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.

Sixteen of these species are endemic to the island of Molokai, while 35 species are reported from Molokai and one or more other Hawaiian islands. Each of these species is described in more detail below in the section ''Discussion of Plant Taxa.'' Although we considered designating critical habitat on Molokai for each of the 51 plant species, for the reasons described below, the final designation includes critical habitat for 41 of 51 plant species. Species that also occur on other Hawaiian islands may have critical habitat designated on those other islands in subsequent rulemakings.

The Island of Molokai

The island of Molokai, the fifth largest in the Hawaiian Islands chain, is approximately 61 kilometers (km) (38 miles (mi)) long, up to 17 km (10 mi) wide, and encompasses an area of about 688 square (sq) km (266 sq mi). Three shield volcanoes make up most of the land mass of Molokai: West Molokai Mountain, East Molokai Mountain, and a volcano that formed Kalaupapa Peninsula.

The taller and larger East Molokai Mountain rises 1,813 meters (m) (4,970 feet (ft)) above sea level and comprises roughly 50 percent of the island's area. Topographically, the windward (north) side of East Molokai differs from the leeward (south) side. Precipitous cliffs line the windward coast and deep valleys dissect the coastal area. The annual rainfall on the windward side is 200 to over 375 centimeters (cm) (75 to over 150 inches (in)), distributed throughout the year. The soils are poorly drained and high in organic matter. The gulches and valleys are usually very steep, but sometimes gently sloping. Much of the native vegetation on windward East Molokai is intact because of its relative inaccessibility to humans and animals, although destructive ungulates have begun to enter the area in recent years.

Discussion of Plant Taxa

Species Endemic to Molokai

Bidens wiebkei (kookoolau)

Bidens wiebkei, a member of the aster family (Asteraceae), is a short-lived perennial herb, which is somewhat woody at the base and grows from 0.5 to 1 m (1.6 to 3.3 ft) tall with opposite, pinnately compound leaves. This plant is distinguished from other *Bidens* species that grow on Molokai by its erect habit and the curved or twisted, winged achenes (Ganders and Nagata 1999, 57 FR 46325).

This species has been observed in flower during May. Little else is known about the life history of *Bidens wiebkei.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown. (Hawaii Natural Heritage Program (HINHP) Database 2000, United States Fish and Wildlife Service (Service) 1996a).

Historically, *Bidens wiebkei* was known from Pelekunu and the easternmost section of Molokai at Halawa. It is found currently in Halawaiki Gulch, Lamaloa Gulch, and below Puu Kolekole on private lands. There are a total of 5 occurrences containing more than 200 individuals (Geographic Decision Systems International (GDSI) 2000, HINHP Database 2000).

The currently known populations of *Bidens wiebkei* are scattered along slopes in *Metrosideros polymorpha* (ohia) dominated mesic shrublands or dry or mesic *Metrosideros polymorpha-Leptechophylla tameiameiae* (pukiawe) lowland shrubland between 8 and 1,205 m (26 and 3,952 ft) in elevation. Other associated plant species include *Antidesma platyphyllum* (hame), *Dodonaea viscosa* (aalii), *Lysimachia* sp. (kolokolo kuahiwi), *Nestegis sandwicensis* (olopua), *Phyllanthus distichus* (pamakani mahu), *Pisonia* sp. (papala kepau), *Psydrax odorata* (alahee), or *Scaevola gaudichaudii* (naupaka kuahiwi) (Gagne and Cuddihy 1999, Ganders and Nagata 1999, HINHP Database 2000).

The major threats to *Bidens wiebkei* include habitat degradation and possible predation by axis deer (*Axis axis*) and feral goats (*Capra hircus*); competition with nonnative plants, such as *Melinus minutiflora* (molasses grass) and *Schinus terebinthifolius* (Christmas berry); fire; and damage by humans of those plants found along trails (HINHP Database 2000, 57 FR 46325).

Canavalia molokaiensis (awikiwiki)

Canavalia molokaiensis, a member of the legume family (Fabaceae), is a short-lived perennial climbing herb with twining branches and leaves made up of three lance-shaped or sometimes oval leaflets. The only species of this genus found on Molokai, this plant can be distinguished from others in the genus by its more narrow leaflets and its larger, rose-purple flowers (Wagner and Herbst 1999, 57 FR 46325).

This species has been observed in flower during May and December. Fruits and flowers were observed in March. Little else is known about the life history of *Canavalia molokaiensis.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and

limiting factors are unknown (HINHP Database 2000, Service 1996a).

Historically, *Canavalia molokaiensis* was known from East Molokai at Kalaupapa, Pelekunu, and farther south in Kahuaawi Gulch, and in the region of Manawai. It now has a more restricted range, from Kalaupapa to Waialeia, Kaunakakai, Pelekunu, and Kamakou. There are a total of 7 occurrences containing more than 50 plants on State lands, including lands managed by the National Park Service at Kalaupapa National Historical Park, and privately owned lands (GDSI 2000, HINHP Database 2000).

Canavalia molokaiensis typically grows in exposed sites, both dry and mesic, on steep slopes in *Metrosideros polymorpha-Dodonaea viscosa* lowland shrubland and mesic shrublands between 271 and 1,140 m (889 and 3,739 ft) in elevation. Associated plant species include *Artemisia* sp. (hinahina), *Chamaesyce* sp. (akoko), *Coprosma* sp. (pilo), *Leptecophylla tameiameiae,* or *Wikstroemia* sp. (akia) (HINHP Database 2000).

The threats to this species include habitat degradation by feral ungulates, such as feral goats and pigs (*Sus scrofa*), possible predation by feral goats, and competition with nonnative plants, such as *Melinis minutiflora* (Service 1996a).

Clermontia oblongifolia ssp. *brevipes* (oha wai)

Clermontia oblongifolia ssp. *brevipes,* a member of the bellflower family (Campanulaceae), is a short-lived perennial shrub or tree that reaches a height of 2 to 7 m (6.6 to 23 ft). This species is distinguished from others in the genus by the structure of its calyx and corolla, as well as by the lengths of the flower, the floral lobes, and the green hypanthium (base of flower). This subspecies differs from others of the species by the shape and length of its leaves, leaf stalks, and flower stalks (Lammers 1988, 1999).

Little is known about the life history of *Clermontia oblongifolia* ssp. *brevipes.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996a).

Clermontia oblongifolia ssp. *brevipes* is known from five individuals on the privately owned land of the Nature Conservancy of Hawaii's (TNCH) Pelekunu Preserve. The historical range of this subspecies is not known (HINHP Database 2000; Service 1996a; Joel Lau, HINHP, *in litt.* 2000).

Clermontia oblongifolia ssp. *brevipes* occurs in shallow soil on gulch slopes in the wet *Metrosideros polymorpha*-dominated forests between 776 and 1,508 m (2,545 and 4,946 ft) in elevation. Associated plant species include *Broussaisia arguta* (kanawao), *Cheirodendron trigynum* (olapa), *Cibotium* spp. (hapuu), *Hedyotis terminalis* (manono), or *Melicope* sp. (alani) (HINHP Database 2000; Joel Lau, HINHP, *in litt.* 2000).

The threats to this species on Molokai are habitat degradation by feral pigs; possible predation on the fruit or plant parts by rats (*Rattus rattus*), as evidence on related species suggests; and random naturally occurring events that may cause the extinction of the entire species due to the very small number of individuals (Service 1996a, 57 FR 46325).

Cyanea dunbarii (haha)

Cyanea dunbarii, a member of the bellflower family (Campanulaceae), is a short-lived perennial, branched shrub 1.5 to 2 m (4.9 to 6.6 ft) tall with oval to broadly elliptic leaves that have irregularly lobed or cleft margins. This species is distinguished from others in this endemic Hawaiian genus by the lack of prickles on the stems and the irregularly lobed and cleft leaf margins (Lammers 1999).

Cyanea dunbarii has been observed in flower, with immature fruit, in September. Little is known about the life history of *Cyanea dunbarii.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (HINHP Database 2000, Service 1998a).

Cyanea dunbarii was collected in 1918 at Waihanau and Waialae Valleys, and was not observed again until 1992, when Joel Lau of HINHP found it in Mokomoko Gulch on State-owned land within Molokai Forest Reserve. Currently it is known from one occurrence of approximately 30 mature plants at an elevation of 671 m (2,200 ft) (GDSI 2000; HINHP Database 2000; 61 FR 53130; Ken Wood, National Tropical Botanical Garden (NTBG), *in litt.* 2000).

Cyanea dunbarii occurs on a streambank in a mesic to wet *Dicranopteris linearis* (uluhe)-*Metrosideros polymorpha* lowland forest on moderate to steep slopes between 191 and 1,248 m (626 and 4,093 ft) in elevation. Associated species include *Charpentiera obovata* (papala), *Cheirodendron trigynum, Clermontia kakeana* (ohawai), *Diplazium sandwichianum* (hoio), *Freycinetia arborea* (ieie), *Perrottetia sandwicensisr* (olomea), or *Pipturus albidus* (mamaki) (HINHP Database 2000, Service 1998a).

The major threats to *Cyanea dunbarii* on Molokai are competition with the non-native plants *Buddleia asiatica* (butterfly bush), *Commelina diffusa* (honohono), *Erigeron karvinskianus* (daisy fleabane), *Kalanchoe pinnata* (air plant), or *Rubus rosifolius* (thimbleberry); catastrophic extinction by naturally occurring events, such as landslides or flooding; reduced reproductive vigor due to the small number of individuals; predation by rats as rats are known to be in the area and are known to eat stems and fruits of other species of *Cyanea;* and habitat degradation and predation by axis deer and pigs (Cuddihy and Stone 1990, Service 1998a).

Cyanea mannii (haha)

Cyanea mannii, a member of the bellflower family (Campanulaceae), is a branched, short-lived perennial shrub 1.5 to 3 m (5 to 10 ft) tall with narrowly elliptic or lance-shaped leaves. This species is distinguished from the seven other species of the genus on Molokai by a combination of the following characteristics: a branched, woody habit; leaves with small, hardened, marginal teeth; and a purplish corolla (Lammers 1999, 57 FR 46325).

Cyanea mannii has been observed in flower during July. Little is known about the life history of *Cyanea mannii.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (HINHP Database 2000, Service 1996a).

Historically, *Cyanea mannii* was known only from Kalae on East Molokai. In 1984, a single plant was discovered by Joan Aidem on privately owned land west of Puu Kolekole on East Molokai. Since then, seven additional occurrences have been discovered in the east and west forks of Kawela Gulch on privately owned land on East Molokai and within the State's Molokai Forest Reserve. These 8 occurrences contain approximately 200 individuals on State and privately owned lands (GDSI 2000; HINHP Database 2000; Lammers 1999; Service 1996a; Ken Wood, NTBG, *in litt.* 2000).

This species typically grows on the sides of deep gulches in *Metrosideros polymorpha*-dominated montane mesic forests between 191 and 1,248 m (626 and 4,093 ft) in elevation. Associated plant species include *Dicranopteris linearis, Vaccinium* sp. (ohelo), or *Wikstroemia* sp. (HINHP Database 2000, Lammers 1999, Service 1996a).

Threats to *Cyanea mannii* are habitat degradation by feral pigs; predation by rats, which may feed on the fruit or other parts of the plant, as suggested by

evidence from related species; and catastrophic extinction through naturally occurring events due to this species few occurrences and small number of individuals (Service 1996a).

Cyanea procera (haha)

Cyanea procera, a member of the bellflower family (Campanulaceae), is a palm-like, short-lived perennial tree 3 to 9 m (10 to 30 ft) tall. It has stalkless, lance-shaped leaves 60 to 75 cm (24 to 30 in) long and 10 to 17 cm (3.9 to 6.7 in) wide with tiny hardened teeth along the margins. This species can be distinguished from other species of the genus by its growth habit, its stalkless leaves, and the single-lipped appearance of the corolla (Lammers 1999, 57 FR 46325).

Little is known about the life history of *Cyanea procera.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996a).

Historically, *Cyanea procera* was known only from an unspecified site in the Kamalo region of East Molokai. Currently, this species is found on private land and the State's Puu Alii Natural Area Reserve (NAR) with a total of 5 occurrences containing at least 10 individuals (GDSI 2000, HINHP Database 2000).

Cyanea procera is found on the walls of steep gulches in wet *Metrosideros polymorpha*-dominated lowland mixed forests between 277 and 1,248 m (909 and 4,093 ft) in elevation. Associated plant species include *Asplenium* spp. (no common name (NCN)), *Brousaissia arguta, Coprosma ochracea* (pilo), *Cyanea* spp. (haha), *Cyrtandra macrocalyx* (haiwale), *Dicranopteris linearis, Pipturus albidus, Pisonia* spp., *Scaevola procera* (naupaka kuahiwi), or *Touchardia latifolia* (olona) (HINHP Database 2000, Service 1996a).

Threats to *Cyanea procera* are predation by rats (as suggested by evidence on related species) and feral goats, habitat degradation by feral goats and pigs, habitat destruction through erosion, and catastrophic extinction from naturally occurring events due to the vulnerability of a few occurrences with a small number of individuals (57 FR 46325).

Hibiscus arnottianus ssp. *immaculatus* (kokio keokeo)

Hibiscus arnottianus ssp. *immaculatus,* a member of the hibiscus family (Malvaceae), is a long-lived perennial tree up to 3 m (10 ft) tall with alternate, oval, toothed leaves measuring 5 to 7 cm (2 to 2.8 in) long and 4 to 6.5 cm (1.6 to 2.6 in) wide. This subspecies is distinguished from other native Hawaiian members of the genus by its white petals and white staminal column (Bates 1999, 57 FR 46325).

This species was observed in flower during July. Little else is known about the life history of *Hibiscus arnottianus* ssp. *immaculatus.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (HINHP Database 2000, Service 1996a).

Hibiscus arnottianus ssp. *immaculatus* once ranged from Waihanau Valley east to Papalaua Valley on East Molokai. Currently this species is found west of Papalaua Valley on privately owned land and in the State's Olokui NAR above Waiehu. There are a total of 3 occurrences containing between 20 and 30 individuals (GDSI 2000, HINHP Database 2000).

Hibiscus arnottianus ssp. *immaculatus* individuals are scattered along steep sea cliffs in mesic forests between 8 and 1,014 m (26 and 3,326 ft) in elevation. Associated native plant species include *Athyrium* spp. (akolea), *Cyanea grimesiana* (haha), *Antidesma platyphyllum, Boehmeria grandis* (akolea), *Diospyros sandwicensis* (lama), *Metrosideros polymorpha, Pipturus* spp. (mamaki), *Psydrax odorata,* or *Urera glabra* (opuhe) (Bates 1999, HINHP Database 2000).

The major threats to *Hibiscus arnottianus* spp. *immaculatus* are habitat destruction by feral goats and catastrophic extinction by naturally occurring events due to the vulnerability of the three occurrences and few individuals (Service 1996a).

Labordia triflora (kamakahala)

Labordia triflora, a short-lived perennial member of the logan family (Loganiaceae), is similar to *L. tinifolia* var. *lanaiensis,* except in the following characteristics: The stems of *L. triflora* are climbing; the leaf stalks are only 1 to 3 millimeters (mm) (0.04 to 0.1 in) long; inflorescence stalks are 40 to 50 mm (1.6 to 2 in) long; and each flower stalk is 10 to 25 mm (0.4 to 1 in) long (Motley 1995).

The flowers of this species are functionally unisexual. Little else is known about the life history of this species. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Motley 1995, HINHP Database 2000).

Until 1990, *Labordia triflora* was known only from the type collection at Mapulehu and was believed to be extinct. In 1990, Joel Lau rediscovered the species in Kua Gulch on Molokai. Currently, only 10 individuals are known from one occurrence on privately owned land (GDSI 2000, HINHP Database 2000, Motley 1995).

This species occurs on gulch slopes in mixed mesic *Metrosideros polymorpha* forest, between 191 and 1,143 m (626 and 3,749 ft) in elevation. Associated species include *Coprosma* sp., *Myrsine lessertiana* (kolea lau nui), *Nephrolepis exaltata* (sword fern), *Pouteria sandwicensis* (alaa), *Sadleria cyatheoides* (amau), or *Tetraplasandra hawaiensis* (ohe ohe) (Motley 1995; J. Lau, *in litt.* 2001).

The threats to *Labordia triflora* include habitat degradation and destruction by feral pigs and goats; predation by rats that eat seeds; competition with the non-native plant species *Schinus terebinthifolius;* catastrophic extinction through environmental events; and reduced reproductive vigor due to the species' few occurrences and small number of individuals (Motley 1995, 64 FR 48307).

Lysimachia Maxima (NCN)

Lysimachia maxima, a member of the primrose family (Primulaceae), is a sprawling, short-lived perennial shrub with reddish-brown bark. This species is differentiated from others in this genus by the leaves borne in groups of 3, the broadest portion of the leaf located above the middle, and rusty hairs that disappear with maturity (Wagner *et al.* 1999).

Flowers, buds, and immature fruit of *Lysimachia maxima* have been observed in late May through July. Little is known about the life history of this species. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998a, 61 FR 53130).

Lysimachia maxima is only known from one occurrence containing between 45 and 50 individuals on the rim of Pelekunu Valley near Ohialele, on the privately owned land of TNCH's Pelekunu Preserve (GDSI 2000, HINHP Database 2000).

This species occurs in *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest between 446 and 1,329 m (1,463 and 4,359 ft) in elevation. Associated species include *Dubautia* sp. (naenae), *Hedyotis* sp. (NCN), *Ilex anomala* (kawau), *Psychotria* sp. (kopiko), or *Vaccinium* sp. (HINHP Database 2000).

The major threats to *Lysimachia maxima* are catastrophic extinction from random environmental events (*e.g.*, landslides); reduced reproductive vigor

due to the small number of individuals in the only known occurrence; and habitat degradation and/or predation by feral pigs and goats that are known from adjacent areas (Service 1998a).

Melicope reflexa (alani)

Melicope reflexa, a long-lived perennial of the rue family (Rutaceae), is a sprawling shrub 1 to 3 m (3.3 to 10 ft) tall with short, yellowish-brown, short-lived hairs on new growth. Opposite leaves with leaf stalks usually over 1 cm (0.4 in) long, larger leaves and fruit, and partially fused sections of the capsule (fruit) separate it from other species of the genus (Stone *et al.* 1999).

Little is known about the life history of this species. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996a).

Historically, *Melicope reflexa* occurred from a ridge between Hanalilolilo and Pepeopae to as far east as Halawa on East Molokai. The 3 remaining occurrences of fewer than a total of 1,000 individuals are on State and private lands in Honomuni, the Wailau-Mapulehu summit area, and Kukuinui Ridge in Wailau Valley (GDSI 2000, HINHP Database 2000).

Melicope reflexa typically grows in wet *Metrosideros polymorpha*-dominated forest with native trees, such as *Cheirodendron* sp. (olapa), at elevations between 319 and 1,508 m (1,046 and 4,946 ft). Associated native plant species include *Antidesma platyphyllum*, *Alyxia oliviformis* (maile), *Cheirodendron trigynum*, *Cibotium* spp., *Dicranopteris linearis*, *Freycinetia arborea*, or *Syzygium sandwicensis* (ohia ha) (Stone *et al.* 1999; J. Lau, *in litt.* 2001).

Major threats to *Melicope reflexa* include habitat degradation and predation by ungulates (axis deer and feral pigs); competition with the non-native plant *Clidemia hirta* (Koster's curse); and catastrophic extinction from environmental events due to this species' few occurrences and small number of individuals (Service 1996a, 57 FR 46325).

Pritchardia munroi (loulu)

Pritchardia munroi, a member of the palm family (Arecaceae), is a long-lived perennial tree about 4 to 5 m (13 to 16 ft) tall. The leaves are deeply divided into segments with long, drooping tips. This species is distinguished from others of the genus by its relatively smooth leaves; the grayish-brown hair on the inflorescence stalks, which are shorter than the petioles (leaf stalks); and the small size of the fruits (Read and Hodel 1999).

Little is known about the life history of this species. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996a).

Historically and currently, *Pritchardia munroi* is found in leeward East Molokai, above Kamalo, near Kapuaokoolau Gulch. The only known wild individual is found on privately owned land (HINHP Database 2000, Read and Hodel 1999).

The only known wild individual grows near the base of a small ravine in mesic *Metrosideros polymorpha-Dodonaea viscosa-Leptechophylla tameiameiae* shrubland at elevations between 189 and 1,205 m (619 and 3,952 ft). Associated plant species include *Bidens menziesii* (kookoolau), *Coprosma* sp., *Diospyros sandwicensis, Dubautia linearis* (naenae), *Pleomele auwahiensis* (hala pepe), *Pseudognaphalium sandwicensium* (enaena), *Sida fallax* (ilima), or *Wikstroemia* sp. (Read and Hodel 1999; J. Lau, *in litt.* 2001).

Threats to the only known wild individual of *Pritchardia munroi* include habitat degradation by ungulates (axis deer, goats, or pigs) around its fenced exclosure, which prevents the establishment of seedlings; predation of seeds by rats; and catastrophic extinction by random environmental events (*e.g.*, fire) due to its extreme rarity (Service 1996a, 57 FR 46325).

Schiedea lydgatei (NCN)

Schiedea lydgatei, a member of the pink family (Caryophyllaceae), is a low, hairless short-lived perennial with branched stems 10 to 40 cm (4 to 16 in) long that are woody at the base. The opposite, thin, three-veined leaves with petioles and the smooth, open flower clusters with relatively larger, green sepals separate this species from other members of this endemic Hawaiian genus (Wagner *et al.* 1999).

This species has been observed with flowers and fruit in June. Little is known about the life history of this species. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (HINHP Database 2000, Service 1996a).

Historically, *Schiedea lydgatei* was found in Kalae, Poholua, Makolelau, and Ohia Gulch on East Molokai. This species is now known from 4 occurrences in a more restricted area in Makakupaia, Kawela, and Makolelau. The 4 occurrences total more than 1,000 individuals on State and privately owned lands (GDSI 2000, HINHP Database 2000).

This species is found along ridges in dry to mesic grassland, shrubland, and forest with scattered native trees. It ranges in elevation between 458 and 1,047 m (1,502 and 3,434 ft). Associated plant species include *Dicranopteris linearis*, *Dodonaea viscosa*, *Leptecophylla tameiameiae*, or *Metrosideros polymorpha* (Gagne and Cuddihy 1999, HINHP Database 2000, Wagner *et al.* 1999).

The major threats to *Schiedea lydgatei* are habitat degradation by feral ungulates; competition with the non-native plant species *Melinus minutiflora*; and catastrophic extinction due to random environmental events, primarily fire, because in this species' dry, windswept habitat a single fire could potentially destroy a large part of the occurrence (Service 1996a, 57 FR 46325).

Schiedea sarmentosa (NCN)

Schiedea sarmentosa, a short-lived perennial herb of the pink family (Caryophyllaceae), is a many-branched shrub. The opposite leaves are slender, threadlike, and covered with dense, glandular hairs. The flowers are female on some plants and bisexual on others. This species differs from others in this endemic Hawaiian genus by its densely bushy habit, leaf width, hairiness, and staminode (false stamen) length (Wagner *et al.* 1999).

The population in Makolelau Gulch has a frequency of 31 percent female plants. Based on analyses of pollen-ovule ratios, pollen size, inflorescence structure, and comparison to other *Schiedea* species tested in a wind tunnel, *Schiedea sarmentosa* could be wind-pollinated. Little is known about the life history of this species. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998a).

Schiedea sarmentosa has been found in Kawela Gulch, Makolelau, and Onini Gulch. Currently, only five occurrences are known to be extant on private lands. Estimates of the total number of individuals have ranged to over 1,000. An accurate count is difficult because this species grows interspersed with *Schiedea lydgatei* (GDSI 2000, HINHP Database 2000, Service 1998a).

Schiedea sarmentosa is typically found on steep or gentle to moderate slopes in *Metrosideros polymorpha-Dodonaea viscosa* lowland dry or mesic shrubland, or dry to mesic forest dominated by *Metrosideros polymorpha* and/or *Diospyros sandwicensis*, at elevations between 316 and 1,072 m (1,036 and 3,516 ft). Associated species include *Alyxia oliviformis*, *Bidens menziesii*, *Carex meyenii* (NCN),

Chamaesyce sp., *Chenopodium oahuense* (aheahea), *Leptecophylla tameiameiae*, *Lipochaeta rockii* (nehe), *Nestegis sandwicensis*, *Nothocestrum latifolium* (aiea), *Pleomele auwahiensis*, *Sida fallax*, or *Sophora chrysophylla* (mamane) (HINHP Database 2000; J. Lau, *in litt.* 2001).

Major threats to *Schiedea sarmentosa* include habitat degradation by feral goats and pigs, competition by the non-native plants *Melinis minutiflora* and *Ricinus communis* (castor bean), and fire. The species is also threatened by a risk of extinction from naturally occurring events due to the low number of occurrences (Service 1998a, 61 FR 53130).

Silene alexandri (NCN)

Silene alexandri, a member of the pink family (Caryophyllaceae), is an erect, short-lived perennial herb, 30 to 60 cm (1 to 2 ft) tall, and woody at the base. The narrow, elliptic leaves are hairless except for a fringe along the margins. Flowers are arranged in open clusters on stalks. The hairless stems, flowering stalks, and sepals and the larger flowers with white petals separate this species from other members of the genus (Wagner *et al.* 1999).

Little is known about the life history of this species. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996a).

Historically, *Silene alexandri* was known from Makolelau and Kamalo on East Molokai. Recently, the single known occurrence, comprised of fewer than 10 individuals, was reported to be extirpated in the wild. However, individuals remain in cultivation (GDSI 2000; HINHP Database 2000; Steve Perlman, NTBG, pers. comm., 2001).

The only known occurrence was found on moderate to steep slopes or cliffs in dry forest at an elevation between 316 and 1,073 m (1,036 and 3,519 ft). Associated plant species include *Bidens menziesii*, *Carex wahuensis* (NCN), *Diospyros sandwicensis*, *Dodonaea viscosa*, *Leptecophylla tameiameiae*, or *Schiedea* spp. (J. Lau, *in litt.* 2001).

Threats to *Silene alexandri* include habitat degradation by feral goats, possible predation by goats and cattle (*Bos taurus*), and catastrophic extinction through random environmental events, of which the most serious is fire (Service 1996a, 57 FR 46325).

Stenogyne bifida (NCN)

Stenogyne bifida, a nonaromatic member of the mint family (Lamiaceae), is a climbing, short-lived perennial herb, with smooth or slightly hairy, four-angled stems. The long, narrow calyx teeth and the deep lobe in the upper lip of the yellow corolla separate this species from others of the genus (Weller and Sakai 1999).

Little is known about the life history of this species. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996a).

Historically, *Stenogyne bifida* was known from scattered occurrences from Waianui in central Molokai to Pukoo Ridge on East Molokai. This species is now known from only 5 East Molokai occurrences totaling fewer than 10 individuals on Manawai-Kahananui Ridge on private lands; on Kolo Ridge, at Kamoku Flats; and on the east fork of Kawela Gulch on the privately owned land of TNCH's Pelekunu Preserve (GDSI 2000, HINHP Database 2000).

Stenogyne bifida typically grows on gulch slopes in *Metrosideros polymorpha*-dominated montane mesic to wet forest with native species such as *Broussaisia arguta*, *Cheirodendron trigynum*, *Cibotium* sp., *Cyanea* sp., *Dicranopteris linearis*, *Dodonaea viscosa*, *Hedyotis hillebrandii* (manono), *Hedyotis* sp., *Leptecophylla tameiameiae*, *Pipturus albidus*, *Pouteria sandwicensis*, *Psychotria* sp., *Vaccinium* sp., or *Wikstroemia* sp. at elevations between 336 and 1,300 m (1,102 and 4,264 ft) (HINHP Database 2000; Service 1996a; J. Lau, *in litt.* 2001).

The most pervasive threat to this species is habitat degradation by ungulates (axis deer, goats, and pigs) (Service 1996a, 57 FR 46325).

Tetramolopium rockii (NCN)

Tetramolopium rockii, a member of the aster family (Asteraceae), is a glandular, hairy, prostrate short-lived perennial shrub that forms complexly branching mats. The species has been divided into two varieties in the most recent treatment of this genus in Hawaii. Leaves of *T. rockii* var. *calcisabulorum* have slightly inrolled edges and are whitish due to the long silky hairs on their surfaces, whereas var. *rockii* has smaller, less hairy, flat, yellowish-green leaves. This species differs from others of the genus by its growth habit, its hairy and glandular surfaces, its spatulate leaf shape, and its yellow disk florets (Lowrey 1999).

Little is known about the life history of this species. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996a).

Of the two recognized varieties of *Tetramolopium rockii*, var. *rockii* was first discovered at Moomomi about 80 years ago and is still extant in that area. *Tetramolopium rockii* var. *rockii* is found in four areas from Kalawao to Kahinaakalani, Keieho Point to Kapalauoa, and Moomomi to Kahinaakalani. *Tetramolopium rockii* var. *calcisabulorum* is only reported from Keieho Point to Kapalauoa, intergrading with var. *rockii* where their ranges overlap. The total number of individuals of both varieties in the 4 occurrences is estimated to be 174,000; they are located on State lands, including land managed by the National Park Service at Kalaupapa National Historical Park, and privately owned lands (GDSI 2000, HINHP Database 2000).

Tetramolopium rockii is restricted to hardened calcareous sand dunes or ash-covered basalt in the coastal spray zone or coastal dry shrubland and grassland between sea level and 199 m (0 and 653 ft) in elevation. Native plant species associated with this species include *Diospyros sandwicensis*, *Fimbristylis cymosa* (mauu akiaki), *Heliotropium anomalum* (hinahina), *Melanthera integrifolia*, *Metrosideros polymorpha*, *Osteomeles anthyllidifolia* (ulei), *Pouteria sandwicensis*, *Psydrax odorata*, *Scaevola* sp. (naupaka), *Sida fallax*, or *Sporobolus virginicus* (akiaki) (HINHP Database 2000, Lowrey 1999, Service 1996a).

The major threats to *Tetramolopium rockii* are habitat degradation by ungulate (axis deer and cattle) activity and human recreation, competition with the non-native plant *Prosopis pallida* (kiawe), and catastrophic extinction due to fire (57 FR 46325).

Multi-Island Species

Adenophorus periens (pendant kihi fern)

Adenophorus periens, a short-lived perennial member of the grammitis family (Grammitidaceae), 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 (leaflet) margins, by the pinnae being at right angles to the midrib axis, by the placement of the sori (a cluster of spore cases) on the pinnae, and the degree of dissection of each pinna (Linney 1989, Service 1999a).

Little is known about the life history of *Adenophorus periens*, which seems to grow only in dense closed-canopy forest with high humidity. Its breeding system is unknown, but outbreeding is very likely to be the predominant mode of reproduction. Spores (minute, reproductive dispersal unit of ferns) 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 that their longevity is brief, probably measured in days at most. Due to the weak differences between seasons, there seems to be no evidence of seasonality in growth or reproduction. Additional information on reproductive cycles, longevity, specific environmental requirements, and limiting factors is not known (Linney 1989, Service 1999a).

Historically, *Adenophorus periens* was known from Kauai, Oahu, Lanai, East Maui, and Hawaii Island. Currently, it is known from several locations on Kauai, Molokai, and Hawaii. On Molokai, it is found in a single occurrence containing seven individuals on private land (GDSI 2000, HINHP Database 2000).

On Molokai, *Adenophorus periens* is an epiphyte usually growing on *Metrosideros polymorpha* trunks, and is found in *Metrosideros polymorpha-Myrsine lessertiana* forest at elevations between 811 and 1,508 m (2,660 and 4,946 ft). It is found in habitats of well-developed, closed canopy providing deep shade and high humidity. Associated native species include *Anoectochilus sandvicensis* (jewel orchid), *Broussaisia arguta*, *Cheirodendron trigynum*, *Cibotium glaucum* (hapuu), *Coprosma ochracea*, *Cyanea* sp., *Cyrtandra* sp. (haiwale), *Dicranopteris linearis*, *Freycinetia arborea*, *Hedyotis terminalis*, *Ilex anomala*, *Labordia hirtella* (NCN), *Leptecophylla tameiameiae*, *Machaerina angustifolia* (uki), *Melicope* sp., *Psychotria* spp., *Stenogyne kamehamehae* (NCN), *Syzygium sandwicensis*, *Vaccinium calycinum* (ohelo), or *Viola chamissoniana* ssp. *robusta* (pamakani) (HINHP Database 2000, Linney 1989, Service 1999a).

The threats to this species on Molokai are habitat degradation by feral pigs and goats, and competition with the non-native plant *Psidium cattleianum* (strawberry guava) (HINHP Database 2000, Service 1999a, 59 FR 56333).

Alectryon macrococcus (mahoe)

Alectryon macrococcus, a long-lived perennial member of the soapberry family (Sapindaceae), consists of two varieties, *macrococcus* and *auwahiensis*, both of which are trees with reddish-brown branches and 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* (only found on East Maui). The only member of its genus found in Hawaii, this species is distinguished from other Hawaiian members of its family by being a tree with a hard fruit 2.3 cm (0.9 in) or more in diameter (Wagner *et al.* 1999).

Alectryon macrococcus is a relatively slow-growing, long-lived tree that grows in xeric (dry) 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).

Historically and currently, *Alectryon macrococcus* var. *macrococcus* is known from Kauai, Oahu, Maui, and Molokai. On Molokai, it is found on private land, along the Puu Kolekole jeep road, Kaunakakai Gulch, and Kamiloloa Gulch in a total of six occurrences containing nine individuals on State and privately owned lands (GDSI 2000, HINHP Database 2000).

On Molokai, *Alectryon macrococcus* var. *macrococcus* typically grows on talus slopes or in gulches within dry or mesic lowland forest between elevations of 534 and 1,120 m (1,751 and 3,674 ft). Associated native plants include *Dodonaea viscosa*, *Lipochaeta* sp. (nehe), *Myrsine* sp. (kolea), *Nestegis sandwicensis, Nothocestrum* sp. (aiea), *Pleomele* sp. (halapepe), *Psychotria* sp., or *Streblus pendulina* (aiai) (HINHP Database 2000, Service 1997, Wagner *et al.* 1999).

The threats to *Alectryon macrococcus* var. *macrococcus* on Molokai include habitat degradation by feral goats and pigs; competition from non-native plant species, such as *Melinus minutiflora*, *Pennisetum clandestinum* (kikuyu grass), *Psidium cattleianum*, or *Schinus terebinthifolius*; damage from the black twig borer (*Xylosandrus compactus*); seed predation by rats, mice (*Mus domesticus*), and insects (probably the endemic microlepidopteran (small caterpillar) *Prays* cf. *fulvocanella*); loss of pollinators; and catastrophic extinction through a single natural or human-caused environmental disturbance (*e.g.*, fire) due to the very small remaining number of individuals and their limited distribution on Molokai (HINHP Database 2000, 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.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999a).

Historically, *Bonamia menziesii* was known from Kauai, the Waianae Mountains of Oahu, Molokai, Maui, and Hawaii Island. Currently, this species is extant on Kauai, Oahu, Lanai, Maui, and Hawaii. This species was last collected on Molokai in 1918 from Maunaloa by J. F. Rock (HINHP Database 2000).

Nothing is known of the preferred habitat of or native plant species associated with *Bonamia menziesii* on Molokai.

Nothing is known of the threats to *Bonamia menziesii* on Molokai.

Brighamia rockii (pua ala)

Brighamia rockii, a long-lived perennial member of the bellflower family (Campanulaceae), is an unbranched plant with a succulent stem that is bulbous at the bottom and tapers toward the top, ending in a compact rosette of fleshy leaves. This species is a member of a unique endemic Hawaiian genus with only one other species, found on Kauai, from which it differs by the color of its petals, its longer calyx (sepal) lobes, and its shorter flower stalks (Lammers 1999).

Observations of *Brighamia rockii* by Gemmill (1996) have provided the following information: The reproductive system is protandrous, meaning male flower parts are produced before female parts, in this case, separated by several days; only five percent of the flowers produce pollen; very few fruits are produced per inflorescence; there are 20 to 60 seeds per capsule; and plants have been known to flower at nine months of age. This species has been observed in flower during August. Little is known about the life history of this species. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (HINHP Database 2000, Service 1996a).

Historically, *Brighamia rockii* ranged along the northern coast of East Molokai from Kalaupapa to Halawa and may possibly have grown on Lanai and Maui. Currently, it is only extant on Molokai in a total of 5 occurrences with between 121 and 131 individual plants occurring on State and privately owned lands. It occurs on steep, inaccessible sea cliffs along East Molokai's northern coastline from Anapuhi Beach to Wailau Valley on private lands, and on the relatively inaccessible State-owned sea stack of Huelo, east of Anapuhi Beach (GDSI

2000; HINHP Database 2000; Lammers 1999; K. Wood, *in litt.* 2000).

On Molokai, *Brighamia rockii* is found in rock crevices on steep basalt sea cliffs, often within the spray zone, in coastal dry or mesic forest, *Eragrostis variabilis* (kawelu) mixed coastal cliff communities or shrubland, or *Pritchardia* sp. (loulu) coastal mesic forest between sea level and 671 m (0 and 2,201 ft) in elevation. Associated native species include *Artemisia* sp., *Bidens* sp. (kookoolau), *Carex wahuensis* ssp. *wahuensis* (NCN), *Chamaesyce celastroides* var. *amplectans* (akoko), *Cocculus orbiculatus* (huehue), *Cyperus phleoides* ssp. *phleoides* (NCN), *Cyrtomium falcatum* (ahina kuahiwi), *Dianella sandwicensis* (ukiuki), *Diospyros sandwicensis, Hedyotis littoralis* (NCN), *Lepidium bidentatum* var. *o-waihiense* (anaunau), *Metrosideros polymorpha, Osteomeles anthyllidifolia, Pandanus tectorius* (hala), *Peucedanum sandwicensis* (makou), *Phymatosorus grossus* (lauae), *Pittosporum halophilum* (hoawa), *Pritchardia hillebrandii* (loulu), *Psydrax odorata, Reynoldsia sandwicensis* (ohe), *Scaevola sericea* (naupaka kahakai), *Schiedea globosa* (NCN), *Senna gaudichaudii* (kolomona), *Tetramolopium* spp., or *Wikstroemia uva-ursi* (akia) (HINHP Database 2000; Lammers 1999; K. Wood, *in litt.* 2000).

The threats to this species on Molokai are habitat degradation (and possibly predation) by axis deer and goats; competition with the non-native plants *Cyperus gracilis* (McCoy grass), *Digitaria ciliaris* (Henry's crabgrass), *Digitaria insularis* (sourgrass), *Ficus microcarpa* (Chinese banyan), *Kalanchoe pinnata, Lantana camara* (lantana), *Oxalis corniculata* (yellow wood sorrel), *Pluchea carolinensis* (sourbush), *Portulaca oleracea* (pigweed), and *Solanum seaforthianum* (NCN); seed predation by rats; and lack of pollinators (HINHP Database 2000, Service 1996a, 57 FR 46325).

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* (bitter herb), 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. Occurrences are found in dry areas, and plants are more likely to be found following heavy rains. This species appears to be an annual; triggered by declining photo-period, the plant produces seeds and dies. Medeiros *et al.* (1999) noted that in the wild, seedlings first appeared in March and April; flowers first appeared in April and May; mature capsules were observed beginning in May and continuing through June; and by the first week of July, most plants were dead. Little is known about the life history of this species. Its pollination vectors, seed dispersal agents, specific environmental requirements, and limiting factors are unknown (Service 1995a).

Historically and currently, *Centaurium sebaeoides* is known from scattered localities on Kauai, Oahu, Molokai, Lanai, and Maui. Currently on Molokai, there are a total of two occurences containing thousands of individuals, near Mokio Point on privately owned land and in Kalaupapa National Historical Park on State-owned land managed by the National Park Service (GDSI 2000; HINHP Database 2000; Wagner *et al.* 1999; Chuck Chimera, U.S. Geological Survey, pers. comm., 2000).

On Molokai, *Centaurium sebaeoides* grows in volcanic or clay soils or on cliffs in arid coastal areas at elevations between sea level and 409 m (0 and 1,341 ft). Associated species include *Artemisia* sp., *Bidens* sp., *Chamaesyce celastroides* (akoko), *Cyperus phleoides* (NCN), *Dodonaea viscosa, Fimbristylis cymosa, Heteropogon contortus* (pili grass), *Jacquemontia ovalifolia* (pauohiiaka), *Lipochaeta heterophylla* (nehe), *Lipochaeta succulenta* (nehe), *Lycium sandwicense* (ohelo kai), *Lysimachia mauritiana* (kolokolo kuahiwi), *Melanthera integrifolia, Panicum fauriei* (NCN), *Panicum torridum* (kakonakona), *Scaevola sericea, Schiedea globosa, Sida fallax,* or *Wikstroemia uva-ursi* (Medeiros *et al.* 1999, Wagner *et al.* 1999, 56 FR 55770).

The major threats to this species on Molokai are displacement by non-native, woody species, such as *Casuarina equisetifolia* (paina), *Casuarina glauca* (saltmarsh), *Leucaena leucocephala* (koa haole), *Prosopis pallida, Schinus terebinthifolius, Syzygium cumini* (Java plum), and *Tournefortia argentea* (tree heliotrope); trampling and habitat degradation by feral goats and cattle; and damage caused by off-road vehicles (Medeiros *et al.* 1999).

Ctenitis squamigera (pauoa)

Ctenitis squamigera is a short-lived perennial in 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. *Ctenitis squamigera* can be readily distinguished from other Hawaiian species of *Ctenitis* by the dense covering of tan-colored scales on its fronds (Degener and Degener 1957, Wagner and Wagner 1992).

Little is known about the life history of this species. Reproductive cycles, dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998b).

Historically, *Ctenitis squamigera* was recorded from the islands of Kauai, Oahu, Molokai, Lanai, Maui, and Hawaii Island. It is currently found on Oahu, Lanai, Molokai, and Maui. There is currently a single occurrence with 20 individuals on the island of Molokai in Wawaia Gulch on privately owned land (GDSI 2000; HINHP Database 2000; J. Lau, *in litt.* 2000).

On Molokai, *Ctenitis squamigera* is found in mesic forest and gulch slopes between elevations of 757 and 1,133 m (2,483 and 3,716 ft). Associated native plant taxa include *Carex meyenii, Diospyros sandwicensis, Dryopteris unidentata* (NCN), *Metrosideros polymorpha, Nephrolepis exaltata, Nestegis sandwicensis, Pleomele auwahiensis, Pouteria sandwicensis,* or *Xylosma hawaiiense* (maua) (Service 1998b; 59 FR 49025; J. Lau, *in litt.* 2000).

The primary threats to *Ctenitis squamigera* are habitat degradation by goats and competition with the non-native plants *Melinis minutiflora* and *Schinus terebinthifolius* (Service 1998b; 59 FR 49025; J. Lau, *in litt.* 2000).

Cyanea grimesiana ssp. grimesiana (haha)

Cyanea grimesiana ssp. *grimesiana,* a short-lived perennial member of the bellflower family (Campanulaceae), 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 this plant. On Molokai, flowering plants have been observed in July and August. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999a).

Historically and currently, *Cyanea grimesiana* ssp. *grimesiana* is known from Oahu, Molokai, Lanai, and Maui. On Molokai, it is found in a total of two occurrences containing seven individuals in Wailau, Puu Kahea and Olokui NAR on State-owned lands

(GDSI 2000, HINHP Database 2000, Service 1999a).

On Molokai, *Cyanea grimesiana* ssp. *grimesiana* is typically found in mesic forest often dominated by *Metrosideros polymorpha* or *M. polymorpha* and *Acacia koa* (koa), or on cliffs, at elevations between 93 and 1,354 m (305 and 4,441 ft). Associated plants include *Antidesma* sp. (hame), *Bobea* sp. (ahakea), *Cibotium* sp., *Cyrtandra* sp., *Dicranopteris linearis, Doodia* sp. (okupukupu lauii), *Freycinetia arborea, Nephrolepis* sp. (kupukupu), *Psychotria* sp., *Syzygium sandwicensis,* or *Xylosma* sp. (maua) (HINHP Database 2000).

The threats to this species on Molokai are habitat degradation and/or destruction caused by axis deer, feral goats, and pigs; competition with various non-native plants, such as *Clidemia hirta;* catastrophic extinction by randomly naturally occurring events (*e.g.*, fire, landslides) due to the small number of existing individuals; trampling by hikers; seed predation by rats; and predation by various species of slugs (*Milax* spp.) (HINHP Database 2000, Service 1999a, 61 FR 53108).

Cyperus trachysanthos (puukaa)

Cyperus trachysanthos, a member of the sedge family (Cyperaceae), is a short-lived 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 (floral bracts), and the length of the culms (Koyama 1999).

Little is known about the life history of *Cyperus trachysanthos.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999a).

Historically, *Cyperus trachysanthos* was known from Niihau, Kauai, and scattered locations on Oahu, Molokai, and Lanai. This species is now extant on Niihau, Kauai, and Oahu. This species was last collected on Molokai in 1912 from Maunaloa by J. F. Rock (HINHP Database 2000).

Nothing is known of the preferred habitat or native species associated with *Cyperus trachysanthos* on Molokai.

Nothing is known of the threats to *Cyperus trachysanthos* on Molokai.

Diellia erecta (asplenium-leaved diellia)

Diellia erecta, a short-lived perennial fern in the spleenwort family (Aspleniaceae), grows in tufts of three to nine lance-shaped fronds emerging from a rhizome covered with brown to dark gray scales. This species differs from other members of the genus in having larger brown or dark gray scales, fused or separate sori along both margins of the pinna, 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 this species. Its reproductive cycles, dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999a).

Historically, *Diellia erecta* was known from Kauai, Oahu, Molokai, Lanai, Maui, and Hawaii Island. Currently, it is known from Kauai, Oahu, Molokai, Maui, and Hawaii. On Molokai, it is known from a total of 4 occurrences containing at least 10 individuals in Halawa Valley, Kahuaawi Gulch, Makolelau, and Onini Gulch on privately owned lands (HINHP Database 2000; Service 1999a; K. Wood, *in litt.* 1999).

On Molokai, *Diellia erecta* is found in mixed mesic forest and mesic *Diospyros sandwicensis* forest between elevations of 716 and 1,133 m (2,348 and 3,716 ft). Associated native plant species include *Alyxia oliviformis, Bobea* sp., *Coprosma foliosa* (pilo), *Dodonaea viscosa, Dryopteris unidentata, Dubautia linearis* ssp. *opposita* (naenae), *Leptecophylla tameiameiae, Metrosideros polymorpha, Myrsine* sp., *Ochrosia compta* (holei), *Pleomele auwahiensis, Psychotria* sp., *Sophora chrysophylla, Syzygium sandwicensis,* or *Wikstroemia* sp. (HINHP Database 2000; K. Wood, *in litt.* 1999).

The major threats to *Diellia erecta* on Molokai are habitat degradation by pigs, goats, and axis deer; competition with the non-native plant species *Blechnum occidentale* (NCN), *Fraxinus uhdei* (tropical ash), *Melinus minutiflora, Psidium cattleianum,* and *Ricinus communis;* catastrophic extinction due to random naturally occurring events; and reduced reproductive vigor due to the small number of existing individuals (HINHP Database 2000; K. Wood, *in litt.* 1999; Service 1999a; 59 FR 56333).

Diplazium molokaiense (NCN)

Diplazium molokaiense, a short-lived fern in the spleenwort family (Aspleniaceae), has a short prostrate rhizome, and green or straw colored leaf stalks with thin-textured fronds. This species can be distinguished from other species of *Diplazium* on 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).

Little is known about the life history of *Diplazium molokaiense.* Reproductive cycles, dispersal agents, longevity, specific environmental requirements, and limiting factors for *Diplazium molokaiense* are unknown (Service 1998a).

Historically, *Diplazium molokaiense* was found on Kauai, Oahu, Molokai, Lanai, and Maui. Currently, this species is known only from Maui. This species was last collected on Molokai in 1912 from Kaluaaha Valley by C. N. Forbes (HINHP Database 2000).

On Molokai, *Diplazium molokaiense* was found on steep, rocky, wooded gulch walls in wet forests between elevations of 97 and 1,349 m (318 and 4,425 ft) (HINHP Database 2000).

There is no information on threats that may affect *Diplazium molokaiense* on Molokai (Service 1998a).

Eugenia koolauensis (nioi)

Eugenia koolauensis, a member of the myrtle family (Myrtaceae), is a long-lived perennial tree or shrub between 2 and 7 m (7 and 23 ft) tall with branch tips covered with dense brown hairs. *Eugenia koolauensis* differs from the other species in the genus 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 its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, or limiting factors (Service 1998b).

Historically, *Eugenia koolauensis* was known from Maunaloa on western Molokai and from Oahu. Currently, this species is extant on Oahu. It was last collected on Molokai in 1912 from the west end of the island by J. F. Rock (HINHP Database 2000).

On Molokai, *Eugenia koolauensis* was found in rocky gulches or on gentle slopes with deep soil between 475 and 992 m (1,558 and 3,254 ft) in elevation. Associated native plant species include *Diospyros sandwicensis, Erythrina sandwicensis* (wiliwili), *Nesoluma polynesicum, Nestegis sandwicensis, Nototrichium sandwicensis, Reynoldsia sandwicensis,* or *Xylosma hawaiiense* (J. Lau, *in litt.* 2001).

Information on threats that may affect *Eugenia koolauensis* on Molokai is unknown.

Flueggea neowawraea (mehamehame)

Flueggea neowawraea, a member of the spurge family (Euphorbiaceae), 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. This species is usually dioecious (having separate male and female plants) and is the only member of the genus found in Hawaii. It can be distinguished from other Hawaiian species in the family by its hairless whitish lower leaf surfaces and round fruits (Hayden 1999, Service 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. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Hayden 1999, Service 1999a).

Historically, *Flueggea neowawraea* was known from Molokai, Oahu, Kauai, Maui, and Hawaii Island. Currently, this species is found on Kauai, Oahu, Maui, and Hawaii. This species was last collected on Molokai in 1931 from Waihii by G. W. Russ (HINHP Database 2000).

On Molokai, *Flueggea neowawraea* occurred in gulches in mesic forest between 450 and 840 m (1,476 and 2,755 ft) in elevation (J. Lau, *in litt.* 2001).

Information on threats that may affect *Flueggea neowawraea* on Molokai is unknown.

Hedyotis mannii (pilo)

Hedyotis mannii, a member of the coffee family (Rubiaceae), is a short-lived perennial with smooth, usually erect stems 30 to 60 cm (1 to 2 ft) long, which are woody at the base and four-angled or -winged. This species' growth habit; its quadrangular or winged stems; the shape, size, and texture of its leaves; and its dry capsule, which opens when mature, separate it from other species of the genus (Wagner *et al.* 1999).

Little is known about the life history of this species. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996a).

Historically and currently, *Hedyotis mannii* is found on Lanai, West Maui, and Molokai. After an absence of 50 years, this species was rediscovered on Molokai in 1987 by Steve Perlman on private land in Kawela Gulch in TNCH's Kamakou Preserve. Only one occurrence of five plants is known to exist in this area (GDSI 2000, HINHP Database 2000).

On Molokai, *Hedyotis mannii* grows on dark, narrow, rocky gulch walls in mesic and perhaps wet forests at 593 to 1,212 m (1,945 to 3,975 ft) in elevation. Associated plant species include *Cibotium* sp., *Cyanea* sp., *Pipturus* sp., *Psychotria* sp., or *Scaevola* sp. (HINHP Database 2000, Service 1996a, Wagner *et al.* 1999).

The threats to *Hedyotis mannii* on Molokai are habitat degradation by feral pigs; competition with the non-native plant *Melinis minutiflora;* and catastrophic extinction through random environmental events to which the limited number of individuals are extremely vulnerable (HINHP Database 2000, Service 1996a, 57 FR 46325).

Hesperomannia arborescens (NCN)

Hesperomannia arborescens, a long-lived perennial 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 *Hesperomannia* 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 has been observed in flower from April through June and in fruit during March and June. No other information is available on flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998c).

Hesperomannia arborescens was formerly known from Lanai, Molokai, and Oahu. This species is now known from Oahu, Molokai, and Maui. On Molokai, one occurrence of three individuals is known from private land (GDSI 2000, HINHP Database 2000).

On Molokai, *Hesperomannia arborescens* is found on slopes or ridges in wet *Metrosideros polymorpha-Dicranopteris linearis* lowland forest or mesic *Diospyros sandwicensis-M. polymorpha* lowland forest transition zones between 175 and 959 m (574 and 3,146 ft) in elevation. Associated native species include *Antidesma* sp., *Boehmeria grandis, Broussaisia arguta, Cheirodendron* sp., *Cibotium glaucum, Clermontia pallida* (oha wai), *Coprosma* sp., *Cyrtandra* sp., *Diplopterygium pinnatum* (uluhe lau nui), *Elaphoglossum* sp. (ekaha), *Freycinetia arborea, Hedyotis* sp., *Ilex anomala, Myrsine* sp., *Nephrolepis exaltata, Nestegis sandwicensis, Pipturus* sp., *Psychotria mauiensis* (kopiko), *Smilax melastomifolia* (hoi kuahiwi), *Thelypteris* sp. (palapalaia), *Urera glabra,* or *Wikstroemia* sp. (HINHP Database 2000).

The major threats to *Hesperomannia arborescens* on Molokai are habitat degradation by feral pigs, goats, and humans; competition with non-native plants, such as *Clidemia hirta, Kalanchoe pinnata,* and *Rubus rosifolius;* and catastrophic extinction due to random environmental events or reduced reproductive vigor resulting from this species' limited numbers (HINHP Database 2000, 59 FR 14482).

Hibiscus brackenridgei (mao hau hele)

Hibiscus brackenridgei, a short-lived perennial 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 (leaf bracts) that fall off, leaving an elliptical scar. Three subspecies of *Hibiscus brackenridgei* are now recognized: ssp. *brackenridgei, molokaiana,* and *mokuleianus.* Subspecies *molokaiana* was found on the island of Molokai. At the time 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* var. *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** document (Bates 1999, HINHP Database 2000, Wagner *et al.* 1999, Wilson 1993).

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 vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999a).

Historically, *Hibiscus brackenridgei* ssp. *molokaiana* was known from Molokai and is currently found on Oahu. This subspecies was last collected on Molokai in 1920 from Laau

Point by J. F. Rock (HINHP Database 2000).

On Molokai, *Hibiscus brackenridgei* ssp. *molokaiana* occurred on slopes in lowland dry forest and shrubland from 11 to 467 m (36 to 1,531 ft) in elevation (HINHP Database 2000; J. Lau, *in litt.* 2001).

Information on threats that may affect *Hibiscus brackenridgei* ssp. *molokaiana* on Molokai is unknown (Service 1999a).

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 two-flowered, and a two-or three-tiered inflorescence (O'Connor 1999).

Little is known about the life history of this species. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996b).

Ischaemum byrone was historically distributed on Kauai, Oahu, Molokai, Maui, and Hawaii Island. Currently, this species is found on Kauai, Molokai, Maui, and Hawaii Island. On Molokai, there are a total of 2 occurrences containing between 100 and 1,000 individuals located in Wailau Valley and the eastern edge of Kikipua on privately owned lands (GDSI 2000, HINHP Database 2000, 59 FR 10305).

On Molokai, *Ischaemum byrone* is found in coastal dry shrubland or *Artemisia* sp. cliff communities, near the ocean, among rocks or on basalt cliffs or talus slopes, at elevations between sea level and 238 m (0 and 781 ft). Associated taxa include *Bidens molokaiensis* (NCN), *Fimbristylis cymosa, Hedyotis littoralis, Lysimachia mauritiana,* or *Pandanus tectorius* (hala) (Gagne and Cuddihy 1999, HINHP Database 2000, O'Connor 1999).

The threats to *Ischaemum byrone* on Molokai are competition by non-native grasses, particularly *Digitaria ciliaris;* predation by goats and axis deer; and elimination and degradation of habitat through fire and residential development (Service 1996b).

Isodendrion pyrifolium (wahine noho kula)

Isodendrion pyrifolium, a short-lived perennial member of the violet family (Violaceae), is a small, branched shrub. It 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 drops all but the newest leaves. After sufficient rain, the plants produce flowers with seeds ripening one to two months later. No further information is available on flowering cycles, pollination vectors, seed dispersal agents, specific environmental requirements, or limiting factors (Service 1996c).

Isodendrion pyrifolium was known historically from Kauai, Oahu, Maui, Hawaii, Niihau, Molokai, and Lanai. Currently, this species is only extant on the island of Hawaii. It was last collected on Molokai in the 1800s (HINHP Database 2000).

On Molokai, *Isodendrion pyrifolium* was found in dry shrublands at low elevations between 69 and 422 m (226 and 1,384 ft). Associated native plant species included *Bidens menziesii, Dodonaea viscosa, Heteropogon contortus,* or *Leptecophylla tameiameiae* (HINHP Database 2000; Wagner *et al.* 1999; J. Lau, *in litt.* 2001).

Information on threats that may have affected *Isodendrion pyrifolium* on Molokai is unknown (Service 1996a).

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. This species differs from others in the genus in Hawaii by its smaller size and its narrower, flattened, and more spreading spikelets (flower clusters) (Koyama 1999, 59 FR 56333).

Little is known about the life history of this species. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996b).

Historically, *Mariscus fauriei* was found on east Molokai, Lanai, and Hawaii Island. This species is no longer extant on Lanai. Currently on Molokai, there is one occurrence with 20 to 30 plants above Kamiloloa on State-owned land (GDSI 2000; HINHP Database 2000).

On Molokai, *Mariscus fauriei* typically grows in *Diospyros sandwicensis*-dominated lowland dry forests, often on a lava substrate, at elevations between 436 and 1,120 m (1,430 and 3,673 ft). Associated species include *Peperomia* sp. (ala ala wai nui), *Psydrax odorata,* or *Rauvolfia sandwicensis* (hao) (HINHP Database 2000, Koyama 1999).

The threats to *Mariscus fauriei* on Molokai include predation and habitat degradation by feral goats and axis deer. Because there is only one known occurrence on Molokai, the species is also threatened by the risk of extinction through random environmental events and through reduced reproductive vigor (Service 1996b, 59 FR 56333).

Marsilea villosa (ihiihi)

Marsilea villosa, a member of the marsilea family (Marsileaceae), is a short-lived perennial aquatic to semi-aquatic fern, similar in appearance to a four-leaved clover. The leaves are borne in pairs along a thin rhizome. A hard sporocarp (hard-walled case containing male and female spores) is borne at the base of a leaf pair. The plant occurs either in scattered clumps or as a dense interwoven mat, depending on the competition with other species for limited habitat resources. The species is the only member of the genus native to Hawaii and is closely related to *Marsilea vestita* (NCN) of the western coast of the United States (Service 1996c).

Marsilea villosa requires periodic flooding for spore release and fertilization, then a decrease in water level for the young plants to establish, and finally dry soil for sporocarps to mature. Shading reduces the vigor of *Marsilea villosa.* No other life history information is known for this species (Service 1996c).

Marsilea villosa was known historically from Oahu, Molokai, and Niihau. Currently, it is found only on Oahu and Molokai. On Molokai, there are four occurrences with an unspecified number of individuals located at Kamaka ipo, Ilio Point, Kaiehu Point, and from Kaeo to Mokio on State- and privately owned lands (GDSI 2000, HINHP Database 2000).

On Molokai, *Marsilea villosa* typically occurs in shallow depressions in clay soil or lithified sand dunes overlain with alluvial clay. All reported populations occur at elevations between 125 and 172 m (410 and 564 ft). While *Marsilea villosa* can withstand minimal shading, it appears most vigorous growing in open areas. The associated native vegetation with *Marsilea villosa* on Molokai includes *Centaurium sebaeoides, Heteropogon contortus, Schiedea globosa, Sida fallax, Tetramolopium sylvae* (pamakani), or *Waltheria indica* (uhaloa) (Service 1996c).

The threats to *Marsilea villosa* on Molokai are the destruction of natural hydrology; encroachment and competition from naturalized, non-native plants such as *Cenchrus ciliaris* (buffelgrass), *Chamaecrista nictitans*

(partridge pea), *Digitaria insularis, Lantana camara,* and *Prosopis pallida;* damage by off-road vehicles or by grazing cattle and axis deer; habitat destruction, degradation, and fragmentation through development, fire, and trampling by humans and introduced mammals; and catastrophic extinction from random environmental events and from reduced reproductive vigor due to few occurrences and small occurrence sizes (Service 1996c, 57 FR 27863).

Melicope mucronulata (alani)

Melicope mucronulata, a long-lived perennial of the rue family (Rutaceae), is a small tree up to 13 ft (4 m) tall with oval to elliptic-oval leaves. This species is distinguished from others in the genus by the growth habit, the number of flowers in each flower cluster, the size and shape of the fruit, and the degree of hairiness of the leaves and fruit walls (Stone *et al.* 1999).

Little is known about the life history of this species. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997).

First discovered in 1920 in Kanaio, East Maui, *Melicope mucronulata* was not relocated until 1983. On Molokai, two occurrences of three individuals were found two years later in Kupaia on the privately owned Kamakou Preserve (GDSI 2000, HINHP Database 2000, Stone *et al.* 1999).

On Molokai, *Melicope mucronulata* occurs on steep, west- or north-facing slopes in mesic *Diospyros sandwicensis-Metrosideros polymorpha* forest, *M. polymorpha-Dodonaea viscosa* shrubland, or *M. polymorpha-Leptechophylla tameiameiae* shrubland between elevations of 199 and 1,143 m (653 and 3,749 ft). Associated native species include *Alyxia oliviformis, Alphitonia ponderosa* (kauila), *Coprosma foliosa, Hedyotis terminalis, Melicope hawaiensis* (alani), *Myrsine lanaiensis* (kolea), *Nestegis sandwicensis, Ochrosia compta, Osteomeles anthyllidifolia, Phyllanthus* sp. (NCN), *Pleomele auwahiensis, Pittosporum* sp., or *Psychotria mariniana* (kopiko) (HINHP Database 2000; J. Lau, *in litt.* 2001).

On Molokai, the major threat to the continued existence of this species is catastrophic extinction from random environmental events due to the few extant occurrences and small number of individuals. Habitat degradation by goats and pigs, predation by goats, and competition with non-native plants, particularly *Melinis minutiflora*, also pose immediate threats to this species (Service 1997, 57 FR 20772).

Melicope munroi (alani)

Melicope munroi, a long lived perennial of the rue family (Rutaceae), is a sprawling shrub up to 3 m (10 ft) tall. The new growth of this species has minute hairs. This species differs from other Hawaiian members of the genus in the shape of the leaf and the length of the inflorescence (flower cluster) stalk (Stone *et al.* 1999).

Little is known about the life history of *Melicope munroi*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 2001).

Historically, this species was known from the Lanaihale summit ridge of Lanai and above Kamalo on Molokai. Currently, *Melicope munroi* is only known from Lanai. This species was last collected on Molokai in 1910 by J. F. Rock (HINHP Database 2000).

Nothing is known of the preferred habitat of or native plants associated with *Melicope munroi* on Molokai.

Nothing is known of the threats to *Melicope munroi* on Molokai.

Neraudia sericea (NCN)

Neraudia sericea, a short-lived perennial and a member of the nettle family (Urticaceae), is a 3 to 5 m (10 to 16 ft) tall shrub with densely hairy branches. The lower leaf surface is densely covered with irregularly curved, silky gray to white hairs along the veins. *Neraudia sericea* differs from the other four species of this endemic Hawaiian genus by the density, length, color, and posture of the hairs on the lower leaf surface and by its mostly entire leaf margins (Wagner *et al.* 1999).

Little is known about the life history of this species. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999a).

Neraudia sericea was known historically from Molokai, Lanai, Maui, and Kahoolawe. Currently, this species is found only on Maui and Molokai. On Molokai, one occurrence of 50 to 100 individuals is known from Makolelau on privately owned land (GDSI 2000, HINHP Database 2000).

On Molokai, *Neraudia sericea* generally occurs on gulch slopes and gulch bottoms in lowland dry to mesic *Metrosideros polymorpha-Dodonaea viscosa-Leptechophylla tameiameiae* shrubland or forest between 691 and 1,043 m (2,266 and 3,421 ft) in elevation. Other associated plant species include *Alyxia oliviformis, Coprosma* sp., *Hedyotis* sp., or *Pleomele auwahiensis* (HINHP Database 2000; Wagner *et al.* 1999; J. Lau, *in litt.* 2001).

The primary threats to *Neraudia sericea* on Molokai are habitat degradation by feral pigs and goats; competition with the non-native plant *Melinus minutiflora*; and catastrophic extinction through random environmental events due to the vulnerability of a single population (Service 1999a, 59 FR 56333).

Peucedanum sandwicense (makou)

Peucedanum sandwicense, a short-lived perennial member of the parsley family (Apiaceae), is a parsley-scented, sprawling herb. Hollow stems arise from a short, vertical stem with several fleshy roots. This species is the only member of the genus in the Hawaiian Islands (Constance and Affolter 1999).

Little is known about the life history of this species. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995b).

Historically and currently, *Peucedanum sandwicense* is known from Molokai, Maui, and Kauai. In 1990, it was discovered on Oahu. On Molokai, five occurrences are known from private and State-owned lands in Pelekunu Valley, on Huelo Islet and Mokapu Islet, and State-owned lands managed by the National Park Service at Kalaupapa National Historical Park. The 5 occurrences total approximately 50 individuals (GDSI 2000; HINHP Database 2000; Service 1995b; K. Wood, *in litt.* 2000).

On Molokai, *Peucedanum sandwicense* grows in cliff habitats in brown soil and talus in *Chamaesyce celastroides* var. *amplectans-Chenopodium oahuense* coastal dry shrubland or *Diospyros sandwicensis* forest from sea level to above 840 m (0 to 2,755 ft) in elevation. *Peucedanum sandwicense* is associated with native species such as *Artemisia australis* (ahinahina), *Dianella sandwicensis, Eragrostis* sp. (kawelu), *Lepidium bidentatum* var. *o-waihiense, Melathera integrifolia, Metrosideros polymorpha, Osteomeles anthyllidifolia, Peperomia remyi* (NCN), *Pittosporum halophilum, Plectranthus parviflorus* (ala ala wai nui), *Plumbago zeylanica* (iliee), *Portulaca lutea* (ihi), *Pritchardia hillebrandii, Reynoldsia sandwicensis, Santalum ellipticum* (iliahialoe), *Scaevola sericea, Schiedea globosa, Senna gaudichaudii*, or *Sida fallax* (Constance and Affolter 1999; HINHP

Database 2000; Service 1995b; K. Wood, *in litt.* 2000).

Major threats to *Peucedanum sandwicense* on Molokai are seed predation by rats and competition with the non-native plant species *Ageratum conyzoides* (maile hohono), *Coronopus didymus* (swinecress), *Kalanchoe pinnata, Lantana camara, Malvastrum coromandelianum* ssp. *coromandelianum* (false mallow), *Morinda citrifolia* (noni), *Plantago lanceolata* (English plantain), *Pluchea carolinensis* (sourbush), *Portulaca oleracea, Pseudoelephantopus spicatus* (NCN), *Schinus terebinthifolius*, and *Sonchus oleraceus* (pualele) (Service 1995b; 59 FR 9304; K. Wood, *in litt.* 2000).

Phyllostegia mannii (NCN)

Phyllostegia mannii, a short-lived perennial and nonaromatic member of the mint family (Lamiaceae), is a climbing vine with many-branched, four-sided, hairy stems. This species is distinguished from others in the genus by its hairiness; its thin, narrow leaves, which are not pinnately divided; and the usually six flowers per false whorl in a terminal inflorescence (Wagner *et al.* 1999).

This species has been observed in fruit in July. Little is known about the life history of this species. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996a).

Historically, *Phyllostegia mannii* was found from Hanalilolilo to Ohialele on East Molokai and at Ukulele on East Maui. It has not been seen on Maui for over 70 years and is apparently extirpated on that island. On Molokai, this species is now known from only one occurrence on Puu Alii on privately owned land (GDSI 2000, HINHP Database 2000, Service 1996a).

On Molokai, *Phyllostegia mannii* grows in shaded sites in sometimes foggy and windswept, wet, open *Metrosideros polymorpha*-dominated montane forest with a native shrub and *Cibotium* sp. understory between 590 and 1,508 m (1,935 and 4,946 ft) in elevation. Associated plant species include *Asplenium* sp., *Broussaisia arguta, Cheirodendron trigynum, Coprosma ochracea, Cyanea* sp., *Dicranopteris linearis, Hedyotis hillebrandii, Pipturus albidus, Pouteria sandwicensis, Psychotria* sp., *Touchardia latifolia, Vaccinium* sp., or *Wikstroemia* sp. (HINHP Database 2000, Service 1996a).

The only known occurrence of *Phyllostegia mannii* is threatened by habitat destruction and degradation by feral pigs. A single natural or human-caused environmental event could extirpate the species (Service 1996a, 57 FR 46325).

Phyllostegia mollis (NCN)

Phyllostegia mollis, a short-lived member of the mint family (Lamiaceae), grows as a nearly erect, densely hairy, non-aromatic, perennial herb. 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 five years. The species is known to flower in late winter and spring. Little is known about the life history of this species. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998b).

Historically, *Phyllostegia mollis* was known from Oahu, Molokai, and East Maui. Currently, this species is found only on Oahu and Maui. It was last collected on Molokai in 1912 from Kamakou Preserve by J. F. Rock (HINHP Database 2000).

On Molokai, *Phyllostegia mollis* typically grew in mesic *Metrosideros polymorpha* forests between 551 and 1,216 m (1,807 and 3,988 ft) in elevation (J. Lau, *in litt.* 2001).

Nothing is known of the threats that may have affected *Phyllostegia mollis* on Molokai.

Plantago princeps (laukahi kuahiwi)

Plantago princeps, a short-lived member of the plantain family (Plantaginaceae), is a small shrub or robust 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, vars. *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. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown. However, individuals have been observed in fruit from April through September (Service 1999a).

Plantago princeps was historically known from Kauai, Oahu, Molokai, Maui, and Hawaii Island. It no longer occurs on Hawaii Island. *Plantago princeps* var. *anomala* is currently known from Kauai and Oahu; var. *longibracteata* is known from Kauai and Oahu; var. *princeps* is known from Oahu; and var. *laxiflora* is known from Molokai and Maui. On Molokai, there is currently one remaining occurrence of *Plantago princeps* var. *laxiflora* with five individuals in Kawela Gulch on privately owned land (GDSI 2000, HINHP Database 2000, Service 1999a).

On Molokai, *Plantago princeps* var. *laxiflora* is typically found on streambanks in *Metrosideros polymorpha* lowland mesic forest between 592 and 1,213 m (1,942 and 3,979 ft) in elevation. Associated plant species include *Coprosma* sp., *Cyanea* sp., *Dodonaea viscosa, Dryopteris unidentata, Pipturus albidus*, or *Wikstroemia oahuensis* (akia), (Wagner *et al.* 1999; J. Lau, *in litt.* 2001).

The primary threats to *Plantago princeps* var. *laxiflora* on Molokai are predation and habitat degradation by feral pigs and goats, and competition with various non-native plant species (Service 1999a, 59 FR 56333).

Platanthera holochila (NCN)

Platanthera holochila, a short-lived perennial 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. It is distinguished by other Hawaiian orchids by its underground tubers that lack roots at the nodes or pseudobulbs, and the shape and length of its dorsal sepal. 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. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999a).

Historically, *Platanthera holochila* was known from Maui, Oahu, Molokai, and Kauai. Currently, *P. holochila* is extant on Kauai, Molokai, and Maui. On Molokai, one occurrence with less than 10 individuals is reported from Hanalilolilo on the privately owned land of Kamakou Preserve (GDSI 2000, HINHP Database 2000).

On Molokai, *Platanthera holochila* is found on slightly sloping ridgetops in *Metrosideros polymorpha-*

Cheirodendron trigynum wet forest or *M. polymorpha* mixed montane bog between 551 and 1,382 m (1,807 and 4,532 ft) in elevation. Associated native plants include *Cibotium* sp., *Leptecophylla tameiameiae*, or *Oreobolus furcatus* (NCN) (J. Lau, *in litt.* 2001).

The primary threats to *Platanthera holochila* on Molokai are habitat degradation and destruction by feral pigs, competition with non-native plants, and a risk of extinction from naturally occurring events and/or reduced reproductive vigor, due to the small number of remaining occurrences and individuals. Predation by non-native slugs may also be a potential threat to this species (Service 1999a, 61 FR 53108).

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. *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).

Little is known about the life history of this species. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998a).

Historically, *Pteris lidgatei* was found on Oahu, Molokai, and West Maui. Currently, this species is known from Oahu and Maui. It was last collected on Molokai in 1912 from the slopes of Olokui by C. N. Forbes (HINHP Database 2000).

On Molokai, *Pteris lidgatei* grew on steep streambanks between 78 and 1,266 m (256 and 4,152 ft) in elevation in wet forest (HINHP Database 2000).

Nothing is known of the threats that may have affected *Pteris lidgatei* on Molokai (Service 1998a).

Schiedea nuttallii (NCN)

Schiedea nuttallii, a long-lived perennial 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, and smaller leaves, flowers, and seeds (Wagner *et al.* 1999).

Based on field and greenhouse observations, *Schiedea nuttallii* is hermaphroditic (flowers contain both male and female parts). Plants on Oahu have been under observation for 10 years, and they appear to be long-lived. *Schiedea nuttallii* appears to be an outcrossing (requires cross-pollination) species. Under greenhouse conditions, plants fail to set seed unless hand-pollinated, suggesting that this species requires insects for pollination. Fruits and flowers are abundant in the wet season but can be found throughout the year. Little else is known about the life history of this plant. Its flowering cycles, pollination vectors, seed dipersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999a; Weller *et al.* 1990; Kapua Kawelo, U.S. Deptartment of Defense, Army Environmental, *in litt.* 1999).

Historically, *Schiedea nuttallii* was known from scattered locations on Kauai, Oahu, Molokai, and Maui. Currently, populations occur on Kauai, Oahu, and Molokai. On Molokai, one occurrence with 22 individuals of *Schiedea nuttallii* is reported on private lands (GDSI 2000, HINHP Database 2000, Service 1999a).

On Molokai, *Schiedea nuttallii* typically grows in streamside grottos in wet *Metrosideros polymorpha-Cheirodendron trigynum* forest at elevations between 677 and 1,423 m (2,220 and 4,667 ft). Associated plants include *Asplenium lobulatum* (piipii lau manamana), Asplenium macraei (iwaiwa lau lii), *Asplenium unilaterale* (pamoho) *Cyrtandra hawaiiensis* (haiwale), *Thelypteris sandwicensis* (NCN), or *Vandenboschia davallioides* (palai hihi) (J. Lau, *in litt.* 2001).

Schiedea nuttallii on Molokai is seriously threatened by competition with several non-native plants; predation by the black twig borer, slugs, and snails; and a risk of extinction from naturally occurring events (*e.g.*, landslides) and/or from reduced reproductive vigor due to the small number of individuals (Service 1999a, 61 FR 53108).

Sesbania tomentosa (ohai)

Sesbania tomentosa, a short-lived perennial 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 colored 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 *S. 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* has been studied by David Hopper, University of Hawaii. His 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 occurrences 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 1999a).

Currently, *Sesbania tomentosa* occurs on six of the eight main Hawaiian Islands (Kauai, Oahu, Molokai, Kahoolawe, Maui, and Hawaii Island) and in the Northwestern Hawaiian Islands (Nihoa and Necker islands). It is no longer found on Niihau and Lanai. On Molokai, *Sesbania tomentosa* is known from 9 occurrences with over 2,000 individuals, occurring from Moomomi to Nenehanaupo and from Kamiloloa to Makolekau on State- and privately owned lands (GDSI 2000, HINHP Database 2000, Service 1999a, 59 FR 56333).

On Molokai, *Sesbania tomentosa* is found in *Scaevola sericea* coastal dry shrubland on windswept slopes, sea cliffs and weathered basaltic slopes between sea level and 516 m (0 and 1,692 ft) in elevation. Associated plant species include *Dodonaea viscosa, Jacquemontia ovalifolia* ssp. *sandwicensis, Melanthera integrifolia*, or *Sida fallax* (HINHP Database 2000, Service 1999a).

The primary threats to *Sesbania tomentosa* on Molokai are competition with various non-native plant species, such as *Lantana camara* and grass species; 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 human activities (*e.g.*, off-road vehicles) (Service 1999a, 59 FR 56333).

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 flowers are white with deeply-lobed, clawed petals. This species is distinguished from *S. 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).

Little is known about the life history of this species. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996a).

The historical range of *Silene lanceolata* includes five Hawaiian Islands: Kauai, Oahu, Molokai, Lanai, and Hawaii. *Silene lanceolata* is presently found on the islands of Molokai, Oahu, and Hawaii. On Molokai, one occurrence of approximately 100 individuals was found in 1987 on private land near Puu Kolekole (GDSI 2000; Service 1996a; K. Wood, *in litt.* 1999).

On Molokai, *Silene lanceolata* grows on gulch slopes, ridge tops, and cliffs in dry to mesic shrubland between 581 and 1,043 m (1,906 and 3,421 ft) in elevation. Associated native plant species include *Bidens menziesii, Carex wahuensis, Diospyros sandwicensis, Dodonaea viscosa, Dubautia linearis, Leptecophylla tameiameiae, Metrosideros polymorpha*, or *Schiedea* spp. (NCN) (Service 1996a; J. Lau, *in litt.* 2001; K. Wood, *in litt.* 1999).

Habitat destruction by feral ungulates (goats and pigs), wildfires, and competition by invading non-native plants are immediate threats to *Silene lanceolata* on Molokai (Service 1996a, 57 FR 46325).

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. 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).

Little is known about the life history of *Solanum incompletum.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (59 FR 56333).

Historically, *Solanum incompletum* was known from Lanai, Maui, and 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, the species is only known from the island of Hawaii. It is unclear when the last individual was collected on Molokai (HINHP Database 2000).

Nothing is known of the preferred habitat of or native plant species associated with *Solanum incompletum* on the island of Molokai.

Nothing is known of the threats to *Solanum incompletum* on Molokai.

Spermolepis hawaiiensis (NCN)

Spermolepis hawaiiensis, a member of the parsley family (Apiaceae), is a slender annual herb with few branches. Its leaves are dissected into narrow, lance-shaped divisions. *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.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999a).

Historically, *Spermolepis hawaiiensis* was known from Kauai, Oahu, Lanai, and the island of Hawaii. Currently, it is found on Kauai, Oahu, Molokai, Lanai, Maui, and the island of Hawaii. On Molokai, there is one known occurrence with approximately 600 individuals on privately owned land in Kamalo (GDSI 2000, HINHP Database 2000, Service 1999a, 59 FR 56333).

On Molokai, *Spermolepis hawaiiensis* is known from ridge crests and gulch slopes in dry to mesic shrublands at elevations between 432 and 972 m (1,416 and 3,188 ft). Associated plant species include *Dodonaea viscosa, Leptecophylla tameiameiae, or Metrosideros polymorpha* (J. Lau, *in litt.* 2001).

The primary threats to *Spermolepis hawaiiensis* on Molokai are habitat degradation by feral goats; competition with various non-native plants, such as *Lantana camara, Melinis minutiflora*, and grasses; and habitat destruction and extinction due to natural environmental events, such as erosion, landslides, and rockslides due to natural weathering (Service 1999a, 59 FR 56333).

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. 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).

Little is known about the life history of this species. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999a).

Historically, *Vigna o-wahuensis* was known from Niihau, Oahu, Molokai, Lanai, Kahoolawe, Maui, and the island of Hawaii. Currently, it is known from the islands of Molokai, Lanai, Kahoolawe, Maui, and the island of Hawaii. On Molokai, 2 occurrences with approximately 16 individuals occur on privately owned lands at Onini Gulch and Makolelau (GDSI 2000, HINHP Database 2000, Service 1999a).

On Molokai, *Vigna o-wahuensis* occurs in dry to mesic grassland and shrubland between 516 and 1,041 m (1,692 and 3,414 ft) in elevation. Associated plant species include *Chenopodium oahuense, Cyperus laevigatus* (makaloa), *Dodonaea viscosa, Eragrostis variabilis, Heteropogon contortus, Ipomoea* sp. (morning glory), *Leptecophylla tameiameiae, Scaevola sericea, Sida fallax*, or *Vitex rotundifolia* (pohinahina) (Geesink *et al.* 1999, HINHP Database 2000, Service 1999a).

The primary threats to *Vigna o-wahuensis* on Molokai are competition with various non-native plant species and a risk of extinction due to random environmental events (primarily fire) and/or reduced reproductive vigor because of the small number of existing occurrences and individuals (Service 1999a, 59 FR 56333).

Zanthoxylum hawaiiense (ae)

Zanthoxylum hawaiiense, a long-lived perennial in the rue family (Rutaceae), is a medium-sized tree with pale to dark gray bark and lemon-scented leaves. It is distinguished from other Hawaiian members of the genus by several characteristics: three leaflets all of similar size, one joint on the lateral leaf stalk, and sickle-shape fruits with a rounded tip (Stone *et al.* 1999).

Little is known about the life history of this species. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996b).

Historically, *Zanthoxylum hawaiiense* was known from the islands of Kauai, Molokai, Lanai, Maui, and the island of Hawaii. Currently, *Zanthoxylum hawaiiense* is found on Kauai, Molokai, Maui, and the island of Hawaii. On Molokai, the four occurrences with a

total of five individuals are located at Makolelau and Puu Hoi Ridge on private lands (GDSI 2000, HINHP Database 2000).

On Molokai, *Zanthoxylum hawaiiense* is found on gulch slopes in mesic *Metrosideros polymorpha* or *Diospyros sandwicensis* forest between 754 and 1,084 m (2,473 and 3,555 ft) in elevation. Associated species include *Alyxia oliviformis, Dodonaea viscosa, Leptecophylla tameiameiae, Myrsine lanaiensis, Nestegis sandwicensis, Osteomeles anthyllidifolia, Pleomele auwahiensis,* or *Psychotria* spp. (HINHP Database 2000; Stone *et al.* 1999; 59 FR 10305; J. Lau, *in litt.* 2001).

The threats to *Zanthoxylum hawaiiense* on Molokai include browsing, grazing, and trampling by feral goats; competition with non-native plant species; habitat degradation and destruction by humans; and extinction from naturally occurring events (primarily fire) and/or from reduced reproductive vigor due to the small number of individuals and occurrences (Service 1996b, 59 FR 10305).

A summary of occurrences and landownership for the 51 plant species reported from the island of Molokai is given in Table 2.

TABLE 2.—SUMMARY OF EXISTING OCCURRENCES ON MOLOKAI AND OF LANDOWNERSHIP FOR 51 SPECIES REPORTED FROM MOLOKAI

Species	Number of current occurrences	Landownership		
		Federal	State	Private
Adenophorus periens	1	.....	.....	X
Alectryon macrococcus	6	.....	X	X
Bidens wiebkei	5	.....	.....	X
Bonamia menzeisii	0	.....	.....	.....
Brighamia rockii	5	.....	X	X
Canavalia molokaiensis	7	.....	X*	X
Centaurium sebaeoides	2	.....	X*	X
Clermontia oblongifolia ssp. *brevipes*	5	.....	.....	X
Ctenitis squamigera	1	.....	.....	X
Cyanea dunbarii	1	.....	X	.....
Cyanea grimesiana ssp. *grimesiana*	2	.....	X	.....
Cyanea mannii	8	.....	X	X
Cyanea procera	5	.....	X	X
Cyperus trachysanthos	0	.....	.....	.....
Diellia erecta	4	.....	.....	X
Diplazium molokaiense	0	.....	.....	.....
Eugenia koolauensis	0	.....	.....	.....
Flueggea neowawraea	0	.....	.....	.....
Hedyotis mannii	1	.....	.....	X
Hesperomannia arborescens	1	.....	.....	X
Hibiscus arnottianus ssp. *immaculatus*	3	.....	X	X
Hibiscus brackenridgei	0	.....	.....	.....
Ischaemum byrone	2	.....	.....	X
Isodendrion pyrifolium	0	.....	.....	.....
Labordia triflora	1	.....	.....	X
Lysimachia maxima	1	.....	.....	X
Mariscus fauriei	1	.....	X	.....
Marsilea villosa	4	.....	X	X
Melicope mucronulata	2	.....	.....	X
Melicope munroi	0	.....	.....	.....
Melicope reflexa	3	.....	X	X
Neraudia sericea	1	.....	.....	X
Peucedanum sandwicense	5	.....	X*	X
Phyllostegia mannii	1	.....	.....	X
Phyllostegia mollis	0	.....	.....	.....
Plantago princeps	1	.....	.....	X
Platanthera holochila	1	.....	.....	X
Pritchardia munroi	1	.....	.....	X
Pteris lidgatei	0	.....	.....	.....
Schiedea lydgatei	4	.....	X	X
Schiedea nuttallii	1	.....	.....	X
Schiedea sarmentosa	5	.....	.....	X
Sesbania tomentosa	9	.....	X	X
Silene alexandri	0	.....	.....	.....
Silene lanceolata	1	.....	.....	X
Solanum incompletum	0	.....	.....	.....
Spermolepis hawaiiensis	1	.....	.....	X
Stenogyne bifida	5	.....	.....	X
Tetramolopium rockii	4	.....	X*	X
Vigna o-wahuensis	2	.....	.....	X
Zanthoxylum hawaiiense	2	.....	.....	X

*Some occurrences are on State land that is managed by the National Park Service at Kalaupapa National Historical Park and/or the U.S. Coast Guard Reservation at Kalaupapa.

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, *Adenophorus periens, Alectryon macrococcus* (as *A. macrococcum* var. *macrococcum* and *A. mahoe*), *Bidens wiebkei, Bonamia menziesii, Brighamia rockii, Canavalia molokaiensis, Flueggea neowawraea* (as *Drypetes phyllanthoides*), *Hedyotis mannii* (as *H. thyrsoidea* var. *thyrsoidea*), *Hesperomannia arborescens* (as *H. arborescens* var. *bushiana* and var. *swezeyi*), *Hibiscus arnottianus* ssp. *immaculatus* (as *H. immaculatus*), *Hibiscus brackenridgei* (as *H. brackenridgei* var. *brackenridgei,* var. *mokuleianus,* and var. ''from Hawaii''), *Ischaemum byrone, Marsilea villosa, Melicope reflexa* (as *P. reflexa*), *Neraudia sericea* (as *N. kahoolawensis*), *Peucedanum sandwicense* (as *P. kauaiense*), *Plantago princeps* (as *P. princeps* var. *elata,* var. *laxifolia,* var. *princeps*), *Sesbania tomentosa* (as *S. hobdyi* and *S. tomentosa* var. *tomentosa*), *Silene alexandri, Silene lanceolata, Solanum incompletum* (as *S. haleakalense* and *S. incompletum* var. *glabratum,* var. *incompletum,* and var. *mauiensis*), *Vigna o-wahuensis* (as *V. sandwicensis* var. *heterophylla* and var. *sandwicensis*), and *Zanthoxylum hawaiiense* (as *Z. hawaiiense* var. *citiodora*) were considered endangered; *Diellia erecta* and *Zanthoxylum hawaiiense* (as *Z. hawaiiense* var. *hawaiiense* and var. *velutinosum*) were considered threatened; and *Ctenitis squamigera, Diplazium molokaiense, Isodendrion pyrifolium, Labordia triflora, Melicope mucronulata* (as *Pelea mucronulata*), *Melicope munroi* (as *Pelea munroi*), *Plantago princeps* (as *P. princeps* var. *acaulis,* var. *denticulata,* and var. *queleniana*), and *Tetramolopium rockii* 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 we 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 *Labordia triflora* and *Melicope munroi.* 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 (40 FR 27823).

General comments received in response to the 1976 proposal were 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). We listed the 51 species as endangered or threatened between 1991 and 1999. A summary of the listing actions can be found in Tables 3(a) and 3(b).

TABLE 3(A).—SUMMARY OF LISTING ACTIONS FOR 51 PLANT SPECIES FROM MOLOKAI

Species	Federal Status	Proposed listing rule		Final listing rule	
		Date	**Federal Register**	Date	**Federal Register**
Adenophorus periens	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Alectryon macrococcus	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Bidens wiebkei	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325
Bonamia menzeisii	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Brighamia rockii	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325
Canavalia molokaiensis	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325
Centaurium sebaeoides	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770
Clermontia oblongifolia ssp. *brevipes*	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325
Ctenitis squamigera	E	06/24/93	58 FR 34231	09/09/94	59 FR 49025
Cyanea dunbarii	E	10/02/95	60 FR 51436	10/10/96	61 FR 53130
Cyanea grimesiana ssp. *grimesiana*	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108
Cyanea mannii	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325
Cyanea procera	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325
Cyperus trachysanthos	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108
Diellia erecta	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Diplazium molokaiense	E	12/14/92	57 FR 39066	06/27/94	59 FR 32932
Eugenia koolauensis	E	10/02/95	60 FR 51398	10/10/96	61 FR 53089
Flueggea neowawraea	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Hedyotis mannii	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325
Hesperomannia arborescens	E	10/14/92	57 FR 47028	03/28/94	59 FR 14482
Hibiscus arnottianus ssp. *immaculatus*	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325
Hibiscus brackenridgei	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770
Isodendrion pyrifolium	T	10/02/95	60 FR 51417	10/10/96	61 FR 53108
Ischaemum byrone	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305
Labordia triflora	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307
Lysmachia maxima	E	10/02/95	60 FR 51436	10/10/96	61 FR 53130
Mariscus fauriei	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305
Marsilea villosa	E	02/15/91	56 FR 6349	06/22/92	57 FR 27863

TABLE 3(A).—SUMMARY OF LISTING ACTIONS FOR 51 PLANT SPECIES FROM MOLOKAI—Continued

Species	Federal Status	Proposed listing rule		Final listing rule	
		Date	**Federal Register**	Date	**Federal Register**
Melicope mucronulata	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Melicope munroi	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307
Melicope reflexa	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325
Neraudia sericea	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Peucedanum sandwicense	T	10/30/91	56 FR 55862	02/25/94	59 FR 9304
Phyllostegia mannii	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325
Phyllostegia mollis	E	10/02/95	60 FR 51398	10/10/96	61 FR 53089
Plantago princeps	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Platanthera holochila	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108
Pritchardia munroi	E	10/08/92	57 FR 46325	09/20/91	56 FR 47718
Pteris lidgatei	E	10/02/95	60 FR 51398	10/10/96	61 FR 53089
Schiedea lydgatei	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325
Schiedea nuttallii	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108
Schiedea sarmentosa	E	10/02/95	60 FR 51436	10/10/96	61 FR 53130
Sesbania tomentosa	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Silene alexandri	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325
Silene lanceolata	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325
Solanum incompletum	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Spermolepis hawaiiensis	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Stenogyne bifida	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325
Tetramolopium rockii	T	09/20/91	56 FR 47718	10/08/92	57 FR 46325
Vigna o—wahuensis	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Zanthoxylum hawaiiense	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305

Key: E=Endangered T=Threatened.

TABLE 3(B).—SUMMARY OF LISTING ACTIONS (PROPOSED AND FINAL CRITICAL HABITAT DETERMINATIONS) FOR 51 PLANT SPECIES FROM MOLOKAI

Species	Proposed designation or nondesignation of critical habitat		Designation or nondesignation of critical habitat	
	Date(s)	**Federal Register**	Date(s)	**Federal Register**
Adenophorus periens	11/07/2000, 12/27/2000, 12/29/2000, 03/04/2002, 04/05/2002, 05/28/2002, 05/28/2002	65 FR 66808, 65 FR 82086, 65 FR 83158, 67 FR 9806, 67 FR 16492, 67 FR 36968, 67 FR 37108	01/09/2003, 02/27/2003	68 FR 1220, 68 FR 9116
Alectryon macrococcus	11/07/2000, 12/18/2000, 12/29/2000, 01/28/2002, 03/04/2002, 04/03/2002, 04/05/2002, 05/28/2002	65 FR 66808, 65 FR 79192, 65 FR 83158, 67 FR 3940, 67 FR 9806, 67 FR 15856, 67 FR 16492, 67 FR 37108	02/27/2003	68 FR 9116
Bidens wiebkei	12/29/2000, 04/05/2002	65 FR 83158, 67 FR 16492	NA	NA
Bonamia menzeisii	11/07/2000, 12/18/2000, 12/27/2000, 01/28/2002, 03/04/2002, 04/03/2002, 04/05/2002, 05/28/2002, 05/28/2002	65 FR 66808, 65 FR 79192, 65 FR 82086, 67 FR 3940, 67 FR 9806, 67 FR 15856, 67 FR 16492, 67 FR 36968, 67 FR 37108	01/09/2003, 02/27/2003	68 FR 1220, 68 FR 9116
Brighamia rockii	12/29/2000, 03/04/2002, 04/03/2002, 04/05/2002	65 FR 83158, 67 FR 9806, 67 FR 15856, 67 FR 16492	01/09/2003,	68 FR 1220
Canavalia molokaiensis	12/29/2000, 04/05/2002	65 FR 83158, 67 FR 16492	NA	NA
Centaurium sebaeoides	11/07/2000, 12/18/2000, 12/27/2000,	65 FR 66808, 65 FR 79192, 65 FR 82086,	01/09/2003, 02/27/2003	68 FR 1220, 68 FR 9116

TABLE 3(B).—SUMMARY OF LISTING ACTIONS (PROPOSED AND FINAL CRITICAL HABITAT DETERMINATIONS) FOR 51 PLANT SPECIES FROM MOLOKAI—Continued

Species	Proposed designation or nondesignation of critical habitat		Designation or nondesignation of critical habitat	
	Date(s)	**Federal Register**	Date(s)	**Federal Register**
	12/29/2000, 01/28/2002, 03/04/2002, 04/03/2002, 04/05/2002, 05/28/2002	65 FR 83158, 67 FR 3940, 67 FR 9806, 67 FR 15856, 67 FR 16492, 67 FR 37108		
Clermontia oblongifolia ssp. *brevipes*	12/29/2000, 04/05/2002	65 FR 83158, 67 FR 16492	NA	NA
Ctenitis squamigera	12/18/2000, 12/27/2000, 12/29/2000, 01/28/2002, 03/04/2002, 04/05/2002, 05/28/2002	65 FR 79192, 65 FR 82086, 65 FR 83158, 67 FR 3940, 67 FR 9806, 67 FR 16492, 67 FR 37108	01/09/2003, 02/27/2003	68 FR 1220, 68 FR 9116
Cyanea dunbarii	12/29/2000, 04/05/2002	65 FR 83158, 67 FR 16492	NA	NA
Cyanea grimesiana ssp. *grimesiana*	12/18/2000, 12/27/2000, 12/29/2000, 03/04/2002, 04/03/2002, 04/05/2002	65 FR 79192, 65 FR 82086, 65 FR 83158, 67 FR 9806, 67 FR 15856, 67 FR 16492	01/09/2003,	68 FR 1220,
Cyanea mannii	12/29/2000, 04/05/2002	65 FR 83158, 67 FR 16492	NA	NA
Cyanea procera	12/29/2000, 04/05/2002	65 FR 83158, 67 FR 16492	NA	NA
Cyperus trachysanthos	11/07/2000, 01/28/2002, 03/04/2002, 04/05/2002, 05/28/2002	65 FR 66808, 67 FR 3940, 67 FR 9806, 67 FR 16492, 67 FR 37108	01/09/2003, 02/27/2003	68 FR 1220, 68 FR 9116
Diellia erecta	12/18/2000, 12/29/2000, 01/28/2002, 03/04/2002, 04/03/2002, 04/05/2002, 05/28/2002, 05/28/2002	65 FR 79192, 65 FR 83158, 67 FR 3940, 67 FR 9806, 67 FR 15856, 67 FR 16492, 67 FR 36968, 67 FR 37108	01/09/2003, 02/27/2003	68 FR 1220, 68 FR 9116
Diplazium molokaiense	12/18/2000, 01/28/2002, 03/04/2002, 04/03/2002, 04/05/2002, 05/28/2002	65 FR 79192, 67 FR 3940, 67 FR 9806, 67 FR 15856, 67 FR 16492, 67 FR 37108	01/09/2003, 02/27/2003	68 FR 1220, 68 FR 9116
Eugenia koolauensis	04/05/2002, 05/28/2002, 04/05/2002, 05/28/2002	67 FR 16492, 67 FR 37108, 67 FR 16492, 67 FR 37108	NA	NA
Flueggea neowawraea	11/07/2000, 12/18/2000, 01/28/2002, 04/03/2002, 04/05/2002, 05/28/2002, 05/28/2002	65 FR 66808, 65 FR 79192, 67 FR 3940, 67 FR 15856, 67 FR 16492, 67 FR 36968, 67 FR 37108	02/27/2003	68 FR 9116
Hedyotis mannii	12/18/2000, 12/27/2000, 12/29/2000, 03/04/2002, 04/03/2002, 04/05/2002	65 FR 79192, 65 FR 82086, 65 FR 83158, 67 FR 9806, 67 FR 15856, 67 FR 16492	01/09/2003	68 FR 1220
Hesperomannia arborescens	12/18/2000, 12/29/2000, 03/04/2002, 04/03/2002, 04/05/2002,	65 FR 79192, 65 FR 83158, 67 FR 9806, 67 FR 15856, 67 FR 16492,	01/09/2003	68 FR 1220

TABLE 3(B).—SUMMARY OF LISTING ACTIONS (PROPOSED AND FINAL CRITICAL HABITAT DETERMINATIONS) FOR 51 PLANT SPECIES FROM MOLOKAI—Continued

Species	Proposed designation or nondesignation of critical habitat		Designation or nondesignation of critical habitat	
	Date(s)	**Federal Register**	Date(s)	**Federal Register**
	05/28/2002	67 FR 37108		
Hibiscus arnottianus ssp. *immaculatus*	12/29/2000, 04/05/2002	65 FR 83158, 67 FR 16492	NA	NA
Hibiscus brackenridgei	12/18/2000, 12/27/2000, 03/04/2002, 04/03/2002, 04/05/2002, 05/28/2002, 05/28/2002	65 FR 79192, 65 FR 82086, 67 FR 9806, 67 FR 15856, 67 FR 16492 67 FR 36968, 67 FR 37108	01/09/2003, 02/27/2003	68 FR 1220, 68 FR 9116
Isodendrion pyrifolium	01/28/2002, 03/04/2002, 04/03/2002, 04/05/2002, 05/28/2002, 05/28/2002	67 FR 3940, 67 FR 9806, 67 FR 15856, 67 FR 16492, 67 FR 36968, 67 FR 37108	01/09/2003	68 FR 1220
Ischaemum byrone	12/18/2000, 12/29/2000, 01/28/2002, 04/03/2002, 04/05/2002, 05/28/2002	65 FR 79192, 65 FR 83158, 67 FR 3940, 67 FR 15856, 67 FR 16492, 67 FR 36968	02/27/2003	68 FR 9116
Labordia triflora	12/29/2000, 04/05/2002	65 FR 83158, 67 FR 16492	NA	NA
Lysmachia maxima	12/29/2000, 04/05/2002	65 FR 83158, 67 FR 16492	NA	NA
Mariscus fauriei	12/29/2000, 04/05/2002	65 FR 83158, 67 FR 16492	NA	NA
Marsilea villosa	12/29/2000, 04/05/2002, 05/28/2002	65 FR 83158, 67 FR 16492, 67 FR 37108	NA	NA
Melicope mucronulata	12/18/2000, 12/29/2000, 04/03/2002, 04/05/2002	65 FR 79192, 65 FR 83158, 67 FR 15856, 67 FR 16492	NA	NA
Melicope munroi	12/27/2000, 03/04/2002, 04/05/2002	65 FR 82086, 67 FR 9806, 67 FR 16492	01/09/2003	68 FR 1220
Melicope reflexa	12/29/2000, 04/05/2002	65 FR 83158, 67 FR 16492	NA	NA
Neraudia sericea	12/18/2000, 12/29/2000, 03/04/2002, 04/03/2002, 04/05/2002	65 FR 79192, 65 FR 83158, 67 FR 9806, 67 FR 15856, 67 FR 16492	01/09/2003	68 FR 1220
Peucedanum sandwicense	11/07/2000, 12/18/2000, 12/29/2000, 01/28/2002, 04/03/2002, 04/05/2002, 05/28/2002	65 FR 66808, 65 FR 79192, 65 FR 83158, 67 FR 3940, 67 FR 15856, 67 FR 16492, 67 FR 37108	02/27/2003	68 FR 9116
Phyllostegia mannii	04/03/2002, 04/05/2002	67 FR 15856, 67 FR 16492	NA	NA
Phyllostegia mollis	12/18/2000, 04/03/2002, 04/05/2002, 05/28/2002	65 FR 79192, 67 FR 15856, 67 FR 16492, 67 FR 37108	NA	NA
Plantago princeps	11/07/2000, 12/18/2000, 12/29/2000, 01/28/2002, 04/03/2002, 04/05/2002, 05/28/2002	65 FR 66808, 65 FR 79192, 65 FR 83158, 67 FR 3940, 67 FR 15856, 67 FR 16492, 67 FR 37108	02/27/2003	68 FR 9116
Platanthera holochila	11/07/2000, 12/18/2000, 12/29/2000,	65 FR 66808, 65 FR 79192, 65 FR 83158,	02/27/2003	68 FR 9116

TABLE 3(B).—SUMMARY OF LISTING ACTIONS (PROPOSED AND FINAL CRITICAL HABITAT DETERMINATIONS) FOR 51 PLANT SPECIES FROM MOLOKAI—Continued

Species	Proposed designation or nondesignation of critical habitat		Designation or nondesignation of critical habitat	
	Date(s)	**Federal Register**	Date(s)	**Federal Register**
	01/28/2002, 04/03/2002, 04/05/2002, 05/28/2002	67 FR 3940, 67 FR 15856, 67 FR 16492, 67 FR 37108		
Pritchardia munroi	NA	NA	NA	NA
Pteris lidgatei	12/18/2000, 04/03/2002, 04/05/2002, 05/28/2002	65 FR 79192, 67 FR 15856, 67 FR 16492, 67 FR 37108	NA	NA
Schiedea lydgatei	12/29/2000, 04/05/2002	65 FR 83158, 67 FR 16492	NA	NA
Schiedea nuttallii	12/29/2000, 04/05/2002	65 FR 83158, 67 FR 16492	NA	NA
Schiedea sarmentosa	12/29/2000, 04/05/2002	65 FR 83158, 67 FR 16492	NA	NA
Sesbania tomentosa	11/07/2000, 12/18/2000, 12/29/2000, 01/28/2002, 03/04/2002, 04/03/2002, 04/05/2002, 05/14/2002, 05/28/2002, 05/28/2002	65 FR 66808, 65 FR 79192, 65 FR 83158, 67 FR 3940, 67 FR 9806, 67 FR 15856, 67 FR 16492, 67 FR 34522, 67 FR 36968, 67 FR 37108	01/09/2003, 02/27/2003	68 FR 1220, 68 FR 9116
Silene alexandri	12/29/2000, 04/05/2002	65 FR 83158, 67 FR 16492	NA	NA
Silene lanceolata	12/29/2000, 01/28/2002, 04/05/2002, 05/28/2002	65 FR 83158, 67 FR 3940, 67 FR 16492, 67 FR 37108	NA	NA
Solanum incompletum	01/28/2002, 04/05/2002	67 FR 3940, 67 FR 16492	01/09/2003	68 FR 1220
Spermolepis hawaiiensis	11/07/2000, 12/18/2000, 12/27/2000, 12/29/2000, 01/28/2002, 03/04/2002, 04/03/2002, 04/05/2002, 05/28/2002, 05/28/2002	65 FR 66808, 65 FR 79192, 65 FR 82086, 65 FR 83158, 67 FR 3940, 67 FR 9806, 67 FR 15856, 67 FR 16492, 67 FR 36968, 67 FR 37108	01/09/2003, 02/27/2003	68 FR 1220, 68 FR 9116
Stenogyne bifida	12/29/2000, 04/05/2002	65 FR 83158, 67 FR 16492	NA	NA
Tetramolopium rockii	12/29/2000, 04/05/2002	65 FR 83158, 67 FR 16492	NA	NA
Vigna o-wahuensis	12/18/2000, 12/27/2000, 12/29/2000, 01/28/2002, 03/04/2002, 04/03/2002, 04/05/2002, 05/28/2002, 05/28/2002	65 FR 79192, 65 FR 82086, 65 FR 83158, 67 FR 3940, 67 FR 9806, 67 FR 15856, 67 FR 16492, 67 FR 36968, 67 FR 37108	01/09/2003, 02/27/2003	68 FR 1220, 68 FR 9116
Zanthoxylum hawaiiense	11/07/2000, 12/18/2000, 12/29/2000, 01/28/2002, 04/03/2002, 04/05/2002, 05/28/2002	65 FR 66808, 65 FR 79192, 65 FR 83158, 67 FR 3940, 67 FR 15856, 67 FR 16492, 67 FR 36968	02/27/2003	68 FR 9116

At the time each plant was listed, we found that designation of critical habitat was prudent for two of these plants (*Labordia triflora* and *Melicope munroi*) and not prudent for the other 49 plants because it would not benefit the plant or would increase the degree of threat to the species. The not prudent findings 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 findings for 245 listed plant species in Hawaii, including 49 of the 51 species reported from Molokai. 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).

On August 10, 1998, the court ordered us to publish proposed critical habitat designations or nondesignations for at least 100 species by November 30, 2000, and to publish proposed designations or nondesignations for the remaining 145 species by April 30, 2002 (*Conservation Council for Hawaii* v. *Babbitt,* 24 F. Supp. 2d 1074 (D. Haw. 1998)).

At the time we listed *Labordia triflora* and *Melicope munroi* (64 FR 48307), we found that designation of critical habitat was prudent and stated that we would develop critical habitat designations for these two taxa, along with eight others, by the time we completed designations for the other 245 Hawaiian plant species. This timetable was challenged in *Conservation Council for Hawaii* v. *Babbitt,* Civ. No. 99–00283 HG (D. Haw. Aug. 19, 1999, Feb. 16, 2000, and March 28, 2000). The court agreed that it was reasonable for us to integrate these 10 Maui Nui (Maui, Lanai, Molokai, and Kahoolawe) plant taxa into the schedule established for designating critical habitat for the other 245 Hawaiian plants, but the court ordered us to publish proposed critical habitat designations for the 10 Maui Nui species with the first 100 plants from the group of 245 by November 30, 2000, and to publish final critical habitat designations by November 30, 2001.

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 State 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 would 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 February 18, 1999, we contacted landowners on the island of Molokai, notifying them of our requirement to designate critical habitat for 51 plant species. We included a copy of the November 30, 1998, **Federal Register** notice, a map showing the general locations of the species that may be on his/her property, and a handout containing general information on critical habitat. We held an open house on the island of Molokai, at the Mitchell Pauole Community Center, on March 15, 2000, to meet one-on-one with local landowners and other interested members of the public. In addition, we met with Maui County DOFAW staff and discussed their management activities on Molokai.

On December 29, 2000, we published the fourth of the court-ordered proposed critical habitat designations or nondesignations for 32 Molokai plants (65 FR 83158). The prudency findings and proposed critical habitat designations for Kauai and Niihau plants were published on November 7, 2000 (65 FR 66808), for Maui and Kahoolawe plants on December 18, 2000 (65 FR 79192), and for Lanai plants on December 27, 2000 (65 FR 82086). All of these proposed rules had been sent to the **Federal Register** by or on November 30, 2000, as required by the court orders.

In those rules, we proposed that critical habitat was prudent for 47 species (*Adenophorus periens, Alectryon macrococcus, Bidens wiebkei, Brighamia rockii, Canavalia molokaiensis, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *brevipes, Ctenitis squamigera, Cyanea dunbarii, Cyanea grimesiana* ssp. *grimesiana, Cyanea mannii, Cyanea procera, Diellia erecta, Diplazium molokaiense, Flueggea neowawraea, Hedyotis mannii, Hesperomannia arborescens, Hibiscus arnottianus* ssp. *immaculatus, Hibiscus brackenridgei, Ischaemum byrone, Labordia triflora, Lysimachia maxima, Mariscus fauriei, Marsilea villosa, Melicope mucronulata, Melicope reflexa, Neraudia sericea, Peucedanum sandwicense, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Schiedea lydgatei, Schiedea nuttallii, Schiedea sarmentosa, Sesbania tomentosa, Silene alexandri, Silene lanceolata, Spermolepis hawaiiensis, Stenogyne bifida, Tetramolopium rockii, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense*) that are reported from Molokai as well as on Kauai, Niihau, Maui, Kahoolawe, and Lanai. We proposed that critical habitat was not prudent for one species, *Pritchardia munroi,* because it would increase the threat of vandalism or collection of this species on Molokai. Critical habitat was not proposed in that rule for two species, *Lysimachia maxima* and *Phyllostegia mannii,* because they are currently found only in areas on Molokai that do not require special management consideration or protection because they are already protected and managed to the benefit of these species.

On December 29, 2000, we proposed designation of critical habitat on approximately 6,163 hectares (ha) (15,228 acres (ac)) of land on the island of Molokai. The publication of the proposed rule opened a 60-day public comment period, which closed on February 27, 2001. On February 22, 2001, we published a notice (66 FR 11132) announcing the reopening of the comment period until April 2, 2001, on the proposal to designate critical habitat for plants from Molokai and a notice of a public hearing. On March 21, 2001, we held a public hearing at the Mitchell Pauole Center Hall, Molokai.

On October 3, 2001, we submitted a joint stipulation to the U.S. District Court with Earthjustice (representing the plaintiffs in *Hawaii Conservation Council* v. *Babbitt*) 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.

On April 5, 2002, we published a revised proposed rule for 51 plant species from Molokai (67 FR 16492). Critical habitat for 46 (*Adenophorus periens, Alectryon macrococcus, Bidens wiebkei, Brighamia rockii, Canavalia molokaiensis, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *brevipes, Ctenitis squamigera, Cyanea dunbarii, Cyanea grimesiana* ssp. *grimesiana, Cyanea mannii, Cyanea procera, Diellia erecta, Diplazium molokaiense, Eugenia koolauensis, Flueggea neowawraea, Hedyotis mannii, Hesperomannia arborescens, Hibiscus arnottianus* ssp. *immaculatus, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Labordia triflora, Lysimachia maxima, Mariscus fauriei, Marsilea villosa, Melicope mucronulata, Melicope reflexa, Neraudia sericea, Peucedanum sandwicense, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Pteris lidgatei, Schiedea lydgatei, Schiedea nuttallii, Schiedea sarmentosa, Sesbania tomentosa, Silene alexandri, Silene lanceolata, Spermolepis hawaiiensis, Stenogyne bifida, Tetramolopium rockii, Vigna o-wahuensis*, and *Zanthoxylum hawaiiense*) of the 51 plant species from Molokai was proposed on approximately 17,614 ha (43,532 ac) of land (67 FR 16492). We proposed that critical habitat was prudent for one species (*Eugenia koolauensis*) for which a prudency finding had not been made previously. Critical habitat was not proposed for *Bonamia menziesii, Cyperus trachysanthos, Melicope munroi*, and *Solanum incompletum* on the island of Molokai because these plants no longer occur on Molokai, and we are unable to identify habitat that is essential to their conservation on this island.

The publication of the revised proposed rule opened a 60-day public comment period, which closed on June 4, 2002. On July 11, 2002, we submitted joint stipulations to the U.S. District Court with Earthjustice requesting extension of the court orders for the final rules to designate critical habitat for plants from Lanai (December 30, 2002), Kauai and Niihau (January 31, 2003), Molokai (February 28, 2003), Maui and Kahoolawe (April 18, 2003), Oahu (April 30, 2003), the Northwestern Hawaiian Islands (April 30, 2003), and the island of Hawaii (May 30, 2003), citing the need to conduct additional review of the proposals, address comments received during the public comment periods, and to conduct a series of public workshops on the proposals. The joint stipulations were approved and ordered by the court on July 12, 2002. On August 12, 2002, we published a notice announcing the availability of the draft economic analysis on the proposed critical habitat (67 FR 52419). On August 23, 2002, we published a notice announcing a public hearing (67 FR 54607). On August 26, 2002, we held a public information meeting at the Mitchell Pauole Center Hall, Kaunakakai, Molokai. On August 26, 2002, we published a notice reopening the public comment period until September 30, 2002 (67 FR 54766). On September 9, 2002, we held a public hearing at the Mitchell Pauole Center Hall, Kaunakakai, Molokai.

Summary of Comments and Recommendations

We received a total of two oral and 702 written comments during the three comment periods on the revised proposal and draft economic analysis, including the public hearing held on September 9, 2002. These included responses from three State agencies, two county agencies, and 19 private organizations or individuals, including four designated peer reviewers. Approximately 680 of these were identical letters submitted as part of a mailing campaign, in support of the proposed critical habitat designations. Of the 24 parties who did not respond as part of the mailing campaign, eight supported the proposed designations, 13 were opposed, and three provided information or declined to oppose or support the proposed designations.

We reviewed all comments received for substantive issues and new information regarding critical habitat for *Adenophorus periens, Alectryon macrococcus, Bidens wiebkei, Brighamia rockii, Canavalia molokaiensis, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *brevipes, Ctenitis squamigera, Cyanea dunbarii, Cyanea grimesiana* ssp. *grimesiana, Cyanea mannii, Cyanea procera, Diellia erecta, Diplazium molokaiense, Eugenia koolauensis, Flueggea neowawraea, Hedyotis mannii, Hesperomannia arborescens, Hibiscus arnottianus* ssp. *immaculatus, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Labordia triflora, Lysimachia maxima, Mariscus fauriei, Marsilea villosa, Melicope mucronulata, Melicope reflexa, Neraudia sericea, Peucedanum sandwicense, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Schiedea lydgatei, Schiedea nuttallii, Schiedea sarmentosa, Sesbania tomentosa, Silene alexandri, Silene lanceolata, Spermolepis hawaiiensis, Stenogyne bifida, Tetramolopium rockii, Vigna o-wahuensis*, and *Zanthoxylum hawaiiense.* Similar comments were grouped into general issues and are addressed in the summary below.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited independent opinions from 15 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. We received comments from four. All four generally supported our methodology and conclusion, but none supported or opposed the proposed critical habitat designations. Comments received from the peer reviewers are summarized in the following section and were considered in developing the final rule.

Issue 1: Biological Justification and Methodology

(1) *Comment:* One peer reviewer wrote that the amount and location of lands in the proposed rule appears to be adequate for the long-term conservation of these species if lands, that were not included in the proposal because they were not in need of special management or protection are managed properly. Further, the peer reviewer stated that deletion of significant portions of any of the proposed critical habitat units is likely to prevent the recovery of, or lead to the extinction of, listed species. Another peer reviewer commented that the proposed rule identifies enough land to provide for the long-term conservation of multiple populations. Another commenter wrote in support of tripling the acreage of critical habitat on Molokai in order to help ensure the survival of plant species. Conversely, other commenters felt that the proposed critical habitat units are larger than necessary and that the Service should work to ensure that: (1) The benefits of exclusion are carefully weighed against the benefits of designating critical habitat, (2) ''critical habitat does not include the entire geographical area which can be occupied by the threatened or endangered species'' (16 U.S.C. 1532(5)(C)), and (3) the final rule will exclude large areas that do not

contain the primary constituent elements for habitat designation.

Our Response: We made revisions to the unit boundaries based on information supplied by commenters, as well as information gained from field visits to some of the sites. This new information showed that the primary constituent elements were not present in certain portions of some of the proposed units and that recent changes in land use had occurred that would preclude those areas from supporting the primary constituent elements in the future, or that the areas should not be considered essential to the conservation of the species in question. In many cases, critical habitat boundaries were reduced for multi-island species because we have proposed or otherwise identified adequate and more appropriate habitat on other islands. In addition, some areas excluded from this designation, such as TNCH lands, will still contribute significantly to the recovery of these species. These areas are counted towards the recovery goal of 8 to 10 populations of 100, 300, or 500 individuals.

(2) *Comment:* One commenter was concerned that there is an absence of good scientific data on the plants in this rulemaking and stated that guesswork is an unacceptable way to designate critical habitat.

Our Response: When developing this rule to designate critical habitat for 46 plants from Molokai, we used the best scientific data currently available, including but not limited to, information from 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; the final listing rules for these species; information received during the public comment periods and the informational meetings and public hearings held on Molokai on September 9, 2002; recent biological surveys and reports; our recovery plans for these species; GIS information (*e.g.,* vegetation, soils, annual rainfall, elevation contours, landownership); information received from landowners, land managers, and interested parties on the island of Molokai; discussions with botanical experts; and recommendations from the Hawaii Pacific Plant Recovery Coordinating Committee (HPPRCC) (GDSI 2000; HINHP Database 2000; HPPRCC 1998; Service 1995, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001; 65 FR 83158; 67 FR 16492; CPC *in litt.* 1999).

In accordance with our policy on peer review published on July 1, 1994 (59 FR 34270), we solicited the expert opinions of knowledgeable and independent specialists regarding the proposed rule. The purpose of this peer review was to ensure that our designation methodology of critical habitat of Molokai plants was based on scientifically sound data, assumptions, and analysis. The comments of the peer reviewers were taken into consideration in the development of this final designation and nondesignation. We are required under a court-approved stipulation to finalize this designation by February 28, 2003. If provided with new information, we may revise the critical habitat designation in the future.

(3) *Comment:* One commenter felt that the Service's definition of a population is not adequate.

Our Response: We acknowledge the difficulty in identifying a discrete, quantitative distance between populations but believe, as do the peer reviewers who commented on this issue, that the use of 1,000 m (3,280 ft) is a scientifically reasonable convention. We have defined a population, for the purpose of this rule, 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 (3,280 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).

(4) *Comment:* One peer reviewer suggested that sites significantly altered by human activities, such as roads and buildings, should not be included in ''conservation plans,'' but that areas that have been altered by agriculture and other activities that do not significantly disturb the soil should be included as they provide potential sites for restoration of plant species.

Our Response: Agricultural lands are generally not considered to be the highest ranking places to designate critical habitat because they usually have had the most disturbance. However, for some species some of this land is essential for their conservation because suitable habitat does not exist elsewhere. Approximately 11 percent of designated land on Molokai is within the State Agricultural District.

(5) *Comment:* One commenter stated that the presence of an endangered species in a particular habitat is not necessarily an indication that such habitat is best for the species' survival and reproduction. For example, conservationists believed that the Hawaiian goose (nene) (*Branta sandvicensis*) preferred uplands because it remained extant in upland habitats, but later information suggests that the nene prefer lower elevations.

Our Response: The best available information, both historic and current, was used from a variety of sources (see ''Methods'' section) to determine the primary constituent elements. Historic information is scant for many species. However, the Service remains obligated to use the best available information, which includes the characteristics of the habitat supporting a taxon's remaining individuals. We expect more will become known in the future about the specific life history needs of these species, but we believe at this time that we have used the best available scientific information, including peer review and expert scientific input.

(6) *Comment:* One peer reviewer and other commenters stated that the proposed rule is improved by the inclusion of appropriate unoccupied habitat because such habitat will help to recover species that have been reduced to an unsustainable number of populations. Several commenters opposed designating critical habitat in unoccupied areas. Two commenters wrote that the lands in urban, agricultural, and rural districts are designated, used, and intended for a wide variety of land use activities. As such, there is a much greater likelihood that critical habitat designation will have an adverse economic impact on the landowner. These commenters recommend the following rebuttable presumption: Non-conservation lands that are unoccupied by any listed species should not be designated as critical habitat.

Our Response: Our recovery plans for these species identify the need to expand existing populations and reestablish wild populations within historical range. Because of the very limited current range of these species, designating only occupied areas would not meet the conservation requirements of the species. Occupied areas, as well as the similar habitat around them within the designated units of critical habitat that may be occupied in the future, provide the essential life-cycle needs of the species and provide some or all of the habitat components essential for the conservation (primary constituent elements) of these species. Additional, nonadjacent, areas of unoccupied habitat are essential to the conservation of the species because they provide habitat for the establishment of new populations.

(7) *Comment:* One commenter felt that critical habitat should be designated for *Pritchardia munroi.* This commenter opposed the Service's decision that it is not prudent to designate critical habitat on the grounds that: (1) Designation of critical habitat would not increase the threat of vandalism to this species; (2) the Service failed to list overcollecting as one of the threats to this species in the revised proposal (67 FR 16497); (3) the species' existence on non-Federal land is irrelevant; (4) the Service cannot refuse to designate critical habitat because it cannot think of a future Federal activity likely to trigger consultation under section 7 of the Act; and (5) critical habitat offers benefits that go far beyond the protection that *Pritchardia munroi* receives under section 7, namely, critical habitat will help a species *recover,* whereas section 7 merely protects a species from *extinction.*

Our Response: In this final rule to designate or not designate critical habitat for 42 plants from Molokai we have incorporated new information and addressed comments and new information received during the comment periods. However, no additional information was provided during the comment periods that demonstrates that the threats to *Pritchardia munroi* from vandalism or collection would not increase if critical habitat was designated for this species on Molokai.

We believe that designation of critical habitat would likely increase the threat from vandalism or collection to this species of *Pritchardia* on Molokai. First, it is easy to identify, and second, it may be 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 this species of palm may be attractive to such collectors. Several nurseries advertise and sell *Pritchardia* palms, including *Pritchardia munroi* and six other federally listed *Pritchardia* species. See the section entitled ''Prudency'' in this rule for more information regarding instances of vandalism, collection, and commercial trade of Hawaiian species of *Pritchardia.* Although the final listing rule and proposed critical habitat do not list vandalism or overcollection as threats, in light of documented vandalism and overcollection events on species in the same genus on Kauai, we believe that *Pritchardia munroi* is vulnerable to the same types of threats because of the similarity in appearance of the species.

In addition, we believe that designation would not provide significant benefits that would outweigh these increased risks. First, *Pritchardia munroi* does not occur on Federal land. The private land where it is found is zoned for agriculture, though the single tree has been fenced (HINHP Database 2000). In addition, this species is found in a small ravine in an area that is remote and inaccessible to standard vehicles. It is, therefore, unlikely that the land on which it is found will be developed. 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 the species that it does not already have through listing alone. If, however, any future Federal involvement did occur, such as through the permitting process or funding by the U.S. Department of Agriculture, the U.S. Department of 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 this 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 have determined that designation of critical habitat for *Pritchardia munroi* is not prudent.

(8) *Comment:* One commenter asked why other federally listed plants on Molokai and historically listed plants were not included in the critical habitat proposal. One peer reviewer questioned the decision to not designate critical habitat for *Gardenia brighamii* and *Kokia cookei* based on: (1) Recent records of *Gardenia brighamii* on Molokai; (2) the recovery plan's stated need for three populations of *Gardenia brighamii* on Molokai; and (3) *Kokia cookei* being known only from Molokai.

Our Response: The proposed rule to designate critical habitat for 46 species found on Molokai was prepared in response to a lawsuit (*see ''Previous Federal Action''*). Species listed prior to 1991, such as *Gardenia brighamii* and *Kokia cookei,* were not included in this lawsuit and were thus not addressed in the proposed rule. In addition, critical habitat was not proposed for four species (*Bonamia menziesii, Cyperus trachysanthos, Melicope munroi,* and *Solanum incompletum*) that no longer occur on Molokai and for which we were unable to identify any habitat that is essential to their conservation on the island. Finally, critical habitat is not designated for four species (*Hedyotis mannii, Phyllostegia mollis, Platanthera holochila,* and *Vigna o-wahuensis*) because they are currently found only in areas on Molokai that do not require special management consideration or protection because they are already protected and managed within TNCH preserves.

Issue 2: Effects of Critical Habitat Designation

(9) *Comment:* Critical habitat must accommodate the traditional cultural gathering rights of Native Hawaiians as reflected in Article XII of the State constitution and upheld by the Hawaii Supreme Court in the Public Access Shoreline Hawaii and Ka Paakai o Ka Aina decisions.

Our Response: Critical habitat designation does not affect activities, including human access, on State or private lands unless some kind of Federal permit, license, or funding is involved and the activities may affect the species. It imposes no regulatory prohibitions on State or other non-Federal lands, nor does it impose any restrictions on State or non-Federal activities that are not funded or authorized by any Federal agencies. Access to Federal lands that are designated as critical habitat is not restricted unless access is determined to result in the destruction or adverse modification of the critical habitat. If we determine that access will result in adverse modification of the critical habitat, we will suggest reasonable or prudent alternatives that allow the proposed activities to proceed. Activities of the State or private landowner or individual, such as farming, grazing, logging, and gathering generally are not affected by a critical habitat designation, even if the property is within the geographical boundaries of the critical habitat. A critical habitat designation has no regulatory effect on access to State or private lands. Recreational, commercial, and subsistence activities, including hunting, on non-Federal lands are not regulated by this critical habitat designation, and may be impacted only where there is Federal involvement in the action and the action is likely to destroy or adversely modify critical habitat.

(10) *Comment:* Several commenters believed that critical habitat will not help to recover listed plants and is unnecessarily restrictive, even if it is scientifically based. These commenters

generally advocated on-the-ground management in place of critical habitat designation. Suggested alternatives included voluntary outplanting and propagation, Service support for conservation programs, and incentives for landowners to recover species. The commenters recommended that research be conducted to determine if critical habitat areas can be effectively managed in light of the many threats that face them. They concluded that private landowners may welcome the introduction of listed species on their property if the Service could help support such projects and cooperation and, in doing so, showed trust in landowners.

Our Response: While we agree that critical habitat will not take the place of on-the-ground management, critical habitat designation is one of a number of conservation tools established in the Act that can play an important role in the recovery of a species. For a Federal action to adversely modify critical habitat, the action would have to adversely affect the critical habitat's constituent elements or their management in a manner likely to appreciably diminish or preclude the conservation of the species. Designation of critical habitat is a way to guide Federal agencies in evaluating their actions, in consultation with the Service, such that their actions do not preclude conservation of listed species. There also are educational or informational benefits to the designation of critical habitat. Educational benefits include notifying landowners, land managers, and the general public about the importance of protecting the habitat of these species and disseminating information about their essential habitat requirements. On-the-ground management for restoration of these species is addressed in the species' recovery plans. The Service routinely coordinates with and assists private landowners and others interested in conservation through a variety of programs.

Issue 3: Site-Specific Biological Comments

(11) *Comment:* One peer reviewer stated that critical habitat should be designated for TNCH's Pelekunu Preserve unless assurances exist that: (1) Ungulates will be unequivocally controlled if they reach specified damage thresholds; (2) damage thresholds will be reevaluated if experience shows that current thresholds are inadequate to protect listed species; and (3) control of ungulates to threshold levels will occur even if the Molokai Hunters Working Group objects to the control. Another commenter pointed out that the fact that TNCH recognized the need to manage these fragile areas for conservation should confirm that the habitat not only ''*may*'' but actually *does* ''require special management considerations or protection,'' and thus more than satisfies the definition of critical habitat. According to the commenter, failure to designate TNCH lands as critical habitat would be violating the requirement that the Service designate critical habitat ''to the maximum extent prudent and determinable'' (16 U.S.C. 1533(a)(3)). The commenter also stated that critical habitat designation will protect TNCH's Moomomi, Pelekunu, and Kamakou Preserves from Federal actions occurring outside the preserves that may modify or destroy essential habitat found within preserve boundaries. Another commenter noted that TNCH's land should be designated because it is the among the highest quality native habitat areas on Molokai.

Our Response: In the revised proposed determinations of prudency and proposed designations of critical habitat for plant species from the island of Molokai, Hawaii (April 5, 2002; 67 FR 16492), we indicated that we believed that lands managed by TNCH provided adequate special management or protection for 19 of the Molokai plant species. This was based the definition of critical habitat (section 3(5)), which specifies critical habitat as areas within the geographical area occupied by the species on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection. In order to give meaning to this last clause, we considered that if an area was already adequately managed then there would be no requirement for special management considerations or protection.

However, in a recent opinion (*Center for Biological Diversity* v. *Norton,* Civ. No. 01–409 TUC DCB D. Ariz. Jan. 13, 2003), a Federal district court determined that our definition of critical habitat, as it applies to special management, is not correct. The court stated that ''whether habitat does or does not require special management by defendant or FWS is not determinative on whether or not the habitat is 'critical' to a threatened or endangered species (pages 13–14 of the court's decision).'' We continue to believe that our interpretation was reasonable. However, we nevertheless have not declined to include areas from this final designation because they are adequately managed.

As discussed in detail in the ''*Analysis of Impacts Under Section 4(b)(2)*,'' we have determined that the benefits of excluding TNCH's Molokai preserves as critical habitat outweigh the benefits of including them as critical habitat for *Bidens wiebkei, Canavalia molokaiensis, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *brevipes, Cyanea mannii, Cyanea procera, Hedyotis mannii, Labordia triflora, Lysimachia maxima, Mariscus fauriei, Melicope mucronulata, Phyllostegia mannii, Phyllostegia mollis, Platanthera holochila, Schiedea sarmentosa, Silene alexandrii, Stenogyne bifida, Tetramolopium rockii,* and *Vigna o-wahuense.*

(12) *Comment:* One peer reviewer questioned the designation of critical habitat in the western portion of Kalaupapa Peninsula because it is heavily degraded and does not appear to be good habitat for *Centaurium sebaeoides, Sesbania tomentosa,* and *Tetramolopium rockii.*

Our Response: We agree and have removed this portion of the Kalaupapa Peninsula from critical habitat.

(13) *Comment:* The Service provides no rationale for the decision to eliminate from critical habitat an area that *Marsilea villosa* currently occupies in Kamakaipo Gulch on the west shore of Molokai.

Our Response: In the April 5, 2002, revised proposal, we stated there was critical habitat for *Marsilea villosa* within Molokai unit A1. Upon further inspection, we discovered that certain areas contain the suitable habitat for this species were inadvertently left out of the designation. We are unable at this time to publish another revised proposal to include this suitable habitat for *Marsilea villosa.* We have proposed critical habitat for this species on the island of Molokai. We will publish a separate rule incorporating this suitable habitat for the species after completing the final rules for the other Hawaiian islands.

Issue 4: Legal Issues

(14) *Comment:* A peer reviewer and other commenters noted that critical habitat should be identified for all areas that may need to be managed for the benefit of the listed species. The Act defines critical habitat (Section 3(5)(A)(I)) as ''the specific areas* * *(I) essential to the conservation of the species and (II) which may require special management considerations or protection* * *.'' It does not use the phrase ''which may require additional special management considerations or protection.'' Therefore, all areas that meet the definition of critical habitat

should be designated, even if they are currently being managed for conservation. Designation of these areas would be in accordance with the mandatory duty to designate critical habitat ''to the maximum extent prudent and determinable'' (16 U.S.C. 1533(a)(3)). Also, designation will provide an additional measure of protection by preventing Federal agencies from carrying out, funding, or approving any activity likely to result in adverse modification or destruction of critical habitat—whether directly or indirectly, regardless of the location of the activity. Furthermore, areas that may have adequate management in place may not be safe from even direct threats from Federal activities, which can arise with little warning.

Our Response: Section 3(5)(A)(i) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*) defines critical habitat as areas on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection. In order to give meaning to the last clause of the definition, we have previously considered that, if an area was already adequately managed, then there would be no requirement for special management considerations or protection. We believed that adequate special management or protection would be provided by a legally operative plan that addresses the maintenance and improvement of essential habitat elements and that provides for the long-term conservation of the species. We considered 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 in place, and/or have adequate funding for the management plan); and (3) provides assurances that 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 achieve the plan's goals and objectives). Therefore, if an area provides physical and biological features essential to the conservation of the species, and also is covered by a plan that meets these criteria, then such an area would not have constituted critical habitat as defined by the Act because the physical and biological features found there do not require special management.

However, in a recent opinion (*Center for Biological Diversity* v. *Norton,* Civ. No. 01–409 TUC DCB D. Ariz. Jan. 13, 2003), a Federal district court determined that our definition of critical habitat, as it applies to special management, is not correct. The court stated that ''whether habitat does or does not require special management by defendant or FWS is not determinative on whether or not the habitat is 'critical' to a threatened or endangered species (pages 13–14 of the court's decision).'' We continue to believe that our interpretation was reasonable. However, we nevertheless have not declined to include areas from this final designation because they are adequately managed.

(15) *Comment:* Critical habitat designation, and the underlying decision to list as endangered the species that are the subject of the designation, exceed the constitutional limits of the Service's delegated authority. Congress enacted the Endangered Species Act as an exercise of its commerce clause power and delegated exercise of that Commerce Clause power to the Service to apply the Act by regulation. The listed species are not interstate. They exist only in Hawaii and do not cross state lines. Nor are they in commerce as the subject of any economic endeavor. They lack any commercial value. Therefore, the Service's regulations listing these species and designating critical habitat for them within Hawaii exceed the Federal power to regulate interstate commerce under the governing precedents interpreting the Commerce Clause.

Our Response: The Federal government has the authority under the Commerce Clause of the U.S. Constitution to protect these species, for the reasons given in Judge Wald's opinion and Judge Henderson's concurring opinion in *Nat'l Ass'n of Home Builders* v. *Babbitt,* 130 F.3d 1041 (D.C. Cir. 1997), *cert. denied,* 1185 S. Ct. 2340 (1998). *See also Gibbs* v. *Babbitt,* No.99–1218 (4th Cir. 2000). The *Home Builders* case involved a challenge to application of ESA prohibitions to protect the listed Delhi Sands flower-loving fly. As with the species at issue here, the Delhi Sands flower-loving fly is endemic to only one State. Judge Wald held that application of the ESA to this fly was a proper exercise of Commerce Clause power because it prevented loss of biodiversity and destructive interstate competition.

(16) *Comment:* With regard to the Draft Economic Analysis (DEA), a commenter stated that since State law prohibits taking of endangered plants, a court could follow Federal precedents and say that an action that degrades critical habitat injures the plant and so is an ''illegal'' taking of the plant. The economic impact of a landowner not being able to use his own land for fear of injuring species needs to be taken into account.

Our Response: Possible costs resulting from interplay of the Federal Endangered Species Act and Hawaii State law were discussed in the economic analysis under indirect costs (*e.g.*, possible conservation management mandate for the private landowner and reduction in game mammal populations). The economic analysis considers the economic impacts of section 7 consultations related to critical habitat even if they are attributable co-extensively to the listed status of the species. In addition, the economic analysis examines any indirect costs of critical habitat designation, such as where critical habitat triggers the applicability of a State or local statute. However, where it is the listing of a species that prompts action at the State or local level, the impacts are not attributable to critical habitat designation and are not appropriately considered in the economic analysis of critical habitat designation. Take prohibitions under Hawaii law are purely attributable to a listing decision and do not co-extensively occur because of critical habitat designations. There are no take prohibitions associated with critical habitat.

Issue 5: Economic Issues

(17) *Comment:* A commenter stated that the DEA must take into account the unique local circumstances of landownership and limited economic base of Molokai, which are especially susceptible to detrimental impacts of regulations.

Our Response: The DEA considers all activities that are reasonably foreseeable to affect the proposed critical habitat areas over the next 10 years. The analysis first considers the impact of preexisting State and local land-use restrictions and the likely presence or absence of a Federal nexus on these activities. Subsequently, the analysis estimates the likely direct effects of implementation of section 7 of the Act on the identified reasonably foreseeable activities, as well as discusses the indirect effects associated with potential changes in land use regulations, property values, and other changes. Based on this comprehensive review of

land uses and activities, the DEA estimates the total direct costs associated with implementation of section 7 for the plants would range from $109,070 to $804,750. Subsequently, based on a review of public comments and information from the Service regarding the intended removal or reduction of critical habitat units, the Addendum estimates the revised total direct costs to be approximately $54,470 to $269,150. When considered in the context of the island economy, these revised costs represent, in the worst case, approximately 0.2 percent of the total personal income of Molokai in 2000.

In addition, Chapter VI, Section 5.b. of the DEA addresses the limited economic base of Molokai by examining potential impacts on small entities (small businesses, small organizations, and small governmental jurisdictions) under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act of 1996). The DEA concludes that a significant economic impact on a substantial number of small entities will not result from the critical habitat designation. After considering the information provided in public comments and the Service's intended reduction or removal of critical habitat units, the Addendum does not revise this conclusion.

(18) *Comment:* A commenter stated that the Service must analyze all economic impacts of critical habitat designation, not merely those impacts that are a ''but for'' result of the critical habitat designation. The commenter further stated that the DEA does not adequately analyze the full scope of economic impacts, but focuses primarily on section 7(a)(2) of the Act, which requires consultation with the Service when Federal permits, funding, or other Federal action is required, and says that other sections of the Act are outside the scope of this economic analysis. The commenter believes that the critical habitat designations will have a significant economic effect extending far beyond the draft's narrow concept of a Federal nexus.

Our Response: The Service has authority under section 7 of the Act to consult on activities on land owned by individuals, organizations, States, or local and tribal governments only if the activities on the land have a Federal nexus. A Federal nexus occurs when the activities require a Federal permit, license, or other authorization, or involve Federal funding. The Service does not have jurisdiction under section 7 to consult on activities occurring on non-Federal lands when the activities are not federally funded, authorized, or carried out. In addition, consultation is not required for activities that are not likely to affect listed species or their critical habitat.

The economic analysis considered the economic impacts of section 7 consultations related to critical habitat even if they are attributable co-extensively to the listed status of the species. In addition, the economic analysis examined any indirect costs of critical habitat designation such as where critical habitat triggers the applicability of a State or local statute.

However, where it is the listing of a species, rather than the designation of critical habitat, that prompts action at the State or local level, the impacts are not attributable to critical habitat designation and are appropriately not considered in the economic analysis of critical habitat designation. For example, there are no take prohibitions associated with critical habitat. Take prohibitions under Hawaii law are purely attributable to a listing decision and do not co-extensively occur because of critical habitat designations. Thus, the economic analysis did not include an analysis of the impact of these other sections of the Act.

(19) *Comment:* A commenter stated that the DEA fails to recognize all the connections between Federal and State law. For example, if the Federal government approves eligibility for flood insurance, flood plain development programs shall become subject to consultations under the Act. Another comment stated that while the Service has stated that critical habitat affects only activities that require Federal permits or funding, and does not require landowners to carry out special management or restrict use of their land, the DEA fails to address the breadth of Federal activities that affect private property in Hawaii and the extent to which private landowners are required to obtain Federal approval before they can use their property. The commenter elaborated that these requirements also extend to State agencies requiring Federal funds or approvals.

Our Response: The analysis in the DEA, as revised by the Addendum, is based on a review of all ''reasonably foreseeable'' projects, land uses, and activities that may be directly affected by the implementation of section 7 for the species in question. ''Reasonably foreseeable'' projects, land uses, and activities were broadly defined in the analysis as those that are: (1) Currently authorized, permitted, or funded; (2) proposed in plans currently available to the public; or (3) projected or likely to occur within the next ten years, based on (a) recent economic or land-use trends, development patterns, evolving technologies, competitive advantages, etc., and (b) limits imposed by land-use controls, access, terrain, infrastructure, and other restrictions on development. After determining the ''reasonably foreseeable'' projects, land uses, and activities that could affect the physical and biological features of the proposed critical habitat units, the next step in the analysis was to determine Federal involvement. Thus, while the economic analysis did not evaluate all possible activities with Federal nexus, it was focused on the most relevant subset of these activities—those that are ''reasonably foreseeable.'' The results of this analysis are presented in TableVI–3 in the DEA and Table Add-2 in the Addendum.

More specifically, the critical habitat units as modified overlap slightly with areas identified by the Federal Emergency Management Agency as within the flood zone. No residential or commercial development is located or planned within this area. Thus, no consultations for eligibility for flood insurance or flood plain development programs are anticipated within the next ten years.

(20) *Comment:* One commenter stated that several economic impacts are acknowledged in the DEA, but their impacts are not quantified in summary tables. These include: (1) The value of hunting estimated at $1,430,000; (2) economic loss of up to $675,000,000 if the State places critical habitat in the Protective Subzone of the Conservation District; and (3) indirect costs beyond section 7 costs.

Our Response: (1) The DEA does not estimate the value of hunting on Molokai at $1,430,000. Instead, the DEA reported a number of figures that act as indicators of the value of hunting. Specifically, the DEA reported that hunting on Molokai generates approximately $340,000 in direct sales, $670,000 in direct and indirect sales, $280,000 in income, and $140,000 in surplus value. These estimates reflect separate methods to illustrate the total value of hunting and are not intended to be added together. Moreover, it should be noted that some of these estimates were updated in Section 5 of the Addendum to incorporate data from the Service's 2001 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation. Specifically, the revised estimates indicate that hunting generates approximately $317,000 in direct sales, $563,000 in total direct and indirect sales, and $185,000 in income.

(2) The potential economic loss associated with a reduction in property value due to redistricting of all Agricultural land to the Protective Subzone of the Conservation District has been significantly reduced due to the modification of critical habitat units. While the economic loss as estimated for the modified designation could approach $715,000, the probability of redistricting is estimated to be small, resulting in a low expected property value loss.

(3) In addition to property value losses, the DEA and associated Addendum do address several types of indirect costs, including the possibility of mandated conservation management, loss in hunting revenue, and others. However, although the economic analysis does provide stylized and/or worst-case estimates of some of the potential indirect costs, the actual probability of these impacts occurring is not estimated due to the limited information regarding the likelihood of these impacts. As a result, the expected value of the impacts is not reported. Rather than report the stylized and/or worst-case estimates, the analysis presents qualitative descriptions of the magnitude of the impacts to account for the fact that the expected values are not known.

(21) *Comment:* One commenter stated that the Service is unaware of a significant number of future housing or resort development activities in coastal areas on Molokai that might trigger section 7 consultation by requiring permits from Federal agencies.

Our Response: Chapter VI, Section 3.e. of the DEA discussed potential residential development within the critical habitat and concluded that no resort or residential development was anticipated within the next 10 years. This estimate reflected information gathered that the lands within the proposed designation are either: (1) Managed by landowners who stated that they do not have plans to develop; (2) within a recreational preserve; (3) governed by agreements under the East Molokai Watershed Partnership; or (4) do not have publicly available development plans. No new information has been provided that contradicts this conclusion; thus, no changes have been made to the DEA in this regard.

(22) *Comment:* One commenter noted that critical habitat Units F and G are potential sites for groundwater exploration, and Federal funding or agencies may be involved.

Our Response: Chapter VI, Section 3.g. of the DEA discussed section 7 costs associated with water system development as part of the Molokai Irrigation System or by Molokai Ranch. The Addendum analyzes additional information from the Maui County Department of Water Supply regarding a proposed backup well and concludes that the planned well and accompanying access road are located outside the critical habitat, as modified. As such, no additional costs were included in the Addendum for this project.

(23) *Comment:* One commenter stated that the designation of critical habitat in Units F and G would require hundreds of Kapaakea subdivision future beneficiaries to conduct an environmental assessment and section 7 consultation in order to construct their home and prepare ground for farming. The commenter further noted that Department of Hawaiian Homeland's homesteading program uses Federal programs to guarantee and insure the mortgages of homesteaders, and Federal funds may be used to construct site improvements and homes.

Our Response: The economic analysis focused primarily on the ''reasonably foreseeable'' projects, land uses, and activities that could affect the physical and biological features of the proposed critical habitat units as these are the activities that could be affected by the critical habitat designation. As previously discussed, ''Reasonably foreseeable'' projects, land uses, and activities were defined in the DEA as those which are: (1) Currently authorized, permitted, or funded; (2) proposed in plans currently available to the public; or (3) projected or likely to occur within the next 10 years based on (a) recent economic or land-use trends, development patterns, evolving technologies, competitive advantages, etc., and (b) limits imposed by land-use controls, access, terrain, infrastructure, and other restrictions on development. The economic analysis did not discuss future development within Kapaakea because none of the information available indicated that new residential development or new agricultural activity was likely within the next 10 years; thus, these activities were not considered ''reasonably foreseeable.''

Units F and G have been modified, and as a result, the total amount of DHHL land within critical habitat has been reduced by two-thirds, from approximately 1,350 ha (3,336 ac) to 425 ha (1,049 ac). The DHHL land remaining in critical habitat is located mauka (towards the mountains) and eastward of the existing Kapaakea Homestead, and most is adjacent to the Molokai Forest Reserve. There are no publicly available plans for development of this area within the next 10 years, nor has DHHL indicated that development of this area within the next 10 years is likely. Thus, no section 7 costs for residential development by Native Hawaiian beneficiaries in Units F and G subdivision were included in the Addendum.

(24) *Comment:* One commenter stated that Molokai hunters were concerned about the potential loss of hunting areas and questioned whether or not fences to exclude ungulates will be constructed, and, if so, where construction will take place. Another commenter questioned why a cost was associated with project modifications to the management of game hunting on State managed lands, because Molokai does not have any State hunting areas that are managed to maintain or enhance game mammal populations. The commenter also questioned the methodology used to estimate the project modification cost because game mammals travel freely.

Our Response: Chapter VI, Section 3.a. of the DEA discussed the direct impacts of section 7 implementation on hunting taking place on DLNR lands on Molokai. The analysis estimated future project modifications associated with game mammal management by extrapolating from historical consultation records. These records indicate that DLNR generally installs fencing around bird watering stations as a project modification stemming from consultations with the Service. As a result, the analysis assumed that fencing would continue to occur around watering stations in the future.

The DEA goes on to estimate an increase in the number of watering stations to be fenced under the assumption that the proposed habitat area would extend beyond the area historically considered in consultations with the Service on the listed plants. The DEA presents a cost estimate of $17,600 to $148,000. However, public comment suggested that consultations already do address areas both occupied and unoccupied by the listed plants because ungulates are assumed to roam freely across the island. As such, there would likely not be an increase in the number of watering stations fenced. Adopting this new assumption, and also incorporating the intended reductions in the designation as indicated by the Service, the Addendum revised the estimate to a range of $4,400 to $37,000. This conclusion is based on discussions with DLNR, other stakeholders familiar with the issue, and decades of public testimony by hunters.

(25) *Comment:* One commenter requested that its lands not be designated as critical habitat due to the following reasons: (1) Land values

would be detrimentally affected; (2) designation may conflict with existing operations of an economically vital surface water collection system that is maintained in Kaunakakai ahupuaa and Kawela Forest Reserve lands; and (3) lands proposed for designation on the west end of the ranch are used for grazing and recreation.

Our Response: As modified, the designated acreage of land owned by Molokai Ranch is approximately 226 ha (558 ac) (reduced for biological reasons from the 1,080 ha (2,670 ac) proposed for designation). Approximately 77 ha (190 ac) are located near the northern coastline on the west side of Molokai, in a remote area. Most of the 77 ha (190 ac) are in the Agricultural District, but a portion of the land along the coastline is within the Conservation District. The remaining 149 ha (367 ac) are located in the Conservation District within the Molokai Forest Reserve.

Chapter VI, Section 4.g. of the DEA discussed the potential indirect impact that the designation of critical habitat could have on property values. The DEA noted that the worst-case scenario—and one that is not expected over the long term because uncertainties about the implications of the designation are likely to dissipate over time—would be a perception among potential buyers that the land should be valued as if it were subject to the same restrictions as land in the Conservation District. The DEA also states that land values on Molokai could drop between $1,000 per acre for remote agricultural land to $75,000 per acre for land suitable for development as a result of redistricting to the Conservation District. The commenter did not provide alternative numbers.

Thus, an estimate of the potential impact on Molokai Ranch's land values is as follows: The 149 ha (367 ac) are not likely to lose value due to critical habitat designation because of their presence within the Conservation District. While the total decrease in value for the approximately 77 ha (190 ac) in the Agricultural District could range from $190,000 to $14.2 million, any loss in value due to redistricting is more likely to be on the lower end of the range due to the remote location and distance from infrastructure of these 77 ha (190 ac).

No costs are expected to occur from impacts to the existing water collection system because none of the designated species are stream-dependent for their survival and therefore would not cause a reduction in water diversion. In addition, water infrastructure is considered a manmade feature and therefore its operation and maintenance are not considered critical habitat, as these features and structures normally do not contain, and are not likely to develop, any primary constituent elements.

No costs are expected to occur from impacts to designated lands on the west end of the ranch that are used for grazing and recreation. As noted in Chapter III of the DEA, the Service does not have jurisdiction under section 7 to consult on activities occurring on non-Federal lands when the activities are not federally funded, authorized, or carried out. Because there is no known Federal involvement in the grazing and recreational activities identified by the commenter, no costs are anticipated to occur as a result of critical habitat designation.

(26) *Comment:* One commenter stated that because unemployment is so high on Molokai, restrictions on subsistence activities, such as hunting and fishing, may cause a much greater economic impact than is suggested in the DEA.

Our Response: Chapter VI, Section 4.d. of the DEA discussed the economic impact critical habitat designation may have on subsistence activities. The designation of critical habitat by itself will not directly impact subsistence activities, as critical habitat designation does not require: (1) Creating any reserve, refuge, or wilderness areas; (2) fencing for any reason; (3) removing ungulates; or (4) closing areas to hunters or gatherers. Instead, it requires only that if the State or a private landowner seeks to undertake an activity that may affect the designated area using Federal funding or with a Federal permit, the Federal Action agency consult with the Service.

However, the DEA recognized that there is some risk that designation of critical habitat could have an indirect impact on subsistence activities if, as a result of a future lawsuit, a court mandated actions that reduce the ability of individuals to practice subsistence activities in these areas. However, the probability of a lawsuit being filed, the likelihood of its success, and the role of critical habitat in the suit are unknown. In addition, the DEA recognized the possibility that the State or private landowners could adopt a policy of restricting access into areas that overlap critical habitat units without a judicial mandate. The likelihood of voluntary landowner restrictions is also unknown. Based on professional judgment, however, the probability of a complete restriction of subsistence activities within critical habitat as a result of lawsuits or voluntary action was deemed unlikely.

The DEA was unable to quantify this indirect impact because of (1) The lack of information on the amount of the subsistence harvest; (2) the lack of information on the proportion of the subsistence harvest derived from areas within versus outside of critical habitat; and (3) the lack of information on the cultural significance of the subsistence activities conducted within critical habitat. Thus, the DEA concluded that while there could be a significant loss associated with the restriction of subsistence activities within the proposed critical habitat, the probability of subsistence activities actually being restricted within the proposed critical habitat was undetermined but generally unlikely.

(27) *Comment:* One commenter notes that a Federal nexus exists for the nonpoint source water discharge program. This commenter was concerned that if water discharge into critical habitat does not meet water quality standards, a permit could be denied. The commenter suggested that the effect on agriculture may be devastating since some runoff from agricultural activities is unavoidable.

Our Response: The State Department of Health Polluted Runoff Control Program and the State Office of Planning, Coastal Zone Management Program, work together to address nonpoint source pollution through outreach and education and programs that utilize incentives. Under the Coastal Zone Act Reauthorization Amendments, Section 6217, the State is required to meet various conditions for approval of the State's Coastal Nonpoint Pollution Control Program by the U.S. Environmental Protection Agency. To meet these conditions, the State Department of Health is developing administrative rules to create State-wide enforceable policies and mechanisms to address nonpoint source pollution. These draft rules are currently the subject of public informational meetings. Public comments and suggestions received during these meetings will be considered before final rules are drafted and proposed to the Governor.

At the present time, there is no permit requirement for nonpoint source pollution. Moreover, the proposed rules regarding nonpoint source pollution make no reference to critical habitat. The proposed rules simply provide a general prohibition on nonpoint source pollution and allow for exemption of violation under certain conditions (for example, if best management practices are utilized). The probability that these rules will be adopted without significant changes is impossible to

determine, as the recent elections resulted in an administration change and the new Governor's position on the issue of non-point source water pollution is not yet known. Moreover, at this point, critical habitat does not appear to play any role in the proposed rules. Thus, the possible economic impact, if any, caused by the interplay of nonpoint source pollution requirements and the designation of critical habitat is entirely speculative and unable to be estimated.

(28) *Comment:* One comment stated that the DEA fails to consider economic impacts of critical habitat that result through interaction with State law, specifically Hawaii's Land Use Law. Critical habitat could result in downzoning under State law. HRS Sec. 205–2(e) states that Conservation Districts shall include areas necessary for conserving endangered species. HRS Sec.195D–5.1 states that the DLNR shall initiate amendments in order to include the habitat of rare species. Even if the DLNR does not act, the State Land Use Commission may initiate such changes, or they may be forced by citizen suits. Areas for endangered species may be placed in the Protective Subzone with the most severe restrictions. While existing uses can be grandfathered in, downzoning will prevent landowners from being able to shift uses in the future, reduce market value, and make the land unmortgageable. Additionally, forced redistricting from Agricultural to Conservation could increase real property taxes even while driving down the real value of the property.

Our Response: Both the DEA and this Addendum attempt to quantify the potential impacts from downzoning. As indicated earlier in this Addendum, the Service has indicated that it plans to remove most of the land in the Agricultural District from the final critical habitat designation. The intended modification would result in the inclusion of about 2,608 acres of Agricultural lands in the revised designation. Limited grazing takes place in these Agricultural lands. As discussed in section 5.c. of the Addendum, assuming Agricultural land in reserves would not lose value and assuming relatively low land values due to the remoteness of the Agricultural lands designated, reduction in land values due to redistricting land within the intended critical habitat designation from Agricultural to Conservation District could approach $715,000. As discussed in section 5.c. of the Addendum, redistricting these lands to the Conservation District is not likely to interfere with the use of the land or significantly reduce its economic value. The remaining privately owned land (715 acres) is considered remote Agricultural land. Therefore, utilizing the value from the lower end of the range, an estimate of the total drop in property value should redistricitng of all privately owned Agricultural land occur would be $715,000 (715 × $1,000). Under this scenario, even if a landowner has no plans to sell the land, the loss in land value could reduce potential mortgage financing. However, the likelihood of redistricting is not reasonably certain.

(29) *Comment:* One comment stated that the DEA fails to consider economic impacts of listing and critical habitat that result through interaction with State law, specifically Hawaii's Endangered Species Act. *New Mexico Cattlegrowers Association* v. *U.S. Fish and Wildlife Service* requires consideration of the impact of listing as well as the impact of designating an area as critical habitat. Instead, the analysis is expressly limited to the impact of Federal agency consultation under the jeopardy standard. However, since Federal listing triggers listing under State law, the Service must consider the impact of take prohibitions under State law (and consequently Federal law which prohibits destruction of plants in knowing violation of State law).

Our Response: The economic analysis considers the economic impacts of section 7 consultations related to critical habitat even if they are attributable co-extensively to the listed status of the species. In addition, the economic analysis examines any indirect costs of critical habitat designation such as where critical habitat triggers the applicability of a State or local statute. However, where it is the listing of a species that prompts action at the State or local level, the impacts are not attributable to critical habitat designation and are not appropriately considered in the economic analysis of critical habitat designation. Take prohibitions under Hawaii law are purely attributable to a listing decision and do not co-extensively occur because of critical habitat designations. There are no take prohibitions associated with critical habitat.

(30) *Comment:* A commenter stated that the DEA fails to consider economic impacts of critical habitat that result through interaction with State law, specifically Hawaii's Environmental Impact Statement Law. HRS Sec. 343–5 applies to any use of conservation land, and a full Environmental Impact Statement is required if any of the significance criteria listed in HAR Sec. 11–200–12 apply. One of these criteria is that an action is significant if it ''substantially affects a rare, threatened or endangered species or its habitat.'' This will result in costly procedural requirements and delays. However, the DEA does not acknowledge that any impact on endangered species habitat will be deemed to be ''significant.'' Multiple commenters also stated the following: The DEA fails to evaluate the practical effect that critical habitat designation will have on development. Special Management Area permits administered by Maui County, as required by Hawaii's Coastal Zone Management Act, will be harder to get, will result in delays, will cause a decline in property values, and may make it impossible to develop.

Another commenter stated that the Service has taken the position in other States that it has a right to intervene in local land-use proceedings if they affect endangered species on private property. The commenter provided the example of the Service's petition to the local zoning board in Arizona to postpone approval of a rezoning petition pending a survey to determine the extent to which an endangered plant was present on the property, even though no Federal approval was being sought. The commenter concluded that the failure of the Service to address these activities in the DEA is a fundamental error of the analysis.

Our Response: Adverse impacts on development, including delays for additional studies and agency reviews, increased costs for environmental studies, increased risk of project denials, increased risk of costly mitigation measures, increased risk of litigation over approvals, etc., are not expected since there are no known development plans within the areas proposed for designation, as modified. Furthermore, the following factors make future development projects in areas designated as critical habitat highly unlikely: (1) As modified, approximately 89 percent of critical habitat is in the Conservation District where development is already limited; (2) the approximately 11 percent of critical habitat in the Agricultural District is in arid areas or areas lined with gulches or steep cliffs that generally support limited, if any, grazing; (3) there are no known plans for development within the proposed critical habitat as modified; and (4) as modified, most of the land being designated as critical habitat in the Special Management Area is also within the Conservation District, where development is severely limited. In general, the Service does not intervene in local land use decisions, except to provide information on potential effects

to threatened or endangered species or trust resources, when asked to do so.

(31) *Comment:* A commenter stated that the DEA fails to consider economic impacts of critical habitat that result through interaction with State law, specifically the State Water Code. HRS Sec. 174C–2 states that ''adequate provision shall be made for protection of fish and wildlife.'' HRS Sec. 174C–71 instructs the Commission of Water Resource Management to establish an instream use protection program to protect fish and wildlife. Since landowners may depend on water pumped from other watersheds, these effects can be far-reaching. It is impossible to tell from the descriptions in the proposal whether any water diversions will have to be reduced as a result of listing and critical habitat designation. The Service has an obligation to thoroughly investigate this issue and refrain from designating critical habitat until it has determined whether its actions will affect water use and balance this against any benefit to the species. Another commenter stated that if the critical habitat proposal would require reducing water diversions from any stream, the Service should investigate whether that would take anyone's vested water rights.

Our Response: No costs are expected to occur from such impacts to water systems, because none of the 41 species are stream-dependent for their survival and therefore would not cause a reduction in water diversion. In addition, water infrastructure is considered a manmade feature and therefore its operation and maintenance are not subject to the critical habitat provisions of section 7, because these features and structures normally do not contain, and are not likely to develop, any primary constituent elements.

(32) *Comment:* One commenter stated that the DEA fails to discuss economic impacts that may occur if opponents of water diversions use critical habitat designations to delay and confuse water use decisions on the grounds that any water diversion upstream of critical habitat may increase an endangered plant's risk of extinction. Furthermore, the burden of proof that diversions will not cause extinction will be placed on those diverting water. Proof will be difficult because so little is known about the needs of these species.

Our Response: Chapter VI, Section 3.g.(1) of the DEA states that it is highly unlikely that a new ditch system or major expansion to an existing one (including new diversions) would be proposed or approved in the proposed critical habitat. This assessment is made due to the existing protections provided by the baseline environmental regulations, current environmental and cultural concerns, current economic and financial constraints, probable public opposition to stream diversions, and difficulties in obtaining permits.

(33) *Comment:* One commenter stated that the cost of potential citizen lawsuits preventing certain activities or requiring some sort of management in critical habitat was not discussed in the DEA. Another commenter stated that critical habitat designation will bring unnecessary and costly litigation. One commenter stated that the proposed critical habitat could entail considerable cost to both the State and private landowners. One commenter stated that critical habitat designation could indirectly result in limitations or special management requirements (such as fencing or control of invasive species) being established on private lands. The commenter pointed out that the DEA estimates that the Palila court decision may be interpreted to mandate private conservation and therefore the proposed critical habitat designation could cost Molokai landowners $840,000 to $2,240,000 per year, or $8.4 million to $22.4 million over 10 years. However, Table VI–3 of the DEA dismisses these costs as minor and does not add them to the total cost estimate. The commenter suggested that these costs be considered.

Our Response: The Act does not obligate landowners to manage their land to protect critical habitat, nor would landowners and managers be obligated under the Act to participate in projects to recover a species for which critical habitat has been established. However, Chapter VI, Section 4.c. of the DEA does discuss the potential mandate for conservation management pursuant to litigation and the resulting costs for the proposed designation on Molokai. Specifically, adverse impacts on development, including delays for additional studies and agency reviews, increased costs for environmental studies, increased risk of project denials, increased risk of costly mitigation measures, increased risk of litigation over approvals, etc., are not expected since there are no known development plans within the proposed designation, as modified. Furthermore, the following factors make future development projects in the designated critical habitat highly unlikely: (1) As modified, approximately 89 percent of the proposed critical habitat is in the Conservation District where development is already limited; (2) the approximately 11 percent of the proposed critical habitat in the Agricultural District are in arid areas or areas lined with gulches or steep cliffs that generally host only limited, if any, grazing; (3) there are no known plans for development within the proposed critical habitat as modified; and (4) as modified, most of the land being designated as critical habitat in the Special Management Area is also within the Conservation District. While it is conceivable that there may initially be an increase in subsequent lawsuits related to the critical habitat designation, it is not possible to predict their number, degree of complexity, or any other associated effect due to scant historical evidence for the 41 plant species.

(34) *Comment:* Several commenters stated that the cost of potential citizen suits preventing certain activities or requiring some sort of management in critical habitat was not discussed in the DEA. Litigation regarding land management requirements is not only foreseeable, but is likely. Critical habitat designation will bring unnecessary and costly litigation, thus creating an economic disaster that would severely challenge one private landowner's economic viability. Another commenter also stated that even if litigation is unrealistic, expectations of litigation alone can lower property values.

Our Response: As discussed in the DEA and in the Addendum, an undetermined probability exists that a Federal or State court could mandate certain indirect impacts as a result of critical habitat. While the economic analysis did not assess the legal merits of the arguments for or against the various indirect impacts, the DEA and the Addendum present the worst-case scenario of the costs associated with the potential outcomes of third-party lawsuits whenever possible. For example, for the sake of illustration, the DEA and Addendum assume a worst-case scenario whereupon mountainous areas (approximately 95 percent of the designated area) are subject to required conservation management. While the illustrative cost of such a scenario is estimated to be $695,000 to $1.85 million per year, the probability of such a conservation mandate is unclear due to the inability to predict whether a suit would be filed, its likelihood of success, or the extent of its coverage if successful. The Service believes the likelihood of the worst case scenario occurring is extremely low, and has not occurred in areas designated as critical habitat in Hawaii.

(35) *Comment:* One commenter stated that the Service did not adequately address the takings of private property as a result of designating critical habitat for the Molokai plant species. In

addition, if the proposed designation of critical habitat precipitates conversion of agricultural lands to conservation land that has no economically beneficial use, then the Federal and State governments will have taken private property. Additionally, the landowner may incur the cost of litigation against the government to make it pay just compensation.

Our Response: The possible costs associated with redistricting land were discussed in the DEA under indirect costs. Since the publication of the DEA, we have removed most of the land in the Agricultural District from the final critical habitat designation. As noted above, redistricting the remaining parcels to the Conservation District is not likely to significant reduce the value of the land because: (1) Any areas that have been historically grazed are likely to be put in a subzone that will allow grazing (*i.e.*, not the Protective Subzone); and (2) the economic use of the land is already constrained by topography, remote location, and other existing restrictions.

(36) *Comment:* One commenter stated that precise mapping of manmade objects is needed and that the estimate of the time to investigate the implications of critical habitat is too low given the size of the proposed designated areas, the vagueness of the regulations concerning these unmapped holes, and the real costs of obtaining all necessary approvals for a development project in Hawaii. Another commenter questioned whether the indirect cost of investigating the implications of critical habitat should be considered a ''sunk'' cost of the critical habitat designation process rather than a potential future cost of a final designation.

Our Response: To address these concerns, the Addendum revisited the hour estimates presented in the DEA. Chapter VI, Section 4.f. of the DEA indicated that the landowner may want to learn how the designation may affect: (1) The use of his land (either through restrictions or new obligations); and (2) the value of his land. Since the commenters did not provide an estimate of time or cost incurred in order to investigate implications of critical habitat, the Addendum conservatively doubled the estimate of hours spent by the landowner and/or his attorneys or professional staff on investigating the issues. Using these new assumptions, the analysis estimated that total section 7 costs range from $73,500 to $218,500, all of which are attributable to critical habitat.

While some landowners may expend time and money to investigate the implications of critical habitat on their land during the designation process, many landowners may not do so until after final designation is complete. Thus, the DEA and the Addendum treated these costs as a cost attributable to the final designation and nondesignation.

(37) *Comment:* One commenter stated that the DEA lacks a thorough benefits analysis. The commenter maintained that the DEA does not include the benefits of watershed protection and improvement, protection of other stream and riparian biota, and the value of the designated plant species as an indicator of ecological health. Other multiple commenters stated that the DEA ignored the benefit of keeping other native species off the endangered species list, of maintaining water quality and quantity, of promoting ground water recharge, and of preventing siltation of the marine environment, thus protecting coral reefs. Another commenter noted that additional benefits of critical habitat include combating global warming, providing recreational opportunities, attracting ecotourism, and preserving Hawaii's natural heritage. The commenter also noted that the Service must use the tools available, such as the University of Hawaii (UH) Secretariat for Conservation Biology study that estimated the value of ecosystem services, to determine the benefits of critical habitat. Another commenter stated that the DEA overestimates economic benefits and many of the alleged benefits are entirely speculative, unquantifiable or lack any commercial value.

Our Response: There is little disagreement in the published economic literature that real social welfare benefits can result from the conservation and recovery of endangered and threatened species (Bishop 1978, 1980; Brookshire and Eubanks 1983; Boyle and Bishop 1986; Hageman 1985; Samples *et al.* 1986; Stoll and Johnson 1984). Such benefits have also been ascribed to preservation of open space and biodiversity (see examples in Pearce and Moran (1994) and Fausold and Lilieholm (1999)), both of which are associated with species conservation.

Chapter VI, Section 6.c. of the DEA and Section 6 of the Addendum discuss the potential benefits addressed in the above comments. However, the DEA and Addendum also indicate that these benefits are not quantified due to lack of information available on: (1) Quantified data on the value of the 41 species; and (2) quantified data on the change in the quality of the ecosystem and the species as a result of the designation (for example, how many fewer ungulates will roam into the critical habitat, how many fewer invasive plants will be introduced as a result, and therefore how many more individuals of the 41 species will be present in the area).

Although the UH study does value ecosystem services, it has limited applicability for valuing the benefits of the proposed critical habitat designation for the 41 species for a number of reasons. First, the UH study had a different purpose, which was to estimate the total value of environmental benefits provided by the entire Koolau Mountains on the island of Oahu versus the value of the more limited benefits provided by the proposed critical habitat for the 41 species on the island of Molokai. Consistent with its purpose, the UH study provides no estimates of the changes in environmental conditions resulting from changes in land and stream management due to critical habitat designation.

Furthermore, many of the assumptions and much of the analysis in the UH study are not transferable to the economic analysis of critical habitat for the 41 species. For example, the value of water recharge in the UH study reflects projected water supply and demand conditions on Oahu, an island which is more than twice the size of Molokai but has a population more than 115 times that of Molokai. Also, the UH benefit analysis of reducing soil runoff is unique to three valleys that drain through partially channelized streams in urban areas into the manmade Ala Wai Canal. Since this canal was designed with inadequate flushing from stream or ocean currents, it functions as an unintended settling basin and so must be dredged periodically. In addition, the recreational and ecotourism values provided in the UH study apply to areas that are accessible to most hikers, which is not the case with most of the critical habitat for the 41 species. Most of the Molokai critical habitat units are in mountainous areas with steep slopes and difficult access or on coastal cliffs. Perhaps more importantly, a critical habitat designation provides no guarantee of public use of or access to the property. It therefore is not clear to what extent a study which derived values from expectations of public use would be applicable to critical habitat designations.

(38) *Comment:* One commenter stated that although agricultural production areas are excluded from the proposed critical habitat units, agricultural resources appear to be included, particularly the source for the Molokai Irrigation System in Waikolu Valley.

The commenter requested assurance that long term improvements to the irrigation system will not be precluded by critical habitat designation.

Our Response: Chapter VI, Section 3.g. of the DEA and Section 4.g. of the Addendum address impacts of the proposed critical habitat designation on the Molokai Irrigation System. The economic analysis indicates that the lack of any current plant for new improvements, coupled with the difficulty of obtaining funding, completing impact studies, and securing permits were new improvements to be envisioned, makes it extremely unlikely that any new water improvements will be proposed or approved within the next 10 years. In addition, this final rule, existing man-made features and structures within the critical habitat units, including but not limited to aqueducts and other water system features such as diversions, flumes, pumping stations, irrigation ditches, pipelines, siphons, tunnels, water tanks, gaging stations, intakes, and wells do not contain the primary constituent elements essential for the conservation of each species and, therefore, are not included in the critical habitat designations.

Even if new projects were proposed, a number of circumstances must occur before there would be any direct impact of section 7 on water improvement proposals. Chapter III of the DEA noted that section 7(a)(2) of the Act requires Federal agencies to consult with us to ensure that activities they fund, authorize, permit, or carry out do not result in destruction or adverse modification of critical habitat. Further, the DEA noted that we do not have jurisdiction under section 7 to consult on activities occurring on non-Federal lands when the activities are not federally funded, authorized, or carried out. Thus, because the Molokai Irrigation System is not located on Federal land, critical habitat designation will have no direct impact on any long-term improvements constructed by the State unless the improvements involve Federal funding or require Federal permits. In addition, even if Federal funding or permitting is identified and a consultation is initiated, no direct impacts will result unless the Service (1) finds that the activity may jeopardize the continued existence of a listed species and/or destroy or adversely modify the critical habitat; and (2) can identify reasonable and prudent alternatives that will keep the action below the thresholds of jeopardy and/or adverse modification.

Thus, long-term improvements to the Molokai Irrigation System will not be precluded by critical habitat designation, but under a worst-case scenario, long-term improvements to the Molokai Irrigation System may involve the development of reasonable and prudent alternatives to prevent adverse modification of the critical habitat.

(39) *Comment:* One commenter stated that the designation of critical habitat in unoccupied areas may effectively extinguish the potential for intensive or extensive agricultural use or irrigation water resource development.

Our Response: As noted above, Chapter III of the DEA noted that section 7(a)(2) of the Act requires Federal agencies to consult with the Service to ensure that activities they fund, authorize, permit, or carry out do not result in destruction or adverse modification of critical habitat. Further, the DEA noted that the Service does not have jurisdiction under section 7 to consult on activities occurring on non-Federal lands when the activities are not federally funded, authorized, or carried out.

As a result, future intensive or extensive agricultural use or irrigation water resource development in unoccupied areas of designated critical habitat will not be subject to section 7 consultation unless it involves Federal funding or requires Federal permits.

The involvement of Federal funding and/or Federal permits will not extinguish the potential for intensive or extensive agricultural use or irrigation water resource development. Instead, the Federal agency with the nexus to the activity initiates consultation with the Service. The consultation between the Federal Action agency and the Service may involve informal consultation, formal consultation in the case of adverse impacts, or both. If during informal consultation the Federal Action agency determines that its action (as originally proposed or revised and taking into account direct and indirect effects) ''is not likely to adversely affect'' listed species or critical habitat (*e.g.*, the effects are beneficial, insignificant or discountable), and the Service agrees with that determination, then the Service provides concurrence in writing, and no further consultation is required.

If, however, the proposed action, as revised during informal consultation, is still likely to adversely affect listed species or critical habitat, the Action agency must request in writing initiation of formal consultation with the Service. If the Service finds, in its biological opinion, that a proposed action is not likely to jeopardize the continued existence of a listed species, or destroy or adversely modify the critical habitat, even though the action may adversely affect listed species or critical habitat, then the action likely can be carried out without violating section 7(a)(2) of the Act.

On the other hand, if the Service finds that a proposed action is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify the critical habitat, then the Service provides the Action agency with reasonable and prudent alternatives that will keep the action below the thresholds of jeopardy and/or adverse modification, if any can be identified. The Service works with Action agencies and Applicants in developing reasonable and prudent alternatives. A reasonable and prudent alternative is one that: (1) Can be implemented in a manner consistent with the intended purpose of the action; (2) can be implemented consistent with the scope of the Action agency's legal authority and jurisdiction; and (3) is economically and technologically feasible. The Service will, in most cases, defer to the Action agency's expertise and judgment as to the feasibility of an alternative. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of a project. Costs associated with implementing reasonable and prudent alternatives vary accordingly.

In summary, the potential for intensive or extensive agricultural use or irrigation water resource development will not be extinguished as a direct result of critical habitat designation. Rather, and only if Federal funding or Federal permits are involved, the Federal Action agency will consult with the Service to determine if the activity ''is likely to adversely affect'' the critical habitat. In the worst case, the proposed agricultural use or irrigation water development may involve the development of reasonable and prudent alternatives to prevent adverse modification of the critical habitat.

Chapter VI, Section 4.e. of the DEA and Section 5.c. of the Addendum discuss the indirect impacts resulting from the redistricting of private land in the Agricultural District into the Conservation District. The DEA noted that under a worst-case scenario, areas designated as critical habitat could be placed in the Protective Subzone with the most severe restrictions, which could prevent a new agricultural use or interfere with irrigation water development. As indicated in the Addendum, the likelihood of mandated redistricting is undetermined, but is expected to be small. The assessment of the probabilities of certain indirect impacts in the DEA is based on State

and local laws and regulations; discussions with State and local officials, landowners, and lawyers; and professional judgment. As discussed in the Addendum, the total drop in property value should redistricting of all privately owned Agricultural land occur is estimated at $715,000.

Summary of Changes From the Revised Proposed Rule

Based on a review of public comments received on the proposed determinations of critical habitat, we have reevaluated our proposed designations and included several changes to the final designations of critical habitat. These changes include the following:

(1) We published 88 single species critical habitat units for 41 plant species on Molokai.

(2) The scientific names were changed for the following associated species found in the ''*Supplementary Information*: *Discussion of the Plant Taxa*'' section: *Chenopodium oahuensis* changed to *Chenopodium oahuense* in the discussions of *Schiedea sarmentosa; Cocculus trilobus* changed to *Cocculus orbiculatus* in the discussion of *Brighamia rockii; Elephantopus spicatus* changed to *Pseudoelephantopus spicatus* in the discussion of *Peucedanum sandwicense; Jacquemontia sandwicensis* changed to *Jacquemontia ovalifolia* ssp. *sandwicensis* in the discussion of *Sesbania tomentosa; Lipochaeta integrifolia* changed to *Melanthera integrifolia* in the discussion of *Centaurium sebaeoides*, *Peucedanum sandwicense*, *Sesbania tomentosa*, and *Tetramolopium rockii; Mariscus phleoides* changed to *Cyperus phleoides* in the discussions of *Brighamia rockii* and *Centaurium sebaeoides; Phymatosorus scolopendria* changed to *Phymatosorus grossus* in the discussions of *Brighamia rockii; Pluchea symphytifolia* changed to *Pluchea carolinensis* in the discussions of *Brighamia rockii; Psychotria hexandra* changed to *Psychotria* spp. in the discussions of *Adenophorus periens; Styphelia tameiameiae* changed to *Leptecophylla tameiameiae* in the discussions of *Adenophorus periens*, *Bidens wiebkei*, *Canavalia molokaiensis*, *Diellia erecta*, *Isodendrion pyrifolium*, *Neraudia sericea*, *Platanthera holochila*, *Pritchardia munroi*, *Schiedea lydgatei*, *Schiedea sarmentosa*, *Silene alexandri*, *Silene lanceolata*, *Spermolepis hawaiiensis*, *Stenogyne bifida*, *Vigna o-wahuensis*, and *Zanthoxylum hawaiiense; Tetramolopium cassia* changed to *Tetramolopium* spp. in the discussion of *Brighamia rockii;* and *Viola robusta* changed to *Viola chamissoniana* ssp. *robusta* in the discussion of *Adenophorus periens*.

(3) In order to avoid confusion regarding the number of location occurrences for each species (that do not necessarily represent viable populations) and the number of recovery populations (*e.g.*, 8 to 10 with 100, 300, or 500 reproducing individuals) we changed the word ''population'' to ''occurrence'' and updated the number of occurrences for the following species found in the **SUPPLEMENTARY INFORMATION:** *Discussion of the Plant Taxa* section and ''Table 2.—Summary of existing occurrences on Molokai, and landownership for 51 species reported from Molokai'': *Alectryon macrococcus*, changed from three populations to six occurrences; *Bidens wiebkei*, changed from three populations to five occurrences; *Brighamia rockii*, changed from four populations to five occurrences; *Canavalia molokaiensis*, changed from five populations to seven occurrences; *Centaurium sebaeoides*, changed from five populations to two occurrences; *Clermontia oblongifolia* ssp. *brevipes*, changed from three populations to five occurrences; *Cyanea mannii*, changed from three populations to eight occurrences; *Cyanea procera*, changed from two populations to five occurrences; *Diellia erecta*, changed from three populations to four occurrences; *Hibiscus arnottianus* ssp. *immaculatus*, changed from two populations to three occurrences; *Lysimachia maxima*, changed from two populations to one occurrence; *Peucedanum sandwicense*, changed from four populations to five occurrences; *Schiedea sarmentosa*, changed from two populations to five occurrences; *Sesbania tomentosa*, changed from six populations to nine occurrences; *Tetramolopium rockii*, changed from three populations to four occurrences; and *Zanthoxylum hawaiiense*, changed from two populations to four occurrences.

(4) We updated the number of individuals for the following species found in the **SUPPLEMENTARY INFORMATION:** *Discussion of the Plant Taxa* section: *Schiedea lydgatei* and *Schiedea sarmentosa* changed to greater than 1,000; *Stenogyne bifida* changed to less than 13; *Cyanea grimesiana* ssp. *grimesiana* changed to less than 7; *Hesperomannia arborescens* and *Melicope mucronulata* changed to 3; and *Sesbania tomentosa* changed to over 2,000.

(5) We revised the list of excluded, manmade features in the *Criteria Used to Identify Critical Habitat* and section 17.99 to include additional features based on information received during the public comment periods.

(6) We made revisions to the unit boundaries based on information supplied by commenters, as well as information gained from field visits to some of the sites, that indicated that the primary constituent elements were not present in certain portions of the proposed unit, that certain changes in land use had occurred on lands within the proposed critical habitat that would preclude those areas from supporting the primary constituent elements, or that the areas were not essential to the conservation of the species in question.

(7) As discussed in detail in the ''*Analysis of Impacts Under Section 4(b)(2)*,'' we have determined that the benefits of excluding TNCH's Molokai preserves as critical habitat outweigh the benefits of including them as critical habitat for *Bidens wiebkei*, *Canavalia molokaiensis*, *Centaurium sebaeoides*, *Clermontia oblongifolia* ssp. *brevipes*, *Cyanea mannii*, *Cyanea procera*, *Hedyotis mannii*, *Labordia triflora*, *Lysimachia maxima*, *Mariscus fauriei*, *Melicope mucronulata*, *Phyllostegia mannii*, *Phyllostegia mollis*, *Platanthera holochila*, *Schiedea sarmentosa*, *Silene alexandrii*, *Stenogyne bifida*, *Tetramolopium rockii*, and *Vigna o-wahuense*.

(8) In accordance with the revisions described in (5), we revised sections 17.12 *Endangered and threatened plants* and 17.99 § 17.99 *Critical habitat; plants on the islands of Kauai, Niihau, and Molokai, HI*, as appropriate.

A brief summary of the modifications made to each unit is given below (*see also* Figure 1).

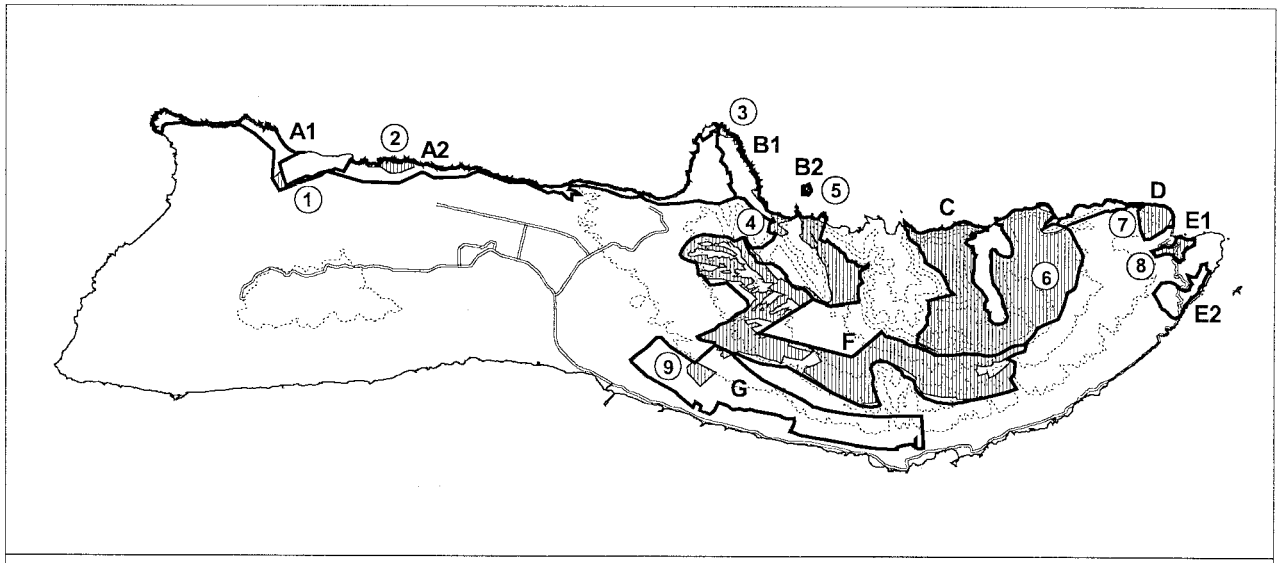


Figure 1
Summary of Changes from Proposed Rule to Final Rule

Final Molokai Critical Habitat Unit
Proposed Molokai Critical Habitat Unit
Major Roads
Coastline
Elevation (1,000-ft. contours)

BILLING CODE 4310–55–C

Molokai A1

This unit was proposed as critical habitat for three species: *Centaurium sebaeoides, Marsilea villosa*, and *Tetramolopium rockii.* We excluded the proposed critical habitat for *Centaurium sebaeoides*, a multi-island species. This area is not essential for the conservation of *Centaurium sebaeoides* because it lacks one or more of the primary constituent elements, has a lower proportion of associated native species than other areas we consider to be essential to the conservation of *Centaurium sebaeoides*, and is not currently managed for conservation of this species. In addition, there are at least 10 other locations that have been identified to meet the recovery goal of 8 to 10 populations throughout its historical range on Molokai and other islands. Habitat also exists on Molokai for *Centaurium sebaeoides* within Moomomi Preserve. The area designated as critical habitat for *Tetramolopium rockii* provides habitat within its historical range for one population.

This modification resulted in the reduction from 472 ha (1,167 ac) to 68 ha (167 ac). This unit was renamed Molokai 1—*Tetramolopium rockii*—a.

In the April 5, 2002, revised proposal, we stated that there was critical habitat for *Marsilea villosa* within Molokai A1. Upon further inspection, we discovered that the actual areas that contain the suitable habitat for this species were inadvertently left out of the proposed unit Molokai A1. We are unable at this time to publish proposed critical habitat for *Marsilea villosa* in this final rule. Critical habitat is proposed for this species on the island of Oahu. We plan to publish a proposed rule to designate critical habitat for *Marsilea villosa* on Molokai subsequent to publication of this final rule for 41 plants on Molokai.

Molokai A2

This unit was proposed as critical habitat for three species: *Centaurium sebaeoides, Sesbania tomentosa*, and *Tetramolopium rockii.* This area is not essential for the conservation of *Centaurium sebaeoides* because it lacks one or more of the primary constituent elements, has a lower proportion of associated native species than other areas we consider to be essential to the conservation of *Centaurium sebaeoides*, and is not currently managed for conservation of this species. In addition, there are at least 10 other locations that have been identified to meet the recovery goal of 8 to 10 populations throughout the historical range on Molokai and other islands. Habitat also exists on Molokai for *Centaurium sebaeoides* within Moomomi Preserve. The areas designated as critical habitat for *Tetramolopium rockii* and *Sesbania tomentosa* provides habitat within their historical range for one population of each species.

This modification resulted in the reduction from 1,532 ha (3,786 ac) to 131 ha (325 ac). This unit was renamed Molokai 2—*Sesbania tomentosa*—a and Molokai 2—*Tetramolopium rockii*—b.

Molokai B1

This unit was proposed as critical habitat for 18 species: *Adenophorus periens, Brighamia rockii, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *brevipes, Cyanea dunbarii, Cyanea grimesiana* ssp. *grimesiana, Cyanea*

procera, Hedyotis mannii, Hibiscus arnottianus ssp. *immaculatus, Ischaemum byrone, Lysimachia maxima, Peucedanum sandwicense, Phyllostegia mannii, Plantago princeps, Platanthera holochila, Schiedea nuttallii, Stenogyne bifida*, and *Tetramolopium rockii.* Modifications were made to this unit to exclude areas not essential to the conservation of *Centaurium sebaeoides, Cyanea grimesiana* ssp. *grimesiana*, and *Peucedanum sandwicense*, all multi-island species. Areas proposed for these three species were excluded because we have proposed adequate habitat elsewhere on Molokai and on other islands within their historical ranges.

We excluded the proposed critical habitat for *Hedyotis mannii, Ischaemum byrone, Plantago princeps*, and *Platanthera holochila*, all multi-island species. This area is not essential to the conservation of these four species because it lacks one or more of the primary constituent elements, has a lower proportion of associated native species than other areas we consider to be essential to the conservation of these four species, and is not currently managed for the conservation of these species. In addition, there are at least eight other locations that have been identified to meet the recovery goal of 8 to 10 populations throughout their historical ranges on other islands. There is habitat designated elsewhere on Molokai for *Ischaemum byrone* and *Plantago princeps.* Habitat exists on Molokai for *Hedyotis mannii* and *Platanthera holochila* within Pelekunu Preserve.

We excluded the proposed critical habitat for *Stenogyne bifida*, an island-endemic species. This area is not essential for the conservation of *Stenogyne bifida* because it lacks one or more of the primary constituent elements, has a lower proportion of associated native species than other areas we consider to be essential to the conservation of *Stenogyne bifida*, and is not currently managed for conservation of this species. In addition, there are at least 10 other locations that have been identified to meet the recovery goal of 8 to 10 populations throughout its historical range on Molokai. In addition, habitat for *Stenogyne bifida* exists within Kamakou and Pelekunu Preserves.

The area designated as critical habitat for the following island-endemic species provides habitat within their historical ranges for one population each of *Hibiscus arnottianus* ssp. *immaculatus* and *Tetramolopium rockii*, two populations of *Clermontia oblongifolia* ssp. *brevipes*, three populations of *Cyanea procera*, six populations of Lysimachia maxima, and seven populations of *Cyanea dunbarii.*

The area designated as critical habitat for the following multi-island species provides habitat within their historical ranges for one population each of *Adenophorus periens, Brighamia rockii, Centaurium sebaeoides, Peucedanum sandwicense*, and *Schiedea nuttallii*, and two populations of *Phyllostegia mannii.*

These modifications resulted in the reduction from 2,179 ha (5,384 ac) to 909 ha (2,246 ac). This unit was renamed Molokai 3—*Centaurium sebaeoides*—a, Molokai 3—*Tetramolopium rockii*—c, Molokai 4—*Brighamia rockii*—a, Molokai 4—*Hibiscus arnottianus* ssp. *immaculatus*—a, Molokai 6—*Adenophorus periens*—a, Molokai 6—*Brighamia rockii*—c, Molokai 6—*Clermontia oblongifolia* ssp. *brevipes*—a, Molokai 6—*Cyanea dunbarii*—a, Molokai 6—*Cyanea procera*—a, Molokai 6—*Hibiscus arnottianus* ssp. *immaculatus*—b, Molokai 6—*Lysimachia maxima*—a, Molokai 6—*Lysimachia maxima*—b, Molokai 6—*Peucedanum sandwicense*—b, Molokai 6—*Phyllostegia mannii*—a, and Molokai 6—*Schiedea nuttallii*—a.

Molokai B2

This unit was proposed as critical habitat for four species: *Brighamia rockii, Ischaemum byrone, Peucedanum sandwicense*, and *Tetramolopium rockii.* We excluded the proposed critical habitat for *Ischaemum byrone*, a multi-island species. This area is not essential for the conservation of *Ischaemum byrone* because it lacks one or more of the primary constituent elements, has a lower proportion of associated native species than other areas we consider to be essential to the conservation of *Ischaemum byrone*, and is not currently managed for conservation of this species. There are also at least 10 other locations that have been identified to meet the recovery goal of 8 to 10 populations throughout its historical range on Molokai and other islands. The area designated as critical habitat for the island-endemic species *Tetramolopium rockii* provides habitat within its historical range for one population. The area designated as critical habitat for the multi-island species *Brighamia rockii* and *Peucedanum sandwicense* provides habitat within their historical ranges for one population of each species.

This modification resulted in a reduction from 20 ha (50 ac) to 4 ha (10 ac). This unit was renamed Molokai 5—*Brighamia rockii*—b, Molokai 5—*Peucedanum sandwicense*—a, and Molokai 5—*Tetramolopium rockii*—d.

Molokai C

This unit was proposed as critical habitat for 14 species: *Adenophorus periens, Brighamia rockii, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *brevipes, Cyanea grimesiana* ssp. *grimesiana, Diplazium molokaiense, Hesperomannia arborescens, Hibiscus arnottianus* ssp. *immaculatus, Ischaemum byrone, Lysimachia maxima, Melicope reflexa, Peucedanum sandwicense, Phyllostegia mannii*, and *Pteris lidgatei.* Modifications were made to this unit to exclude areas not essential to the conservation of *Ischaemum byrone* and *Peucedanum sandwicense*, both multi-island species. Areas proposed for these two species were excluded because we have proposed adequate habitat elsewhere on Molokai and on other islands within their historical ranges. We excluded the proposed critical habitat for *Centaurium sebaeoides*, a multi-island species. This area is not essential for the conservation of *Centaurium sebaeoides* because it lacks one or more of the primary constituent elements, has a lower proportion of associated native species than other areas we consider to be essential to the conservation of *Centaurium sebaeoides*, and is not currently managed for conservation of this species. There are also at least 10 other locations that have been identified to meet the recovery goal of 8 to 10 populations throughout its historical range on Molokai and other islands. Habitat also exists on Molokai for *Centaurium sebaeoides* within Moomomi Preserve.

The area designated as critical habitat for the following island-endemic species provides habitat within their historical ranges for three populations of *Lysimachia maxima*, four to five populations of *Hibiscus arnottianus* ssp. *immaculatus*, five to six populations of *Clermintia oblongifolia* ssp. *brevipes*, and eight populations of *Melicope reflexa.*

The area designated as critical habitat for the following multi-island species provides habitat within their historical ranges for one population each of *Diplazium molokaiense* and *Peucedanum sandwicense:* two populations each of *Cyanea grimesiana* ssp. *grimesiana, Hesperomannia arborescens*, and *Ischaemum byrone;* three populations each of *Adenophorus periens, Brighamia rockii*, and *Pteris lydgatei;* and five populations of *Phyllostegia mannii.*

These modifications resulted in the reduction from 4,507 ha (11,138 ac) to

4,423 ha (10,930 ac). This unit was renamed Molokai 6—*Adenophorus periens*—b, Molokai 6—*Adenophorus periens*—c, Molokai 6—*Brighamia rockii*—d, Molokai 6—*Brighamia rockii*—e, Molokai 6—*Clermontia oblongifolia* ssp. *brevipes*—b, Molokai 6—*Clermontia oblongifolia* ssp. *brevipes*—c, Molokai 6—*Cyanea grimesiana* ssp. *grimesiana*—a, Molokai 6—*Diplazium molokaiense*—a, Molokai 6—*Hesperomannia arborescens*—a, Molokai 6—*Hesperomannia arborescens*—b, Molokai 6—*Hibiscus arnottianus* ssp. *immaculatus*—c, Molokai 6—*Hibiscus arnottianus* ssp. *immaculatus*—d, Molokai 6—*Ischaemum byrone*—a, Molokai 6—*Ischaemum byrone*—b, Molokai 6—*Lysimachia maxima*—c, Molokai 6—*Melicope reflexa*—a, Molokai 6—*Melicope reflexa*—b, Molokai 6—*Peucedanum sandwicense*—c, Molokai 6—*Phyllostegia mannii*—b, Molokai 6—*Phyllostegia mannii*—c, and Molokai 6—*Pteris lidgatei*—a.

Molokai D

This unit was proposed as critical habitat for four species: *Bidens wiebkei, Centaurium sebaeoides, Ischaemum byrone*, and *Peucedanum sandwicense.* We excluded the proposed critical habitat for *Centaurium sebaeoides, Ischaemum byrone*, and *Peucedanum sandwicense*, all multi-island species. This area is not essential for the conservation of *Centaurium sebaeoides, Ischaemum byrone*, and *Peucedanum sandwicense* because it lacks one or more of the primary constituent elements, has a lower proportion of associated native species than other areas we consider to be essential to the conservation of these species, is not currently managed for conservation of this species. In addition, there are at least 10 other locations that have been identified to meet the recovery goal of 8 to 10 populations throughout their historical ranges on Molokai and other islands. Habitat also exists on Molokai for *Centaurium sebaeoides* within Moomomi Preserve. The area designated as critical habitat for the island-endemic species, *Bidens wiebkei*, provides habitat within its historical range for two populations.

These modifications resulted in the reduction from 466 ha (1,153 ac) to 240 ha (593 ac). This unit was renamed Molokai 7—*Bidens wiebkei*—b.

Molokai E1

This unit was proposed as critical habitat for one species: *Bidens wiebkei.* Modifications were made to this unit to exclude areas not essential to the conservation of *Bidens wiebkei*, an island-endemic, because we have designated adequate habitat elsewhere on Molokai within its historical range. Habitat also exists within Pelekunu and Kamakou preserves. The area designated as critical habitat for *Bidens wiebkei* provides habitat within its historical range for two populations.

These modifications resulted in the reduction from 127 ha (315 ac) to 124 ha (305 ac). This unit was renamed Molokai 8—*Bidens wiebkei*—c.

Molokai E2

This unit was proposed as critical habitat for one species: *Bidens wiebkei.* This unit was excluded from critical habitat because the area is not essential to the conservation of this species. The area is highly degraded. This area is not essential for the conservation of *Bidens wiebkei* because it lacks one or more of the primary constituent elements, has a lower proportion of associated native species than other areas we consider to be essential to the conservation of *Bidens wiebkei*, and is not currently managed for conservation of this species. In addition, there are at least 8 other locations that have been identified to meet the recovery goal of 8 to 10 populations throughout its historical range on Molokai. Habitat also exists on Molokai for *Bidens wiebkei* within Kamakou and Pelekunu preserves. This modification resulted in the complete removal of this unit (332 ha (821 ac)) from the final designation.

Molokai F

This unit was proposed as critical habitat for 34 species: *Adenophorus periens, Alectryon macrococcus, Bidens wiebkei, Canavalia molokaiensis, Clermontia oblongifolia* ssp. *brevipes, Ctenitis squamigera, Cyanea dunbarii, Cyanea grimesiana* ssp. *grimesiana, Cyanea mannii, Cyanea procera, Diellia erecta, Eugenia koolauensis, Flueggea neowawraea, Hedyotis mannii, Labordia triflora, Lysimachia maxima, Mariscus fauriei, Melicope mucronulata, Melicope reflexa, Neraudia sericea, Phyllostegia mannii, Phyllostegia mollis, Platanthera holochila, Plantago princeps, Schiedea lydgatei, Schiedea nuttallii, Schiedea sarmentosa, Sesbania tomentosa, Silene alexandri, Silene lanceolata, Spermolepis hawaiiensis, Stenogyne bifida, Vigna o-wahuensis*, and *Zanthoxylum hawaiiense.* Modifications were made to this unit to exclude areas not essential to the conservation of *Alectryon macrococcus, Diellia erecta, Flueggea neowawraea, Mariscus fauriei, Melicope mucronulata, Neraudia sericea, Plantago princeps*, and *Spermolepis hawaiiensis*, all multi-island species. Areas proposed for these eight species were excluded because we have designated more adequate and more appropriate habitat elsewhere on Molokai and on other islands within their historical ranges. Habitat also exists on Molokai for *Mariscus fauriei* and *Melicope mucronulata* within Pelekunu Preserve. Modifications were also made to this unit to exclude areas not essential to the conservation of *Canavalia molokaiensis, Cyanea dunbarii, Cyanea mannii, Cyanea procera, Schiedea lydgatei, Schiedea sarmentosa, Silene alexandri*, and *Stenogyne bifida*, all island-endemic species. Areas proposed for these eight species were excluded because we have designated adequate and more appropriate habitat elsewhere on Molokai within their historical ranges. Habitat also exists on Molokai for *Canavalia molokaiensis, Cyanea mannii, Cyanea procera, Schiedea sarmentosa, Silene alexandri*, and *Stenogyne bifida* within Kamakou Preserve. We excluded the proposed critical habitat for *Cyanea grimesiana* ssp. *grimesiana*, a multi-island species. This area is not essential for the conservation of *Cyanea grimesiana* ssp. *grimesiana* because it lacks one or more of the primary constituent elements, has a lower proportion of associated native species than other areas we consider to be essential to the conservation of *Cyanea grimesiana* ssp. *grimesiana*, and is not currently managed for conservation of this species. There are also at least 10 other locations that have been identified to meet the recovery goal of 8 to 10 populations throughout its historical range on Molokai and other islands. We excluded the proposed critical habitat for *Hedyotis mannii, Phyllostegia mollis, Platanthera holochila*, and *Vigna o-wahuensis*, all multi-island species. This area is not essential for the conservation of these four species because it lacks one or more of the primary constituent elements, has a lower proportion of associated native species than other areas we consider to be essential to the conservation of these four species, and is not currently managed for conservation of these species. In addition, there are at least 10 other locations that have been identified to meet the recovery goal of 8 to 10 populations per species throughout their historical ranges on other islands. Habitat also exists on Molokai for all four of these species within Pelekunu Preserve.

The area designated as critical habitat for the following island-endemic species provides habitat within their historical

ranges for one population of *Bidens wiebkei*; 3 populations each of *Clermontia oblongifolia* ssp. *brevipes* and *Stenogyne bifida*; 5 populations of *Canavalia molokaiense* and *Cyanea mannii*; 6 populations of *Cyanea procera, Lysimachia maxima*, and *Melicope reflexa*; 7 populations of *Schiedea sarmentosa* and *Silene alexandrii*; 8 populations of *Labordia triflora*; and 10 populations of *Cyanea dunbarii* and *Schiedea lydgatei.* The area designated as critical habitat for the following multi-island species provides habitat within their historical ranges for one population each of *Adenophorus periens, Alectryon macrococcus, Ctenitis squamigera, Diellia erecta, Fluggea neowawraea, Plantago princeps, Schiedea nuttallii, Spermolepis hawaiiensis*, and *Zanthoxylum hawaiiense*; two populations of *Eugenia koolauensis, Phyllostegia mannii*, and *Silene lanceolata*; four populations of *Mariscus fauriei* and *Melicope mucronulata*; and six populations of *Neraudia sericea.*

These modifications resulted in the reduction from 4,956 ha (12,247 ac) to 3,819 ha (9,436 ac). This unit was renamed Molokai 6—*Adenophorus periens*—b, Molokai 6—*Alectryon macrococcus*—a, Molokai 6—*Bidens wiebkei*—a, Molokai 6—*Canavalia molokaiensis*—a, Molokai 6—*Canavalia molokaiensis*—b, Molokai 6—*Canavalia molokaiensis*—c, Molokai 6—*Clermontia oblongifolia* ssp. *brevipes*—b, Molokai 6—*Ctenitis squamigera*—a, Molokai 6—*Cyanea dunbarii*—a, Molokai 6—*Cyanea dunbarii*—b, Molokai 6—*Cyanea dunbarii*—c, Molokai 6—*Cyanea mannii*—a, Molokai 6—*Cyanea mannii*—b, Molokai 6—*Cyanea mannii*—c, Molokai 6—*Cyanea mannii*—d, Molokai 6—*Cyanea mannii*—e, Molokai 6—*Cyanea procera*—a, Molokai 6—*Cyanea procera*—b, Molokai 6—*Diellia erecta*—a, Molokai 6—*Eugenia koolauensis*—a, Molokai 6—*Flueggea neowawraea*—a, Molokai 6—*Labordia triflora*—a, Molokai 6—*Labordia triflora*—b, Molokai 6—*Labordia triflora*—c, Molokai 6—*Labordia triflora*—d, Molokai 6—*Lysimachia maxima*—a, Molokai 6—*Lysimachia maxima*—b, Molokai 6—*Mariscus fauriei*—a, Molokai 6—*Mariscus fauriei*—b, Molokai 6—*Melicope mucronulata*—a, Molokai 6—*Melicope mucronulata*—b, Molokai 6—*Melicope mucronulata*—c, Molokai 6—*Melicope mucronulata*—d, Molokai 6—*Melicope mucronulata*—e, Molokai 6—*Melicope reflexa*—b, Molokai 6—*Neraudia sericea*—a, Molokai 6—*Phyllostegia mannii*—b, Molokai 6—*Plantago princeps*—a, Molokai 6—*Schiedea lydgatei*—a, Molokai 6—*Schiedea lydgatei*—b, Molokai 6—*Schiedea nuttallii*—b, Molokai 6—*Schiedea sarmentosa*—a, Molokai 6—*Schiedea sarmentosa*—b, Molokai 6—*Silene alexandri*—a, Molokai 6—*Silene alexandri*—b, Molokai 6—*Silene lanceolata*—a, Molokai 6—*Spermolepis hawaiiensis*—a, Molokai 6—*Stenogyne bifida*—a, and Molokai 6—*Zanthoxylum hawaiiense*—a.

Molokai G

This unit was proposed as critical habitat for four species: *Hibiscus brackenridgei, Isodendrion pyrifolium, Mariscus fauriei*, and *Sesbania tomentosa.* Modifications were made to this unit to exclude areas not essential to the conservation of these multi-island species. Areas proposed for these four species were excluded because we have designated adequate habitat elsewhere on Molokai and on other islands within their historical ranges. Habitat exists for *Mariscus fauriei* within Pelekunu Preserve. The area designated as critical habitat for these four multi-island species provides habitat within their historical ranges for one population each of *Hibiscus brackenridgei, Isodendrion pyrifolium*, and *Sesbania tomentosa*, and three populations of *Mariscus fauriei.*

These modifications resulted in the reduction from 3,023 ha (7,471 ac) to 130 ha (321 ac). This unit was renamed Molokai 9—*Isodendrion pyrifolium*—a, Molokai 9—*Hibiscus brackenridgei*—a, Molokai 6—*Mariscus fauriei*—b, Molokai 9—*Sesbania tomentosa*—b.

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,'' as defined by the Act, means the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. Section 7 also requires conferences with us on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as, ''* * * a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.''

The relationship between a species' survival and its recovery has been a source of confusion to some in the past. We believe that a species' ability to recover depends on its ability to survive into the future when it is recovery can be achieved; thus, the concepts of long-term survival and recovery are linked. However, in the March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club* v. *Fish and Wildlife Service et al.,* 245 F.3d 434) regarding a not prudent finding, the Court found our definition of destruction or adverse modification as currently contained in 50 CFR 402.02 to be invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species. Nevertheless, 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 contain physical and biological features to 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 lifecycle 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 the areas containing physical and biological features

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 areas occupied by the species, we will designate only areas currently known to be essential. Essential areas should already have one or more of 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 geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species' (50 CFR 424.12(e)). Accordingly, 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. 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 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.

A. Prudency

Designation of critical habitat is not prudent when the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species (50 CFR 424.12(a)(1)).

Due to low numbers of individuals and/or populations and their inherent immobility, the 51 plants may be vulnerable to unrestricted collection, vandalism, or disturbance. We examined the evidence currently available for each of these taxa and found specific evidence of vandalism, disturbance, and/or the threat of unrestricted collection for one species of *Pritchardia,* the native palm, on Molokai. At the time of listing, we determined that designation of critical habitat was not prudent for Pritchardia munroi because it would increase the degree of threat from vandalism or collecting, and would provide no benefit (57 FR 46325). We received information on the commercial trade in palms conducted through the Internet (Grant Canterbury, USFWS, 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 munroi.* 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 Molokai. First, it is easy to identify, and second, it may be 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 this species of palm may be attractive to such collectors. Although the final listing rule and proposed critical habitat do not list vandalism or overcollection as a threats, in light of documented vandalism and overcollection events on species in the same genus on Kauai, we believe that *Pritchardia munroi* is vulnerable to the same types of threats because of the similarity in appearance of the species.

In addition, we believe that designation would not provide significant benefits that would outweigh these increased risks. First, *Pritchardia munroi* does not occur on Federal land. It is in a remote location, not accessible to standard vehicles. It is, therefore, unlikely that the land on which it is found will be developed. 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 the species that it does 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 U.S. Department of Agriculture, the U.S. Department of 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, provides additional value to the species, (*e.g.*, by identifying areas important for conservation and calling attention to those areas in need of special protection). However, for this 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 determine that designation of critical habitat for *Pritchardia munroi* is not prudent.

We made final prudent findings for the following 29 multi-island species in other published final critical habitat rules: *Adenophorus periens, Alectryon macrococcus, Bonamia menziesii, Brighamia rockii, Centaurium sebaeoides, Ctenitis squamigera, Cyanea grimesiana ssp. grimesiana, Cyperus trachysanthos, Diellia erecta, Diplazium molokaiense, Flueggea neowawraea,*

Hedyotis mannii, Hesperomannia arborescens, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Labordia triflora, Mariscus fauriei, Melicope munroi, Peucedanum sandwicense, Plantago princeps, Platanthera holochila, Schiedea nuttallii, Sesbania tomentosa, Silene lanceolata, Solanum incompletum, Spermolepis hawaiiensis, Vigna o-wahuensis, and *Zanthoxylum hawaiiense* (64 FR 48307, 68 FR 1220, 68 FR 9116)

Three species no longer occur on Molokai but are reported from one or more other islands. To find whether critical habitat would be prudent for these three species, we analyzed the potential threats and benefits for each species in accordance with the court's orders. These three 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 available for these three species and have not, at this time, found specific evidence of taking, vandalism, collection, or trade of these species or of similar species. Consequently, while we remain concerned that these activities could potentially threaten *Eugenia koolauensis, Phyllostegia mollis,* or *Pteris lidgatei* 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 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 *Eugenia koolauensis, Phyllostegia mollis,* and *Pteris lidgatei* there would be some benefits to designating 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 modifies critical habitat. None of these three species are reported from Federal lands on Molokai where actions are subject to section 7 consultation. However, all three of these species are reported from Federal lands or lands that are administered by a Federal agency on Oahu (*Eugenia koolauensis* is reported from the United States Army's Kahuku Training Area; *Phyllostegia mollis* is reported from the United States Army's Schofield Barracks Military Reservation/Schofield Barracks East Range; and *Pteris lidgatei* is reported from the United States Army's Schofield Barracks Military Reservation/Schofield Barracks East Range and Kawailoa Training Area, as well as the Service's Oahu Forest National Wildlife Refuge). While a critical habitat designation for habitat currently occupied by *Eugenia koolauensis, Phyllostegia mollis,* and *Pteris lidgatei* would not likely change the section 7 consultation outcome 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 find that designating critical habitat is prudent for *Eugenia koolauensis, Phyllostegia mollis,* and *Pteris lidgatei.*

We examined the evidence available for the other 18 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 18 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 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; (2) focusing conservation activities; (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 18 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 modifies critical habitat. One of these species is reported on or near Federal lands (*see* Table 2), where actions are subject to section 7 consultation. Although a majority of the species considered in this rule 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, there may be instances where section 7 consultation would be triggered only if critical habitat were designated. There would also be some educational or informational benefits to the designation of critical habitat. Benefits of designation would include the notification of land owners, 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, designation of critical habitat is prudent for these 18 plant species: *Bidens wiebkei, Canavalia molokaiensis, Clermontia oblongifolia* ssp. *brevipes, Cyanea dunbarii, Cyanea mannii, Cyanea procera, Hibiscus arnottianus* ssp. *immaculatus, Lysimachia maxima, Marsilea villosa, Melicope mucronulata, Melicope reflexa, Neraudia sericea, Phyllostegia mannii, Schiedea lydgatei, Schiedea sarmentosa, Silene alexandri, Stenogyne bifida,* and *Tetramolopium rockii.*

B. 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 *Adenophorus periens, Alectryon macrococcus, Bidens wiebkei, Brighamia rockii, Canavalia molokaiensis, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *brevipes, Ctenitis squamigera, Cyanea dunbarii, Cyanea grimesiana* ssp. *grimesiana, Cyanea mannii, Cyanea procera, Diellia erecta, Diplazium molokaiense, Eugenia koolauensis, Flueggea neowawraea, Hesperomannia arborescens, Hibiscus arnottianus* ssp. *immaculatus, Hibiscus brackenridgei, Ischaemum byrone,*

Isodendrion pyrifolium, Labordia triflora, Lysimachia maxima, Mariscus fauriei, Melicope mucronulata, Melicope reflexa, Neraudia sericea, Peucedanum sandwicense, Phyllostegia mannii, Plantago princeps, Pteris lidgatei, Schiedea lydgatei, Schiedea nuttallii, Schiedea sarmentosa, Sesbania tomentosa, Silene alexandri, Silene lanceolata, Spermolepis hawaiiensis, Stenogyne bifida, Tetramolopium rockii, 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 Center for Plant Conservation's (CPC's) 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, landownership); the final listing rules for these 41 species; the December 29, 2000, proposal; the April 5, 2002, revised proposal; information received during the public comment periods and public hearings; recent biological surveys and reports; our recovery plans for these species; information received from landowners, land managers, and interested parties on the island of Molokai; discussions with botanical experts; and recommendations from the Hawaii and Pacific Plant Recovery Coordinating Committee (HPPRCC) (see also the discussion below) (CPC *in litt.* 1999; GDSI 2000; HINHP Database 2000; HPPRCC 1998; Service 1995, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001; 65 FR 83158; 67 FR 16492).

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 have 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 to some degree. New location data for many species have 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 specific listed species at issue. As a result, the critical habitat designations in this 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 sections 3(5)(A)(i) and 4(b)(1)(A) 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. These features 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, 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.

Much of what is known about the specific physical and biological requirements of *Adenophorus periens, Alectryon macrococcus, Bidens wiebkei, Brighamia rockii, Canavalia molokaiensis, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *brevipes, Ctenitis squamigera, Cyanea dunbarii, Cyanea grimesiana* ssp. *grimesiana, Cyanea mannii, Cyanea procera, Diellia erecta, Diplazium molokaiense, Eugenia koolauensis, Flueggea neowawraea, Hesperomannia arborescens, Hibiscus arnottianus* ssp. *immaculatus, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Labordia triflora, Lysimachia maxima, Mariscus fauriei, Melicope mucronulata, Melicope reflexa, Neraudia sericea, Peucedanum sandwicense, Phyllostegia mannii, Plantago princeps, Pteris lidgatei, Schiedea lydgatei, Schiedea nuttallii, Schiedea sarmentosa, Sesbania tomentosa, Silene alexandri, Silene lanceolata, Spermolepis hawaiiensis, Stenogyne bifida, Tetramolopium rockii,* and *Zanthoxylum hawaiiense* is described in the ''*Background*'' section of this final rule. We are unable to identify these features for *Bonamia menziesii, Cyperus trachysanthos, Melicope munroi,* and *Solanum incompletum,* which no longer occur on the island of Molokai, because information on the physical and biological features (*i.e.*, the primary constituent elements) that are considered essential to the conservation of these four species on Molokai is not known. *Bonamia menziesii, Cyperus trachysanthos,* and *Melicope munroi* were last reported on Molokai between 1910 and 1918. According to David Symon (1999), the known distribution of *Solanum incompletum* included Molokai, as well as Kauai, Lanai, Maui, and the island of Hawaii. It is unclear when *Solanum incompletum* was last reported on Molokai, as there are no collections of this species from Molokai in the HINHP Database or the Bishop Museum (Chris Puttock, Bishop Museum, pers comm, 2002). There is currently no information about the plant communities, associated native plant species, locales, and elevations of these four species on Molokai.

All areas designated as critical habitat are within the historical range of the 41 species at issue and contain one or more of the physical or biological features (primary constituent elements) essential for the conservation of the species.

As described in the discussions for each of the 41 species for which we are designating critical habitat, we are defining the primary constituent elements on the basis of the habitat features of the areas from which the plant species are reported, as described by the type of plant community (*e.g.*, mesic *Metrosideros polymorpha* forest), associated native plant species, locale information (*e.g.*, steep rocky cliffs, talus slopes, gulches, streambanks), and elevation. The habitat features provide the ecological components required by the plant. The type of plant community and associated native plant species indicate specific microclimate (localized climatic) 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 Molokai.

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 (National Research Council 1995)) 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 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 41 species. For each of these species, the overall recovery strategy outlined in the approved recovery plans includes: (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 1995a, 1995b, 1996a, 1996b, 1996c, 1997, 1998a, 1998b, 1998c). Thus, the long-term recovery of these species is dependent upon the protection of existing population sites and potentially suitable unoccupied habitat within their 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, reproducing individuals per population for long-lived perennials; 300 mature, reproducing individuals per population for short-lived perennials; and 500 mature, reproducing 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 be very narrowly distributed on a single island, and the proposed critical habitat designations reflect this exception for these species. For example, the recovery goals for *Tetramolopium rockii* are three populations, protected from all threats, with the total number of individuals sustained or exceeded in each population for five consecutive years (Service 1996a). To be considered recovered, the populations of a multi-island species should be distributed among the islands of its known historic range (Service 1995a, 1995b, 1996a, 1996b, 1996c, 1997, 1998a, 1998b, 1998c). 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 same small-scale events (such as landslides), and which contains a minimum of 100, 300, or 500 mature, reproducing individuals, depending on whether the species is a long-lived perennial, short-lived perennial, or annual.

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 a 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 1996; Menges 1990; Murphy *et al.* 1990; Podolsky 2001; 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.

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 longevity, environmental variation, and successional stage of the habitat. Hawaiian species are poorly studied, and the only one of these 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 a single introduction. For recovery of Hawaiian plants, the HPPRCC recommended a general recovery guideline of 100 mature, reproducing individuals per population for long-lived perennial species, 300 mature, reproducing individuals per population for short-lived perennial species, and 500 mature, reproducing 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 population variability analysis models described above (Burgman *et al.* 2001), this approach 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 entire 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 1996; Podolsky 2001; 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 (Meffe and Carroll 1996; Raup 1991). This basic conservation principle of redundancy applies to Hawaiian plant species. By maintaining 8 to 10 viable populations in several 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 recovery. 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 nonnative plants and animals. Establishing and conserving 8 to 10 viable populations on one or more islands 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 the hurricanes that occurred in 1982 and 1992 on Kauai, fires, and nonnative 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 is essential to 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 of Hawaiian plant species 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. 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 nonnative species introductions) (Mangel and Tier 1994; Pimm *et al.* 1998; Stacey and Taper 1992).

In this rule, we have defined the primary constituent elements based on the general habitat features of the areas from which the plants are reported, 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 designating as critical habitat provide some or all of the habitat components essential for the conservation of the 41 plant species.

Our approach to delineating critical habitat units was applied in the following manner:

1. We proposed and will designate critical habitat on an island-by-island basis for ease of understanding for landowners and the public, for ease of conducting the public hearing process, and for ease of conducting public outreach. In Hawaii, landowners and the public are most interested and affected by issues centered on the island on which they reside.

2. We focused on designating units representative of the known current and historical geographic and elevational range of each species; and

3. We designated critical habitat units to allow for expansion of existing wild populations and reestablishment of wild populations within the historic range, as recommended by the recovery plans for each species.

The proposed critical habitat units were delineated by creating rough units for each species by screen digitizing polygons (map units) using ArcView (Environmental Systems Research Institute, Inc.), a computer GIS program. We created polygons by overlaying current and historic plant location points onto digital topographic maps of each of the islands.

We then evaluated the resulting shape files (delineating historic elevational range and potentially, suitable habitat). We refined elevation ranges, and we avoided land areas identified as not suitable for a particular species (*i.e.*, not containing the primary constituent elements). We then considered the resulting shape files for each species to define all suitable habitat on the island, including occupied and unoccupied habitat.

We further evaluated these shape files of suitable habitat. We used several factors to delineate the proposed critical habitat units from these land areas. We reviewed the recovery objectives (as described above) and 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 suitable 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 (3,280 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). We further refined the resulting critical habitat units by using satellite imagery and parcel data to eliminate areas that did not contain the appropriate vegetation or associated native plant species, as well as features such as cultivated agriculture fields, housing developments, and other areas that are unlikely to contribute to the conservation of one or more of the 41 plant species for which critical habitat was proposed on April 5, 2002. We used geographic features (ridge lines, valleys, streams, coastlines, etc.) or manmade features (roads or obvious land use) that created an obvious boundary for a unit as unit area boundaries.

Following publication of the proposed critical habitat rules, some of which were revised, for 255 Hawaiian plants (67 FR 3940, 67 FR 9806, 67 FR 15856, 67 FR 16492, 67 FR 34522, 67 FR 36968, 67 FR 37108), we reevaluated proposed critical habitat, State-wide, for each species using the recovery guidelines (8 to 10 populations with a minimum of 100 mature, reproducing individuals per population for long-lived perennials; 300 mature, reproducing individuals per population for short-lived perennials; and 500 mature, reproducing individuals per population for annuals) to determine if we had inadvertently proposed for designation too much or too little habitat to meet the essential recovery goals of 8 to 10 populations per species distributed among the islands of the species' known historic range (HINHP Database 2000, 2001; Wagner *et al.* 1990, 1999). Based on comments and information we received during the comment periods, we assessed the proposed critical habitat in order to ascertain which areas contained the

highest quality habitat and had the highest likelihood of conserving the species. We ranked areas of the proposed critical habitat by the quality of the primary constituent elements (*i.e.*, intact native plant communities, predominance of associated native plants versus nonnative plants), potential as a conservation area (*i.e.*, whether the land is zoned conservation and whether the landowner is already participating in plant conservation or recovery actions), and current or expected management of known threats (*e.g.*, ungulate control; weed control; nonnative insect, slug, and snail control). We ranked as most essential areas that contain high quality primary constituent elements, are zoned for conservation, and have ongoing or expected threat abatement actions. This ranking process also included determining which habitats were representative of the historic geographical and ecological distributions of the species (*see* ''Primary Constituent Elements''). Areas that are zoned for conservation or have been identified as a State Forest Reserve, NAR, Wildlife Preserve, State Park, or are managed for conservation by a private landowner have a high likelihood of providing conservation benefit to the species and are therefore more essential than other comparable habitat outside of those types of areas. Of these most essential areas, we selected adequate area for our recovery goals of 8 to 10 populations distributed among the islands of each species' historical range. Of the proposed critical habitat for a species, areas that were not ranked most essential and that may provide habitat for populations above the recovery goal of 8 to 10 were determined not essential for the conservation of the species and were excluded from the final designation.

Within the critical habitat boundaries, section 7 consultation is generally necessary, and adverse modification could occur only if the primary constituent elements are affected. Therefore, not all activities within critical habitat would trigger an adverse modification conclusion. In selecting areas of designated critical habitat, 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 41 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 from the maps. In addition, existing manmade features and structures within the boundaries of the mapped unit, such as buildings; roads; aqueducts and other water system features—including, but not limited to, pumping stations, irrigation ditches, pipelines, siphons, tunnels, water tanks, gaging stations, intakes, reservoirs, diversions, flumes, and wells; telecommunications towers and associated structures and equipment; electrical power transmission lines and distribution, and communication facilities and regularly maintained associated rights-of-way and access ways; radars; telemetry antennas; missile launch sites; arboreta and gardens; heiau (indigenous places of worship or shrines) and other archaeological sites; airports; other paved areas; and lawns and other rural residential landscaped areas do not contain one or more of the primary constituent elements and are therefore excluded under the terms of this regulation. Federal actions limited to those areas would not trigger a section 7 consultation unless they affect the species or primary constituent elements in adjacent critical habitat.

In summary, for these species, we utilized the approved recovery plan guidance to identify appropriately sized land units containing essential occupied and unoccupied habitat. Based on the best available information, we believe these areas constitute the essential habitat on Molokai to provide for the recovery of these 41 species.

The critical habitat areas described below constitute our best assessment of the physical and biological features needed for the conservation of the 41 plant species and of the special management needs of these species, and are based on the best scientific and commercial information available and described above. We publish this final rule 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 orders require us to proceed with designation at this time based on the best information available. As new information becomes available, we may consider reevaluating the boundaries of areas that warrant critical habitat designation.

The approximate areas of the designated crtical habitat by landownership or jurisdiction are shown in Table 4.

TABLE 4.—APPROXIMATE CRITICAL HABITAT AREA DESIGNATED BY UNIT AND LANDOWNERSHIP OR JURISDICTION, MOLOKAI, MAUI COUNTY, HAWAII [1]

Unit name	State/local	Private	Federal	Total
Molokai 1—*Tetramolopium rockii*—a		68 ha (167 ac)		68 ha (167 ac)
Molokai 2—*Sesbania tomentosa*—a	57 ha (142 ac)	< 1 ha (< 1 ac)		58 ha (143 ac)
Molokai 2—*Tetramolopium rockii*—b	103 ha (254 ac)	9 ha (23 ac)		112 ha (278 ac)
Molokai 3—*Centaurium sebaeoides*—a	94 ha (233 ac)		1 ha (3 ac)	95 ha (235 ac)
Molokai 3—*Tetramolopium rockii*—c	104 ha (257 ac)		< 1 ha (< 1 ac)	104 ha (257 ac)
Molokai 4—*Brighamia rockii*—a	20 ha (50 ac)			20 ha (50 ac)
Molokai 4—*Hibiscus arnottianus* ssp. *immaculatus*—a	56 ha (139 ac)			56 ha (139 ac)
Molokai 5—*Brighamia rockii*—b	4 ha (10 ac)			4 ha (10 ac)
Molokai 5—*Peucedanum sandwicense*—a	4 ha (10 ac)			4 ha (10 ac)
Molokai 5—*Tetramolopium rockii*—d	4 ha (10 ac)			4 ha (10 ac)

TABLE 4.—APPROXIMATE CRITICAL HABITAT AREA DESIGNATED BY UNIT AND LANDOWNERSHIP OR JURISDICTION, MOLOKAI, MAUI COUNTY, HAWAII [1]—Continued

Unit name	State/local	Private	Federal	Total
Molokai 6—*Adenophorus periens*—a	79 ha (194 ac)	< 1 ha (< 1 ac)		79 ha (194 ac)
Molokai 6—*Adenophorus periens*—b	49 ha (121 ac)	347 ha (858 ac)		396 ha (980 ac)
Molokai 6—*Adenophorus periens*—c	209 ha (517 ac)	5 ha (12 ac)	214 ha (530 ac)	
Molokai 6—*Alectryon macrococcus*—a	125 ha (309 ac)			125 ha (309 ac)
Molokai 6—*Bidens wiebkei*—a		220 ha (543 ac)		220 ha (543 ac)
Molokai 6—*Brighamia rockii*—c	38 ha (94 ac)			38 ha (94 ac)
Molokai 6—*Brighamia rockii*—d	127 ha (313 ac)	17 ha (42 ac)		144 ha (355 ac)
Molokai 6—*Brighamia rockii*—e	83 ha (205 ac)			83 ha (205 ac)
Molokai 6—*Canavalia molokaiensis*—a	80 ha (197 ac)			80 ha (197 ac)
Molokai 6—*Canavalia molokaiensis*—b	< 1 ha (1 ac)	76 ha (187 ac)		76 ha (188 ac)
Molokai 6—*Canavalia molokaiensis*—c	150 ha (371 ac)			150 ha (371 ac)
Molokai 6—*Clermontia oblongifolia* ssp. *brevipes*—a	130 ha (322 ac)	1 ha (3 ac)		131 ha (325 ac)
Molokai 6—*Clermontia oblongifolia* ssp. *brevipes*—b	104 ha (258 ac)	253 ha (626 ac)		358 ha (884 ac)
Molokai 6—*Clermontia oblongifolia* ssp. *brevipes*—c	422 ha (1,042 ac)	5 ha (12 ac)		427 ha (1,054 ac)
Molokai 6—*Ctenitis squamigera*—a		58 ha (144 ac)		58 ha (144 ac)
Molokai 6—*Cyanea dunbarii*—a	195 ha (481 ac)	133 ha (329 ac)		328 ha (810 ac)
Molokai 6—*Cyanea dunbarii*—b	47 ha (115 ac)	41 ha (102 ac)		88 ha (218 ac)
Molokai 6—*Cyanea dunbarii*—c	23 ha (56 ac)			23 ha (56 ac)
Molokai 6—*Cyanea grimesiana* ssp. *grimesiana*—a	1,898 ha (4,690 ac)	235 ha (581 ac)		2,133 ha (5,272 ac)
Molokai 6—*Cyanea mannii*—a	110 ha (272 ac)			110 ha (272 ac)
Molokai 6—*Cyanea mannii*—b	81 ha (200 ac)			81 ha (200 ac)
Molokai 6—*Cyanea mannii*—c	< 1 ha (< 1 ac)	78 ha (192 ac)		78 ha (192 ac)
Molokai 6—*Cyanea mannii*—d	114 ha (283 ac)	46 ha (114 ac)		161 ha (397 ac)
Molokai 6—*Cyanea mannii*—e	< 1 ha (1 ac)	168 ha (415 ac)		168 ha (416 ac)
Molokai 6—*Cyanea procera*—a	301 ha (744 ac)	47 ha (117 ac)		348 ha (861 ac)
Molokai 6—*Cyanea procera*—b	85 ha (211 ac)	287 ha (710 ac)		373 ha (921 ac)
Molokai 6—*Diellia erecta*—a		99 ha (244 ac)		99 ha (244 ac)
Molokai 6—*Diplazium molokaiense*—a	355 ha (876 ac)	13 ha (32 ac)		368 ha (909 ac)
Molokai 6—*Eugenia koolauensis*—a		471 ha (1,164 ac)		471 ha (1,164 ac)
Molokai 6—*Flueggea neowawraea*—a	61 ha (151 ac)			61 ha (151 ac)
Molokai 6—*Hesperomannia arborescens*—a	158 ha (390 ac)	3 ha (6 ac)		160 ha (397 ac)
Molokai 6—*Hesperomannia arborescens*—b	127 ha (315 ac)	47 ha (117 ac)		175 ha (432 ac)
Molokai 6—*Hibiscus arnottianus* ssp. *immaculatus*—b	108 ha (268 ac)			108 ha (268 ac)
Molokai 6—*Hibiscus arnottianus* ssp. *immaculatus*—c	213 ha (527 ac)	4 ha (11 ac)		218 ha (538 ac)
Molokai 6—*Hibiscus arnottianus* ssp. *immaculatus*—d	146 ha (361 ac)	130 ha (320 ac)		276 ha (681 ac)

TABLE 4.—APPROXIMATE CRITICAL HABITAT AREA DESIGNATED BY UNIT AND LANDOWNERSHIP OR JURISDICTION, MOLOKAI, MAUI COUNTY, HAWAII [1]—Continued

Unit name	State/local	Private	Federal	Total
Molokai 6—*Ischaemum byrone*—a	15 ha (37 ac)	15 ha (36 ac)		30 ha (73 ac)
Molokai 6—*Ischaemum byrone*—b		28 ha (70 ac)		28 ha (70 ac)
Molokai 6—*Labordia triflora*—a	2 ha (5 ac)			2 ha (5 ac)
Molokai 6—*Labordia triflora*—b		2 ha (6 ac)		2 ha (6 ac)
Molokai 6—*Labordia triflora*—c		13 ha (32 ac)		13 ha (32 ac)
Molokai 6—*Labordia triflora*—d	81 ha (201 ac)	442 ha (1,091 ac)		523 ha (1,292 ac)
Molokai 6—*Lysimachia maxima*—a	408 ha (1,008 ac)			408 ha (1,008 ac)
Molokai 6—*Lysimachia maxima*—b	65 ha (161 ac)	376 ha (930 ac)		441 ha (1,091 ac)
Molokai 6—*Lysimachia maxima*—c	400 ha (987 ac)	15 ha (36 ac)		414 ha (1,023 ac)
Molokai 6—*Mariscus fauriei*—a	9 ha (22 ac)			9 ha (22 ac)
Molokai 6—*Mariscus fauriei*—b	304 ha (751 ac)	3 ha (6 ac)		307 ha (758 ac)
Molokai 6—*Melicope mucronulata*—a	84 ha (207 ac)			84 ha (207 ac)
Molokai 6—*Melicope mucronulata*—b	84 ha (207 ac)	< 1 ha (< 1 ac)		84 ha (208 ac)
Molokai 6—*Melicope mucronulata*—c		72 ha (177 ac)		72 ha (177 ac)
Molokai 6—*Melicope mucronulata*—d	113 ha (278 ac)	14 ha (36 ac)		127 ha (314 ac)
Molokai 6—*Melicope mucronulata*—e	60 ha (147 ac)	30 ha (73 ac)		89 ha (221 ac)
Molokai 6—*Melicope reflexa*—a	476 ha (1,176 ac)	8 ha (19 ac)		484 ha (1,195 ac)
Molokai 6—*Melicope reflexa*—b	397 ha (980 ac)	1,829 ha (4,520 ac)		2,226 ha (5,500 ac)
Molokai 6—*Neraudia sericea*—a		116 ha (286 ac)		116 ha (286 ac)
Molokai 6—*Peucedanum sandwicense*—b	61 ha (150 ac)			61 ha (150 ac)
Molokai 6—*Peucedanum sandwicense*—c		84 ha (207 ac)		84 ha (207 ac)
Molokai 6—*Phyllostegia mannii*—a	480 ha (1,185 ac)			480 ha (1,185 ac)
Molokai 6—*Phyllostegia mannii*—b	118 ha (292 ac)	378 ha (934 ac)		496 ha (1,226 ac)
Molokai 6—*Phyllostegia mannii*—c	441 ha (1,089 ac)	11 ha (28 ac)		452 ha (1,117 ac)
Molokai 6—*Plantago princeps*—a		52 ha (129 ac)		52 ha (129 ac)
Molokai 6—*Pteris lidgatei*—a	1,154 ha (2,851 ac)	73 ha (180 ac)		1,227 ha (3,031 ac)
Molokai 6—*Schiedea lydgatei*—a	75 ha (186 ac)	185 ha (458 ac)		261 ha (645 ac)
Molokai 6—*Schiedea lydgatei*—b		163 ha (403 ac)		163 ha (403 ac)
Molokai 6—*Schiedea nuttallii*—a	138 ha (340 ac)			138 ha (340 ac)
Molokai 6—*Schiedea nuttallii*—b		127 ha (313 ac)		127 ha (313 ac)
Molokai 6—*Schiedea sarmentosa*—a	405 ha (1,000 ac)	203 ha (502 ac)		608 ha (1,502 ac)
Molokai 6—*Schiedea sarmentosa*—b		266 ha (657 ac)		266 ha (657 ac)
Molokai 6—*Silene alexandri*—a	405 ha (1,000 ac)	203 ha (502 ac)		608 ha (1,502 ac)
Molokai 6—*Silene alexandri*—b		266 ha (657 ac)		266 ha (657 ac)
Molokai 6—*Silene lanceolata*—a		289 ha (714 ac)		289 ha (714 ac)

TABLE 4.—APPROXIMATE CRITICAL HABITAT AREA DESIGNATED BY UNIT AND LANDOWNERSHIP OR JURISDICTION, MOLOKAI, MAUI COUNTY, HAWAII [1]—Continued

Unit name	State/local	Private	Federal	Total
Molokai 6—*Spermolepis hawaiiensis*—a		85 ha (211 ac)		85 ha (211 ac)
Molokai 6—*Stenogyne bifida*—a	105 ha (259 ac)	480 ha (1,185 ac)		585 ha (1,444 ac)
Molokai 6—*Zanthoxylum hawaiiense*—a		259 ha (640 ac)		259 ha (640 ac)
Molokai 7—*Bidens wiebkei*—b		240 ha (593 ac)		240 ha (593 ac)
Molokai 8—*Bidens wiebkei*—c	123 ha (303 ac)	1 ha (2 ac)		124 ha (305 ac)
Molokai 9—*Isodendrion pyrifolium*—a	101 ha (249 ac)			101 ha (249 ac)
Molokai 9—*Hibiscus brackenridgei*—a	107 ha (264 ac)			107 ha (264 ac)
Molokai 9—*Sesbania tomentosa*—b	88 ha (217 ac)			88 ha (217 ac)
Grand Total*	4,958 ha (12,251 ac)	4,884 ha (12,068 ac)	1 ha (3 ac)	9,843 ha (24,333 ac)

[1] Area differences due to digital mapping discrepancies between TMK data (GDSI 2000) and USGS coastline, or differences due to rounding.
*Totals take into consideration overlapping individual species units.

Critical habitat includes habitat for these 41 species in the northwestern, northeastern, central, and southern portions of Molokai. Lands designated as critical habitat have been divided into a total of 88 units. A brief description of each unit is presented alphabetically below.

Descriptions of Critical Habitat Units

Molokai 6—*Adenophorus periens*—a

This unit is critical habitat for *Adenophorus periens* and is 79 ha (194 ac) on State (Puu Alii NAR) and private land and contains a portion of the eastern ridge of Waikolu Valley. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Adenophorus periens* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, *Metrosideros polymorpha* trunks in *M. polymorpha-Cibotium glaucum* lowland wet forest and cloud forests in well-developed, closed canopy, providing deep shade and high humidity. In addition, it is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Adenophorus periens*—b

This unit is critical habitat for *Adenophorus periens* and is 396 ha (980 ac) on State (Molokai Forest Reserve) and private land. The unit contains a portion of Kaholoapele, Kamakou, Pakui, Puu o Wahaula, and Uapa Summits, and Kalapa, Konomanu, and Kuana Ridges. This unit provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Adenophorus periens* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, *Metrosideros polymorpha* trunks in *M. polymorpha-Cibotium glaucum* lowland wet forest and cloud forests in well-developed, closed canopy, providing deep shade and high humidity. In addition, it is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Adenophorus periens*—c

This unit is critical habitat for *Adenophorus periens* and is 214 ha (530 ac) on State (Molokai Forest Reserve and Olokui NAR) and private land. The unit contains a portion of Kapapa Pali, Olokui and Pohakuulaula Summits. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Adenophorus periens* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, *Metrosideros polymorpha* trunks in *M. polymorpha-Cibotium glaucum* lowland wet forest and cloud forests in well-developed, closed canopy, providing deep shade and high humidity. In addition, it is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Alectryon macrococcus*—a

This unit is critical habitat for *Alectryon macrococcus* and is 125 ha (309 ac) on State land (Molokai Forest Reserve), containing a portion of Kupaia Gulch. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Alectryon macrococcus* and is currently occupied by 5 plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is essential for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to talus slopes or gulches within dry or mesic lowland forest, which are unique to the Molokai range of the species. In addition, it is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being

destroyed by one naturally occurring catastrophic event.

Molokai 6—*Bidens wiebkei*—a

This unit is critical habitat for *Bidens wiebkei* and is 219 ha (542 ac) on private land (Molokai Forest Reserve), containing a portion of Puu Kolekole Summit. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Bidens wiebkei* and is currently occupied by one plant. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is essential for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, slopes in *Metrosideros polymorpha*-dominated mesic shrublands or dry or mesic *M. polymorpha-Styphelia tameiameiae* lowland shrubland. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 7—*Bidens wiebkei*—b

This unit is critical habitat for *Bidens wiebkei* and is 240 ha (593 ac) on private land. The unit contains a portion of Kepuna, Kuinaho, and Lamaloa Gulches, and Lamaloa Head Summit. This unit provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Bidens wiebkei* and is currently occupied by over 200 plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is essential for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, slopes in *Metrosideros polymorpha*-dominated mesic shrublands or dry or mesic *M. polymorpha-Styphelia tameiameiae* lowland shrubland. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 8—*Bidens wiebkei*—c

This unit is critical habitat for *Bidens wiebkei* and is 124 ha (305 ac) on State and private lands. The unit contains a portion of Alanuipuhipaka and Puu o Hoku Ridges, Papio Gulch, and Koalii Summit. This unit provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Bidens wiebkei* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, slopes in *Metrosideros polymorpha*-dominated mesic shrublands or dry or mesic *M. polymorpha-Styphelia tameiameiae* lowland shrubland. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 4—*Brighamia rockii*—a

This unit is critical habitat for *Brighamia rockii* and is 20 ha (51 ac) on State land (Kalaupapa National Historical Park), containing a portion of Kaala Cape. This unit, in combination with unit 5—*Brighamia rockii*—b and unit 6—*Brighamia rockii*—c, provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Brighamia rockii* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, rock crevices on steep basalt sea cliffs, within the spray zone, in coastal dry or mesic forest, *Eragrostis variabilis* mixed coastal cliff communities or shrubland, or *Pritchardia* sp. coastal mesic forest. This unit, together with units 5 and 6, provides for one population within this multi-island species' historical range on Molokai that is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 5—*Brighamia rockii*—b

This unit is critical habitat for *Brighamia rockii* and is 4 ha (10 ac) on State land (Mokapu Bird Sanctuary). This unit is Mokapu Island. This unit in combination, with unit 4—*Brighamia rockii*—a and unit 6—*Brighamia rockii*—c, provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Brighamia rockii* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, rock crevices on steep basalt sea cliffs, within the spray zone, in coastal dry or mesic forest, *Eragrostis variabilis* mixed coastal cliff communities or shrubland, or *Pritchardia* sp. coastal mesic forest. This unit, together with units 4 and 6, provides for one population within this multi-island species' historical range on Molokai that is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Brighamia rockii*—c

This unit is critical habitat for *Brighamia rockii* and is 38 ha (95 ac) on State land (Kalaupapa National Historical Park), containing a portion of Leinaopapio Point. This unit, in combination with unit 4—*Brighamia rockii*—a and unit 5—*Brighamia rockii*—b, provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Brighamia rockii* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, rock crevices on steep basalt sea cliffs, within the spray zone, in coastal dry or mesic forest, *Eragrostis variabilis* mixed coastal cliff communities or shrubland, or *Pritchardia* sp. coastal mesic forest. This unit, together with units 4 and 5, provides for one population within this multi-island species' historical range on Molokai that is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Brighamia rockii*—d

This unit is critical habitat for *Brighamia rockii* and is 145 ha (358 ac) on State (Olokui NAR) and private lands. The unit contains a portion of Ananoio, Oloupena, and Waipu Beaches, Halekou Cape, Puukaoku

Point, Haloku, Oloupena, Puukaoku, and Wailele Falls. This unit provides habitat for 2 populations of 100 mature, reproducing individuals of the long-lived perennial *Brighamia rockii* and is currently occupied by 60 plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is essential for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, rock crevices on steep basalt sea cliffs, within the spray zone, in coastal dry or mesic forest, *Eragrostis variabilis* mixed coastal cliff communities or shrubland, or *Pritchardia* sp. coastal mesic forest. In addition, it is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Brighamia rockii*—e

This unit is critical habitat for *Brighamia rockii* and is 83 ha (206 ac) on State land. The unit contains a portion of Kahiwa Falls and Lepau Point. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Brighamia rockii* and is currently occupied by 5 plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is essential for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, rock crevices on steep basalt sea cliffs, within the spray zone, in coastal dry or mesic forest, *Eragrostis variabilis* mixed coastal cliff communities or shrubland, or *Pritchardia* sp. coastal mesic forest. In addition, it is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Canavalia molokaiensis*—a

This unit is critical habitat for *Canavalia molokaiensis* and is 80 ha (197 ac) on State land (Molokai Forest Reserve). The unit contains a portion of Kapuna Spring and Mokomoko Gulch. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Canavalia molokaiensis* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, exposed sites on steep slopes in dry or mesic *Metrosideros polymorpha-Dodonea viscosa* lowland shrubland. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Canavalia molokaiensis*—b

This unit is critical habitat for *Canavalia molokaiensis* and is 76 ha (187 ac) on State (Molokai Forest Reserve) and private lands. The unit contains a portion of Kahuaawi Gulch. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Canavalia molokaiensis* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, exposed sites on steep slopes in dry or mesic *Metrosideros polymorpha-Dodonea viscosa* lowland shrubland. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Canavalia molokaiensis*—c

This unit is critical habitat for *Canavalia molokaiensis* and is 150 ha (371 ac) on State land (Molokai Forest Reserve), containing a portion of Kaunakakai Gulch. This unit provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *Canavalia molokaiensis* and is currently occupied by an unknown number of plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is essential for the expansion of the present population. The habitat features contained in this unit that are essential for this species include, but are not limited to, exposed sites on steep slopes in dry or mesic *Metrosideros polymorpha-Dodonea viscosa* lowland shrubland. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 3—*Centaurium sebaeoides*—a

This unit is critical habitat for *Centaurium sebaeoides* and is 96 ha (238 ac) on State and Federal lands (Kalaupapa National Historical Park). The unit contains a portion of Kalapapa Peninsula, and Lae Hoolehua and Kaupikiawa Capes. This unit provides habitat for one population of 500 mature, reproducing individuals of the annual *Centaurium sebaeoides* and is currently occupied by several thousand plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is essential for the expansion of the present population. The habitat features contained in this unit that are essential for this species include, but are not limited to, volcanic or clay soils or cliffs in arid coastal areas. In addition, it is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Clermontia oblongifolia* ssp. *brevipes*—a

This unit is critical habitat for *Clermontia oblongifolia* ssp. *brevipes* and is 131 ha (325 ac) on State (Puu Alii NAR) and private lands, containing a portion of the eastern ridge of Waikolu Valley. This unit provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Clermontia oblongifolia* ssp. *brevipes* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, shallow soil on gulch slopes in wet *Metrosideros polymorpha*-dominated forests. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Clermontia oblongifolia* ssp. *brevipes*—b

This unit is critical habitat for *Clermontia oblongifolia* ssp. *brevipes* and is 358 ha (884 ac) on State (Molokai Forest Reserve) and private lands. The unit contains a portion of Kaholoapele, Kamakou, Pakui, Puu o Wahaula, and Uapa Summits, and Kalapa Konomanu and Kuana Ridges. This unit provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *Clermontia oblongifolia* ssp. *brevipes* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, shallow soil on gulch slopes in wet *Metrosideros polymorpha*-dominated forests. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Clermontia oblongifolia* ssp. *brevipes*–c

This unit is critical habitat for *Clermontia oblongifolia* ssp. *brevipes* and is 427 ha (1,054 ac) on State and private lands. The unit contains a portion of Honukakau, Kapuki, and Olokui. This unit provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Clermontia oblongifolia* ssp. *brevipes* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, shallow soil on gulch slopes in wet *Metrosideros polymorpha*-dominated forests. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Ctenitis squamigera*—a

This unit is critical habitat for *Ctenitis squamigera* and is 58 ha (144 ac) on private land. The unit contains a portion of Kalapamoa Ridge and Kua and Wawaia Gulches. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Ctenitis squamigera* and is currently occupied by 20 plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is essential for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, mesic forests or gulch slopes. In addition, it is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Cyanea dunbarii*—a

This unit is critical habitat for *Cyanea dunbarii* and is 328 ha (810 ac) on State (Kalaupapa National Historical Park and Molokai Forest Reserve) and private lands. The unit contains a portion of Waihanau Stream and Waianui Gulch. This unit provides habitat for 7 populations of 300 mature, reproducing individuals of the short-lived perennial *Cyanea dunbarii* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, streambanks in mesic to wet *Dicranopteris linearis-Metrosideros polymorpha* lowland forest on moderate to steep slopes. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Cyanea dunbarii*—b

This unit is critical habitat for *Cyanea dunbarii* and is 88 ha (218 ac) on State (Molokai Forest Reserve) and private lands. The unit contains a portion of Mokomoko Gulch and Kapuna Spring. This unit provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Cyanea dunbarii* and is currently occupied by 30 plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is essential for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, streambanks in mesic to wet *Dicranopteris linearis-Metrosideros polymorpha* lowland forest on moderate to steep slopes. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Cyanea dunbarii*—c

This unit is critical habitat for *Cyanea dunbarii* and is 23 ha (56 ac) on State (Molokai Forest Reserve) land. The unit contains a portion of Kaulolo Ridge and the Molokai Tunnel near Puu Makaliilii. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Cyanea dunbarii* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, streambanks in mesic to wet *Dicranopteris linearis-Metrosideros polymorpha* lowland forest on moderate to steep slopes. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Cyanea grimesiana* ssp. *grimesiana*—a

This unit is critical habitat for *Cyanea grimesiana* ssp. *grimesiana* and is 2,133 ha (5,272 ac) on State (Molokai Forest Reserve and Olokui NAR) and private lands. The unit contains a portion of Kahiwa Falls, Kolo, Kukuinui, and Pohakaunoho Ridges, Puu Lua and Pakui Summit, Malahini Cave, and Kuapuuiki Spring. This unit provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Cyanea grimesiana* ssp. *grimesiana* and is currently occupied by 7 plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is essential for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, mesic forest dominated by *Metrosideros polymorpha* or *M. polymorpha* and *Acacia koa,* or cliffs. In

addition, it is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Cyanea mannii*—a

This unit is critical habitat for *Cyanea mannii* and is 110 ha (272 ac) on State land (Kalaupapa National Historical Park and Molokai Forest Reserve). The unit contains a portion of Waihii Spring and Waianui Gulch. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Cyanea mannii* and is currently occupied by 20 plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is essential for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, the sides of deep gulches in *Metrosideros polymorpha*-dominated montane mesic forests. This unit is geographically separated from the other four units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Cyanea mannii*—b

This unit is critical habitat for *Cyanea mannii* and is 81 ha (199 ac) on State land (Molokai Forest Reserve). The unit contains a portion of Kapuna Spring and Mokomoko Gulch. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Cyanea mannii* and is currently occupied by 50 plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is essential for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, the sides of deep gulches in *Metrosideros polymorpha*-dominated montane mesic forests. This unit is geographically separated from the other four units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Cyanea mannii*—c

This unit is critical habitat for *Cyanea mannii* and is 78 ha (192 ac) on State (Molokai Forest Reserve) and private lands, containing a portion of Kahuaawi Gulch. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Cyanea mannii* and is currently occupied by 50 plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is essential for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, the sides of deep gulches in *Metrosideros polymorpha*-dominated montane mesic forests. This unit is geographically separated from the other four units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Cyanea mannii*—d

This unit is critical habitat for *Cyanea mannii* and is 160 ha (396 ac) on State (Molokai Forest Reserve) and private lands. The unit contains a portion of Kikiakala Summit and Kaunakakai Gulch. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Cyanea mannii* and is currently occupied by 50 plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is essential for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, the sides of deep gulches in *Metrosideros polymorpha*-dominated montane mesic forests. This unit is geographically separated from the other four units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Cyanea mannii*—e

This unit is critical habitat for *Cyanea mannii* and is 168 ha (416 ac) on State (Molokai Forest Reserve) and private lands. The unit contains a portion of Kalaoamoa Ridge, and Kua, Malao, and Wawaia Gulches. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Cyanea mannii* and is currently occupied by 40 plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is essential for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, the sides of deep gulches in *Metrosideros polymorpha*-dominated montane mesic forests. This unit is geographically separated from the other four units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Cyanea procera*—a

This unit is critical habitat for *Cyanea procera* and is 348 ha (860 ac) on State (Kalaupapa National Historical Park, Molokai Forest Reserve, and Puu Alii NAR) and private lands. The unit contains a portion of Kalahuapueo, Kaulahuki, Kikiakala, and Puu Kaeo Summits. This unit provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *Cyanea procera* and is currently occupied by 2 plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is essential for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, walls of steep gulches in wet *Metrosideros polymorpha*-dominated lowland mixed forests. This unit is geographically separated from the other unit designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Cyanea procera*—b

This unit is critical habitat for *Cyanea procera* and is 373 ha (921 ac) on State (Molokai Forest Reserve) and private lands. The unit contains a portion of Kalapamoa Ridge and Makalihua Summit. This unit provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *Cyanea procera* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, walls of steep gulches in wet *Metrosideros*

polymorpha-dominated lowland mixed forests. This unit is geographically separated from the other unit designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Diellia erecta*—a

This unit is critical habitat for *Diellia erecta* and is 99 ha (244 ac) on private land (Molokai Forest Reserve), containing a portion of Makolelau Ridge, just below Puu Kolekole. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Diellia erecta* and is currently occupied by an unknown number of plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is essential for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, mixed mesic forest or mesic *Diospyros sandwicensis* forest. In addition, it is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Diplazium molokaiense*—a

This unit is critical habitat for *Diplazium molokaiense* and is 368 ha (909 ac) on State (Molokai Forest Reserve and Olokui NAR) and private lands, containing a portion of the western ridge of Wailau Valley. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Diplazium molokaiense* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, rocky, wooded gulch walls in wet forests. In addition, it is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Eugenia koolauensis*—a

This unit is critical habitat for *Eugenia koolauensis* and is 471 ha (1,164 ac) on private land (Molokai Forest Reserve). The unit contains a portion of Naa Puu Kulua and Pohakuloa Summits, and Waiakuilani Gulch. This unit provides habitat for 2 populations of 100 mature, reproducing individuals of the long-lived perennial *Eugenia koolauensis* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, rocky gulches or gentle slopes with deep soil. In addition, it is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Flueggea neowawraea*—a

This unit is critical habitat for *Flueggea neowawraea* and is 61 ha (151 ac) on State land (Molokai Forest Reserve). The unit contains a portion of Waihii Spring and Waianui and Mokomoko Gulches. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Flueggea neowawraea* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, gulches in mesic forest. In addition, it is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Hesperomannia arborescens*—a

This unit is critical habitat for *Hesperomannia arborescens* and is 160 ha (397 ac) on State (Molokai Forest Reserve and Olokui NAR) and private lands. The unit contains a portion of Puukaoku and Wailele Falls. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Hesperomannia arborescens* and is currently occupied by 3 plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is essential for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, slopes or ridges in wet *Metrosideros polymorpha-Dicranopteris linearis* lowland forest or mesic *Diospyros sandwicensis-Metrosideros polymorpha* lowland forest transition zones. In addition, it is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Hesperomannia arborescens*—b

This unit is critical habitat for *Hesperomannia arborescens* and is 175 ha (432 ac) on State (Molokai Forest Reserve) and private lands, containing a portion of Kukuinui Ridge. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Hesperomannia arborescens* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, slopes or ridges in wet *Metrosideros polymorpha-Dicranopteris linearis* lowland forest or mesic *Diospyros sandwicensis-Metrosideros polymorpha* lowland forest transition zones. In addition, it is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 4—*Hibiscus arnottianus* ssp. *immaculatus*—a

This unit is critical habitat for *Hibiscus arnottianus* ssp. *immaculatus* and is 56 ha (139 ac) on State land (Kalaupapa National Historical Park), containing a portion of Puu Kauwa Summit. This unit, in combination with unit 6—*Hibiscus arnottianus* ssp. *immaculatus*—b, provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Hibiscus arnottianus* ssp. *immaculatus* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep sea cliffs in mesic forests. This unit, together with unit 6—*Hibiscus arnottianus* ssp. *immaculatus*—b, is

geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Hibiscus arnottianus* ssp. *immaculatus*—b

This unit is critical habitat for *Hibiscus arnottianus* ssp. *immaculatus* and is 108 ha (268 ac) on State land (Kalaupapa National Historical Park and Puu Alii NAR). The unit contains a portion of the eastern ridge at the mouth of Waikolu Valley and the coast from Alapai to Wainene. This unit, in combination with unit 4—*Hibiscus arnottianus* ssp. *immaculatus*—a, provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Hibiscus arnottianus* ssp. *immaculatus* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep sea cliffs in mesic forests. This unit, together with unit 4—*Hibiscus arnottianus* ssp. *immaculatus*—a, is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Hibiscus arnottianus* ssp. *immaculatus*—c

This unit is critical habitat for *Hibiscus arnottianus* ssp. *immaculatus* and is 218 ha (538 ac) on State (Molokai Forest Reserve and Olokui NAR) and private lands. The unit contains a portion of Haloku, Oloupena, and Puukaoku, and Wailele Falls, and Olokui and Pohakuulaula Summits. This unit provides habitat for 2 populations of 100 mature, reproducing individuals of the long-lived perennial *Hibiscus arnottianus* ssp. *immaculatus* and is currently occupied by 15 to 20 plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is essential for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep sea cliffs in mesic forests. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Hibiscus arnottianus* ssp. *immaculatus*—d

This unit is critical habitat for *Hibiscus arnottianus* ssp. *immaculatus* and is 276 ha (681 ac) on State (Molokai Forest Reserve) and private lands. The unit contains a portion of Kahiwa Falls and Kukuinui Ridge. This unit provides habitat for 3 populations of 100 mature, reproducing individuals of the long-lived perennial *Hibiscus arnottianus* ssp. *immaculatus* and is currently occupied by 6 plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is essential for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep sea cliffs in mesic forests. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 9—*Hibiscus brackenridgei*—a

This unit is critical habitat for *Hibiscus brackenridgei* and is 101 ha (249 ac) on State land, containing a portion of Kamiloloa, just above Makakiloia. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Hibiscus brackenridgei* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, slopes in lowland dry forest and shrubland. In addition, it is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Ischaemum byrone*—a

This unit is critical habitat for *Ischaemum byrone* and is 30 ha (75 ac) on State (Olokui NAR) and private lands. The unit contains a portion of Puukaoku Point and Wailele Falls. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Ischaemum byrone* and is currently occupied by 100 to 1,000 plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is essential for the expansion of the present population. The habitat features contained in this unit that are essential for this species include, but are not limited to, coastal dry shrubland or *Artemisia* cliff communities near the ocean, among rocks or on basalt cliffs or talus slopes. In addition, it is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Ischaemum byrone*—b

This unit is critical habitat for *Ischaemum byrone* and is 29 ha (72 ac) on private land. The unit contains a portion of Kahiwa and Waiahookalo Gulches, Kikipua, Lepau, and Milo Points, and Waiokala Cape. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Ischaemum byrone* and is currently occupied by an unknown number of plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is essential for the expansion of the present population. The habitat features contained in this unit that are essential for this species include, but are not limited to, coastal dry shrubland or *Artemisia* cliff communities near the ocean, among rocks or on basalt cliffs or talus slopes. In addition, it is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 9—*Isodendrion pyrifolium*—a

This unit is critical habitat for *Isodendrion pyrifolium* and is 107 ha (264 ac) on State land, containing a portion of Kamiloloa, just above Makakiloia. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Isodendrion pyrifolium* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species

include, but are not limited to, dry shrublands. In addition, it is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Labordia triflora*—a

This unit is critical habitat for *Labordia triflora* and is 2 ha (5 ac) on State land (Molokai Forest Reserve), containing a portion of Kupaia Gulch. This unit, in combination with unit 6—*Labordia triflora*—b, unit 6—*Labordia triflora*—c, and lands within TNCH's Pelekunu Preserve, provides habitat for 4 populations of 100 mature, reproducing individuals of the long-lived perennial *Labordia triflora* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, gulch slopes in mixed mesic *Metrosideros polymorpha* forest. This unit, together with units 6—*Labordia triflora*—b and 6—*Labordia triflora*—c, is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Labordia triflora*—b

This unit is critical habitat for *Labordia triflora* and is 2 ha (6 ac) on private land (Molokai Forest Reserve), containing a portion of the west side of the west fork of Kaweia Gulch. This unit, in combination with unit 6—*Labordia triflora*—a, unit 6—*Labordia triflora*—c, and lands within TNCH's Pelekunu Preserve, provides habitat for 4 populations of 100 mature, reproducing individuals of the long-lived perennial *Labordia triflora* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, gulch slopes in mixed mesic *Metrosideros polymorpha* forest. This unit, together with units 6—*Labordia triflora*—a and 6—*Labordia triflora*—c, is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Labordia triflora*—c

This unit is critical habitat for *Labordia triflora* and is 13 ha (32 ac) on private land (Molokai Forest Reserve), containing a portion of the east side of the east fork of Kaweia Gulch, near Puu Kolekole. This unit, in combination with unit 6—*Labordia triflora*—a, unit 6—*Labordia triflora*—b, and lands within TNCH's Pelekunu Preserve, provide habitat for 4 populations of 100 mature, reproducing individuals of the long-lived perennial *Labordia triflora* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, gulch slopes in mixed mesic *Metrosideros polymorpha* forest. This unit, together with units 6—*Labordia triflora*—a and 6—*Labordia triflora*—b, is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Labordia triflora*—d

This unit is critical habitat for *Labordia triflora* and is 523 ha (1,292 ac) on State (Molokai Forest Reserve) and private lands. The unit contains a portion of Kaluaaha, Makalihua, and Maunaoluolu Summits, Lae o Kapuna Ridge, and Pelekunu Gulch. This unit provides habitat for 4 populations of 100 mature, reproducing individuals of the long-lived perennial *Labordia triflora* and is currently occupied by 10 plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is essential for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, gulch slopes in mixed mesic *Metrosideros polymorpha* forest. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Lysimachia maxima*—a

This unit is critical habitat for *Lysimachia maxima* and is 408 ha (1,009 ac) on State land (Kalaupapa National Historical Park, Molokai Forest Reserve, and Puu Alii NAR). The unit contains a portion of Kalahuapueo, Ohialele, and Puu Kaeo Summits. This unit provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *Lysimachia maxima* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Lysimachia maxima*—b

This unit is critical habitat for *Lysimachia maxima* and is 441 ha (1,090 ac) on State (Molokai Forest Reserve) and private lands. The unit contains a portion of Kalapa, Konomanu, and Kalapamoa Ridges, and Lehuulua and Puu Haha Summits. This unit provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *Lysimachia maxima* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Lysimachia maxima*—c

This unit is critical habitat for *Lysimachia maxima* and is 414 ha (1,023 ac) on State (Molokai Forest Reserve and Olokui NAR) and private lands, containing a portion of Kolo Ridge. This unit provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *Lysimachia maxima* and is currently

unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Mariscus fauriei*—a

This unit is critical habitat for *Mariscus fauriei* and is 9 ha (22 ac) on State land (Molokai Forest Reserve), containing a portion of Kaunakakai Gulch. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Mariscus fauriei* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, *Diospyros sandwicensis*-dominated lowland dry forest, which is unique to Molokai for this species. In addition, it is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Mariscus fauriei*—b

This unit is critical habitat for *Mariscus fauriei* and is 307 ha (758 ac) on State (Molokai Forest Reserve) and private lands, containing a portion of Ooa Summit. This unit provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *Mariscus fauriei* and is currently occupied by 20 to 30 plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is essential for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, *Diospyros sandwicensis*-dominated lowland dry forest, which is unique to Molokai for this species. In addition, it is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Melicope mucronulata*—a

This unit is critical habitat for *Melicope mucronulata* and is 84 ha (206 ac) on State land (Molokai Forest Reserve). The unit contains a portion of Waihii Spring and Waianui Gulch. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Melicope mucronulata* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, west- or north-facing slopes in mesic *Diospyros sandwicensis-Metrosideros polymorpha* forest, *M. polymorpha-Dodonaea viscosa* shrubland, or *M. polymorpha-Styphelia tameiameiae* shrubland. In addition, it is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Melicope mucronulata*—b

This unit is critical habitat for *Melicope mucronulata* and is 84 ha (208 ac) on State (Molokai Forest Reserve) and private lands. The unit contains a portion of Kapuna Spring and Mokomoko Gulch. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Melicope mucronulata* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, west- or north-facing slopes in mesic *Diospyros sandwicensis-Metrosideros polymorpha* forest, *M. polymorpha-Dodonaea viscosa* shrubland, or *M. polymorpha-Styphelia tameiameiae* shrubland. In addition, it is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Melicope mucronulata*—c

This unit is critical habitat for *Melicope mucronulata* and is 72 ha (177 ac) on private land (Molokai Forest Reserve), containing a portion of Kuhuaawi Gulch. This unit, in combination with unit 6—*Melicope mucronulata*—d, provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Melicope mucronulata* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, west- or north-facing slopes in mesic *Diospyros sandwicensis-Metrosideros polymorpha* forest, *M. polymorpha-Dodonaea viscosa* shrubland, or *M. polymorpha-Styphelia tameiameiae* shrubland. This unit, together with the other unit, provides for one population within this multi-island species' historical range on Molokai that is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Melicope mucronulata*—d

This unit is critical habitat for *Melicope mucronulata* and is 127 ha (314 ac) on State (Molokai Forest Reserve) and private lands. The unit contains a portion of Kaunakakai and Kapaakea Gulches. This unit in combination, with unit 6—*Melicope mucronulata*—c, provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Melicope mucronulata* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, west- or north-facing slopes in mesic *Diospyros sandwicensis-Metrosideros polymorpha* forest, *M. polymorpha-Dodonaea viscosa* shrubland, or *M. polymorpha-Styphelia tameiameiae* shrubland. This unit, together with the other unit, provides for one population within this multi-island species' historical range on Molokai that is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Melicope mucronulata*—e

This unit is critical habitat for *Melicope mucronulata* and is 89 ha (221 ac) on State (Molokai Forest Reserve) and private lands. The unit contains a portion of Pelekunu, Ohia, Manawai, and Kahananui Gulches. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Melicope mucronulata* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, west- or north-facing slopes in mesic *Diospyros sandwicensis-Metrosideros polymorpha* forest, *M. polymorpha-Dodonaea viscosa* shrubland, or *M. polymorpha-Styphelia tameiameiae* shrubland. In addition, it is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Melicope reflexa*—a

This unit is critical habitat for *Melicope reflexa* and is 484 ha (1,195 ac) on State (Molokai Forest Reserve and Olokui NAR) and private lands. The unit contains a portion of Kapapa Pali, Olokui and Pohakuulaula Summits. This unit provides habitat for 2 populations of 100 mature, reproducing individuals of the long-lived perennial *Melicope reflexa* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, wet *Metrosideros polymorpha*-dominated forest. This unit is geographically separated from the other unit designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Melicope reflexa*—b

This unit is critical habitat for *Melicope reflexa* and is 2,226 ha (5,500 ac) on State (Molokai Forest Reserve) and private lands. The unit contains a portion of Kahiwa and Papalaua Falls, Kaholoapele, Kamakou, Kaunupahu, Kawaiuliuli, Keahiakalio, Naehu, Pakui, Pohakuloa, Puu Lua, Puu o Wahaula, Puu Ohelo, Puuau, Uapa, and Waiopipi Summits, and Kapea Stream. This unit provides habitat for 6 populations of 100 mature, reproducing individuals of the long-lived perennial *Melicope reflexa* and is currently occupied by an unknown number of plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is essential for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, wet *Metrosideros polymorpha*-dominated forest. This unit is geographically separated from the other unit designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Neraudia sericea*—a

This unit is critical habitat for *Neraudia sericea* and is 116 ha (286 ac) on private land (Molokai Forest Reserve), located just below Puu Kolekole. This unit provides habitat for 6 populations of 300 mature, reproducing individuals of the short-lived perennial *Neraudia sericea* and is currently occupied by 50 to 100 plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is essential for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, gulch slopes and bottoms in lowland dry to mesic *Metrosideros polymorpha-Dodonaea viscosa-Styphelia tameiameiae* shrubland or forest. In addition, it is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 5—*Peucedanum sandwicense*—a

This unit is critical habitat for *Peucedanum sandwicense* and is 4 ha (10 ac) on State land (Mokapu Bird Sanctuary). This unit is Mokapu Island. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Peucedanum sandwicense* and is currently occupied by an unknown number of plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is essential for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, cliff habitats in brown soil and talus in *Chamaesyce celastroides* var. *amplectans-Chenopodium oahuense* coastal dry shrubland or *Diospyros sandwicensis* forest. In addition, it is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Peucedanum sandwicense*—b

This unit is critical habitat for *Peucedanum sandwicense* and is 61 ha (151 ac) on State land (Kalaupapa National Historical Park). The unit contains a portion of Alapai Beach and Leinaopapio Point. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Peucedanum sandwicense* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, cliff habitats in brown soil and talus in *Chamaesyce celastroides* var. *amplectans-Chenopodium oahuense* coastal dry shrubland or *Diospyros sandwicensis* forest. In addition, it is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Peucedanum sandwicense*—c

This unit is critical habitat for *Peucedanum sandwicense* and is 84 ha (208 ac) on private land. The unit contains a portion of Kahiwa Falls, Lepau Point, Waiokala Cape, and Waiahookalo Gulch. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Peucedanum sandwicense* and is currently occupied by 7 to 8 plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is essential for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are

essential for this species include, but are not limited to, cliff habitats in brown soil and talus in *Chamaesyce celastroides* var. *amplectans-Chenopodium oahuense* coastal dry shrubland or *Diospyros sandwicensis* forest. In addition, it is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Phyllostegia mannii*—a

This unit is critical habitat for *Phyllostegia mannii* and is 480 ha (1,185 ac) on State land (Kalaupapa National Historical Park and Puu Alii NAR), containing a portion of Ohialele Summit. This unit provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Phyllostegia mannii* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, shaded sites in foggy and windswept, wet, open *Metrosideros polymorpha*-dominated montane forest, unique to Molokai for this species. In addition, it is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Phyllostegia mannii*—b

This unit is critical habitat for *Phyllostegia mannii* and is 496 ha (1,226 ac) on State (Molokai Forest Reserve) and private lands. The unit contains a portion of Kaholoapele, Kamakou, Pakui, Puu o Wahaula, and Uapa Summits, and Kalapa Konomanu and Kuana Ridges. This unit provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Phyllostegia mannii* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, shaded sites in foggy and windswept, wet, open *Metrosideros polymorpha*-dominated montane forest, unique to Molokai for this species. In addition, it is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Phyllostegia mannii*—c

This unit is critical habitat for *Phyllostegia mannii* and is 452 ha (1,117 ac) on State (Molokai Forest Reserve, Olokui NAR) and private lands. The unit contains a portion of Kapapa Pali, and Olokui and Pohakuulaula Summits. This unit provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *Phyllostegia mannii* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, shaded sites in foggy and windswept, wet, open *Metrosideros polymorpha*-dominated montane forest, unique to Molokai for this species. In addition, it is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Plantago princeps*—a

This unit is critical habitat for *Plantago princeps* and is 52 ha (129 ac) on private land (Molokai Forest Reserve). The unit contains a portion of Kakakawawai and Puu Kolekole Summits. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Plantago princeps* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, streambanks in *Metrosideros polymorpha* lowland mesic forest. In addition, it is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Pteris lidgatei*—a

This unit is critical habitat for *Pteris lidgatei* and is 1,227 ha (3,031 ac) on State (Molokai Forest Reserve and Olokui NAR) and private lands. The unit contains a portion of Kolo and Pohakaunoho Ridges. This unit provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *Pteris lidgatei* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep streambanks in wet forest. In addition, it is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Schiedea lydgatei*—a

This unit is critical habitat for *Schiedea lydgatei* and is 261 ha (645 ac) on State (Molokai Forest Reserve) and private lands. The unit contains a portion of Onini and Kawela Gulch. This unit provides habitat for 6 populations of 300 mature, reproducing individuals of the short-lived perennial *Schiedea lydgatei* and is currently occupied by over 300 plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is essential for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, ridges in dry to mesic grassland, shrubland, or forest. This unit is geographically separated from the other unit designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Schiedea lydgatei*—b

This unit is critical habitat for *Schiedea lydgatei* and is 163 ha (403 ac) on private land (Molokai Forest Reserve). The unit contains a portion of Kapuaokoolau and Waiakuilani Gulches. This unit provides habitat for 4 populations of 300 mature, reproducing individuals of the short-lived perennial *Schiedea lydgatei* and is currently occupied by thousands of plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is essential for the expansion of the present population. The habitat features contained in this unit that are essential for this species include, but are not limited to, ridges in dry to mesic grassland, shrubland, or forest. This unit is geographically separated from the other unit designated

as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Schiedea nuttallii*—a

This unit is critical habitat for *Schiedea nuttallii* and is 138 ha (340 ac) on State land (Puu Alii NAR), containing a portion of the eastern ridge of Waikolu Valley. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Schiedea nuttallii* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, streamside grottos in wet *Metrosideros polymorpha-Cheirodendron trigynum* forest, unique to Molokai for this species. In addition, it is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Schiedea nuttallii*—b

This unit is critical habitat for *Schiedea nuttallii* and is 127 ha (313 ac) on private land, containing a portion of Lehuula Summit. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial Schiedea nuttallii and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, streamside grottos in wet *Metrosideros polymorpha-Cheirodendron trigynum* forest, unique to Molokai for this species. In addition, it is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Schiedea sarmentosa*—a

This unit is critical habitat for *Schiedea sarmentosa* and is 608 ha (1,502 ac) on State (Molokai Forest Reserve) and private lands, containing a portion of Kupaia Gulch. This unit provides habitat for 4 populations of 300 mature, reproducing individuals of the short-lived perennial *Schiedea sarmentosa* and is currently occupied by an unknown number of plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is essential for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, slopes in *Metrosideros polymorpha-Dodonaea viscosa* lowland dry or mesic shrubland or dry to mesic forest. This unit is geographically separated from the other unit designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—Schiedea *sarmentosa*—b

This unit is critical habitat for *Schiedea sarmentosa* and is 266 ha (657 ac) on private land (Molokai Forest Reserve), containing a portion of Na Puu Kula Summit. This unit provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *Schiedea sarmentosa* and is currently occupied by over 1,100 plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is essential for the expansion of the present population. The habitat features contained in this unit that are essential for this species include, but are not limited to, slopes in *Metrosideros polymorpha-Dodonaea viscosa* lowland dry or mesic shrubland or dry to mesic forest. This unit is geographically separated from the other unit designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 2—*Sesbania tomentosa*—a

This unit is critical habitat for *Sesbania tomentosa* and is 58 ha (143 ac) on State and private lands. The unit contains a portion of Anahaki Gulch, and Hinanaulua, Kahinaakalani, and Naaukahihi Capes. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Sesbania tomentosa* and is currently occupied by 114 plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is essential for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, *Scaevola sericea* coastal dry shrubland on windswept slopes, sea cliffs and weathered basaltic slopes, unique to Molokai for this species. In addition, it is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 9—*Sesbania tomentosa*—b

This unit is critical habitat for *Sesbania tomentosa* and is 88 ha (217 ac) on State land, containing a portion of Kamiloloa, just above Makakiloia. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Sesbania tomentosa* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, *Scaevola sericea* coastal dry shrubland on windswept slopes, sea cliffs and weathered basaltic slopes, unique to Molokai for this species. In addition, it is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Silene alexandri*—a

This unit is critical habitat for *Silene alexandri* and is 608 ha (1,502 ac) on State (Molokai Forest Reserve) and private lands, containing a portion of Kupaia Gulch. This unit provides habitat for 4 populations of 300 mature, reproducing individuals of the short-lived perennial *Silene alexandri* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, moderate to steep slopes or cliffs in dry forest. This unit is geographically separated from the other unit designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Silene alexandri*—b

This unit is critical habitat for *Silene alexandri* and is 266 ha (657 ac) on private land (Molokai Forest Reserve), containing a portion of Na Puu Kulua Summit. This unit provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *Silene alexandri* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, moderate to steep slopes or cliffs in dry forest. This unit is geographically separated from the other unit designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Silene lanceolata*—a

This unit is critical habitat for *Silene lanceolata* and is 289 ha (714 ac) on private land (Molokai Forest Reserve). The unit contains a portion of Pohakuloa Summit, and Kapuakoolau and Waiakuilani Gulches. This unit provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Silene lanceolata* and is currently occupied by 100 plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is essential for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, gulch slopes, ridge tops, and cliffs in dry to mesic shrubland, unique to Molokai for this species. In addition, it is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Spermolepis hawaiiensis*—a

This unit is critical habitat for *Spermolepis hawaiiensis* and is 85 ha (211 ac) on private land (Molokai Forest Reserve). The unit contains a portion of Kapuakoolau and Waiakuilani Gulches. This unit provides habitat for one population of 500 mature, reproducing individuals of the annual *Spermolepis hawaiiensis* and is currently occupied by 600 plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is essential for the expansion of the present population. The habitat features contained in this unit that are essential for this species include, but are not limited to, ridge crests and gulch slopes in dry to mesic shrubland. In addition, it is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Stenogyne bifida*—a

This unit is critical habitat for *Stenogyne bifida* and is 585 ha (1,445 ac) on State (Molokai Forest Reserve) and private lands. The unit contains a portion of Kakakawawai, Lehuula, Puu Haha, and Puu Kolekole Summits, and Kalapa Konomanu and Kalapamoa Ridges. This unit provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *Stenogyne bifida* and is currently occupied by one plant. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is essential for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, gulch slopes in *Metrosideros polymorpha*-dominated montane mesic to wet forest. This unit is of appropriate size so that each potential recovery population of this island-endemic species is geographically separated enough to avoid their destruction by one naturally occurring catastrophic event.

Molokai 1—*Tetramolopium rockii*—a

This unit is critical habitat for *Tetramolopium rockii* and is 68 ha (167 ac) on private land. The unit contains a portion of Manalo Gulch and the area between the two radio towers to the west of Manalo Gulch. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Tetramolopium rockii* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, hardened calcareous sand dunes or ash-covered basalt in the coastal spray zone or coastal dry shrubland and grassland. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other three units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 2—*Tetramolopium rockii*—b

This unit is critical habitat for *Tetramolopium rockii* and is 112 ha (278 ac) on State and private lands. The unit contains a portion of Anahaki Gulch and Kahinaakalani and Naaukahihi Capes. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Tetramolopium rockii* based on the recovery criteria listed in the recovery plan and is currently occupied by 40,000 plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is essential for the expansion of the present population. The habitat features contained in this unit that are essential for this species include, but are not limited to, hardened calcareous sand dunes or ash-covered basalt in the coastal spray zone or coastal dry shrubland and grassland. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other three units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 3—*Tetramolopium rockii*—c

This unit is critical habitat for *Tetramolopium rockii* and is 105 ha (260 ac) on State and Federal lands (Kalaupapa National Historical Park). The unit contains a portion of Lae Hoolehua, Kaupikiawa, Makalii, and Mokio Capes. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Tetramolopium rockii* based on the recovery criteria listed in the recovery plan and is currently occupied by 50,000 plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is essential for the expansion of the present population. The habitat features contained in this unit that are essential for this species include, but are not limited to, hardened calcareous sand dunes or ash-covered basalt in the coastal spray zone or coastal dry shrubland and grassland.

Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other three units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 5—*Tetramolopium rockii*—d

This unit is critical habitat for *Tetramolopium rockii* and is 4 ha (10 ac) on State lands (Mokapu Bird Sanctuary). The unit is Mokapu Island. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Tetramolopium rockii* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Molokai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, hardened calcareous sand dunes or ash-covered basalt in the coastal spray zone or coastal dry shrubland and grassland. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other three units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Molokai 6—*Zanthoxylum hawaiiense*—a

This unit is critical habitat for *Zanthoxylum hawaiiense* and is 259 ha (640 ac) on private land (Molokai Forest Reserve). The unit contains a portion of Kapuakoolau and Waiakuilani Gulches. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Zanthoxylum hawaiiense* and is currently occupied by 3 plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is essential for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, gulch slopes in mesic *Metrosideros polymorpha* or *Diospyros sandwicensis* forest. In addition, it is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

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 are not likely to 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 that 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 directly 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 (action agency) to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in the 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 measures 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 were 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 actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of that species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal action agency must enter into consultation with us. Through this consultation, the action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions under certain circumstances, including instances when critical habitat is subsequently designated and the Federal agency has retained discretionary involvement, or control over the action 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.

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 formal 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 we believe would avoid the likelihood of resulting in the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Activities on Federal lands that may affect critical habitat of *Adenophorus periens, Alectryon macrococcus, Bidens wiebkei, Brighamia rockii, Canavalia molokaiensis, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *brevipes, Ctenitis squamigera, Cyanea dunbarii, Cyanea grimesiana* ssp. *grimesiana, Cyanea mannii, Cyanea procera, Diellia erecta, Diplazium molokaiense, Eugenia koolauensis, Flueggea neowawraea, Hesperomannia arborescens, Hibiscus arnottianus* ssp. *immaculatus, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Labordia triflora, Lysimachia maxima, Mariscus fauriei, Melicope mucronulata, Melicope reflexa, Neraudia sericea,*

Peucedanum sandwicense, Phyllostegia mannii, Plantago princeps, Pteris lidgatei, Schiedea lydgatei, Schiedea nuttallii, Schiedea sarmentosa, Sesbania tomentosa, Silene alexandri, Silene lanceolata, Spermolepis hawaiiensis, Stenogyne bifida, Tetramolopium rockii, and *Zanthoxylum hawaiiense* 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.*)), the Department of Housing and Urban Development, 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), Environmental Protection Agency (EPA), or Department of Energy), regulation of airport improvement activities by the FAA, and construction of communication sites licensed by the Federal Communications 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 that habitat or that may be affected by that 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 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 that degrades watershed values;

(3) Rural residential construction that includes concrete pads for foundations and the installation of septic systems in wetlands 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 into critical habitat units; and

(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 listed species and the primary constituent elements of their 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).

Analysis of Impacts Under Section 4(b)(2)

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. 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.

Economic Impacts

Following the publication of the revised proposed critical habitat designation on April 5, 2002, a draft economic analysis was prepared to estimate the potential economic impact of the proposed designation in accordance with the *N.M. Cattlegrowers Ass'n* v. *U.S. Fish and Wildlife Serv.,* 248 F.3d 1277 (10th Cir. 2001). The draft analysis was made available for review on August 12, 2002 (67 FR 52419). We accepted comments on the draft analysis until September 30, 2002.

Our draft economic analysis evaluated the potential direct and indirect economic impacts associated with the proposed critical habitat designation for the 46 Molokai plant species over the next ten years. Direct impacts are those related to consultations under section 7 of the Act. They include the cost of completing the section 7 consultation process and potential project modifications resulting from the consultation. Indirect impacts are secondary costs and benefits not directly related to the Act. Examples of indirect impacts include potential effects to property values, potential effects of redistricting of land from agricultural or urban to conservation, and social welfare benefits of ecological improvements.

The categories of potential direct and indirect costs considered in the analysis included the costs associated with: (1) Conducting section 7 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 consultations; (3) uncertainty and public perceptions resulting from the designation of critical habitat including potential indirect costs resulting from the loss of hunting opportunities and the interaction of State and local laws; 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 (*i.e.*, direct costs).

The draft economic analysis included an evaluation of the economic impacts associated implementation of the section 7 provisions of the Act for the 46 Molokai plant species. To quantify the proportion of total potential economic impacts attributable to section 7 implementation, including both the section 7 listing provisions and the proposed critical habitat designation, the analysis evaluated a ''without section 7'' baseline and compared it to a ''with section 7'' scenario. The ''without section 7'' baseline represented the current and expected economic activity under all modifications except those associated with section 7, 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

implementation of section 7 for the 46 Molokai plant species.

Following the close of the comment period on the draft economic analysis, an addendum was completed that incorporated public comments on the draft analysis and made other changes in the draft as necessary. These changes were primarily the result of modifications made to the proposed critical habitat designation based on biological information received during the comment period. In addition, we have examined the economic effects of including the areas identified in the proposed rule as areas not meeting the definition of critical habitat because they were not in need of special management under section 3(5)(a) of the Act.

Together, the draft economic analysis, the addendum and the addendum amendment constitute our final economic analysis. The final economic analysis estimates that, over the next 10 years, the designation co-extensive with the listing may result in potential direct economic costs of between $54,470 and $269,150, and concludes that economic impacts from the designation of critical habitat would not be significant. The reduction of up to $536,600 from the costs estimated in the draft economic analysis is due to the exclusion of proposed unit Molokai E2 from final designation and the significant reduction in size of proposed units Molokai A1, A2, B1, C, D, F, and G (designation of 9,843 ha (24,323 ac) versus 17,614 ha (43,532 ac) as proposed critical habitat, a reduction of approximately 7,771 ha (19,209 ac)).

While our final economic analysis includes an evaluation of potential indirect costs associated with the designation of critical habitat for 46 plant species on Molokai, the reported costs are highly speculative and, in general, thought to have a low probability of occurrence. In addition, the final economic analysis discusses economic benefits in qualitative terms rather than providing quantitative estimates because of the lack of information available to estimate the economic benefits of endangered species preservation and ecosystem improvements.

A more detailed discussion of our economic analysis is contained in the draft economic analysis and the addendum. Both documents are included in our administrative record and are available for inspection at the Pacific Islands Fish and Wildlife Office (*see* **ADDRESSES** section).

No critical habitat units in the proposed rule were excluded or modified due to economic impacts because the expected cost of the designation is not significant. The likely direct cost impact of designating critical habitat on Molokai for the 46 plant species is estimated to be between $5,447 and $27,000 per year over the next ten years.

Other Impacts

Pursuant to section 4(b)(2) of the Act, the Service has decided to exclude approximately 3,731 ha (9,218 ac) within three areas managed by TNCH from final critical habitat designation because the benefits provided by such an exclusion outweigh the benefits provided by a designation of critical habitat.

In the proposed rule (April 4, 2002, 67 FR 16557), the Service solicited comments from the public as to whether certain areas on Molokai should be excluded from final critical habitat, and what methodology we might use to determine if the benefits of such exclusions outweigh the benefits of including such areas as critical habitat. The rationale for our final decision is described below.

Section 4(b)(2) of the Act requires us to consider other relevant impacts, in addition to economic impacts, of designating critical habitat. In the revised proposed determinations of prudency and proposed designations of critical habitat for plant species from the island of Molokai, Hawaii (April 5, 2002; 67 FR 16492), we indicated that we believed that lands managed by TNCH provided adequate special management or protection for 19 of these species, and if any management plans were submitted during the open comment period we would consider whether such plans provide such protections. This was based the definition of critical habitat (section 3(5)), which specifies critical habitat as areas within the geographical area occupied by the species on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection. In order to give meaning to this last clause, we considered that if an area was already adequately managed then there would be no requirement for special management considerations or protection. We believed that adequate special management or protection would be provided by a legally operative plan that addresses the maintenance and improvement of essential habitat elements and that provides for the long-term conservation of the species. The three criteria identified in the proposed rule for determining if a plan provides adequate special management or protection are as follows: (1) A current plan or agreement must be complete and provide sufficient conservation benefit to the species; (2) the plan or agreement must provide assurances that the conservation management strategies will be implemented; and (3) the plan or agreement must provide assurances that the conservation management strategies will be effective (*i.e.*, provide for periodic monitoring and revisions as necessary).

We proposed to not include the TNCH lands pursuant to this interpretation of the definition of critical habitat. However, in a recent opinion (*Center for Biological Diversity* v. *Norton,* Civ. No. 01–409 TUC DCB D. Ariz. Jan. 13, 2003), a Federal district court determined that our definition of critical habitat, as it applies to special management, is not correct. The court stated that ''whether habitat does or does not require special management by defendant or FWS is not determinative on whether or not the habitat is 'critical' to a threatened or endangered species (pages 13–14 of the court's decision).'' We continue to believe that our interpretation was reasonable. However, we nevertheless have not declined to include areas from this final designation because they are adequately managed.

It is important to note that this Court ruling also concluded that, under section 4(b)(2) of the Act, ''It is certainly reasonable to consider a positive working relationship relevant, particularly when that relationship results in the implementation of beneficial natural resource programs, including species preservation.

We have come to a similar conclusion in relation to certain non-Federal lands on Molokai. As explained below, we believe that the exclusion of TNCH lands from critical habitat will help improve and maintain our relationship with TNCH, and it will also provide incentives to other landowners on Molokai to consider implementing similar voluntary conservation activities on their lands. The Service believes such an outcome will provide greater conservation benefits to these listed species than would a critical habitat designation on these TNCH lands.

The Nature Conservancy of Hawaii

TNCH's Kamakou, Moomomi, and Pelekunu Preserves are occupied habitat for 14 species and unoccupied habitat for five species. According to our published recovery plans, recovery of these species will require reproducing, self-sustaining populations located in a geographic array across the landscape,

with population numbers and population locations of sufficient robustness to withstand periodic threats due to natural disaster or biological threats (Service 1995a, 1995b, 1996a, 1996b, 1996c, 1997, 1998a, 1998b, 1998c, 1999, 2001). The highest priority recovery tasks include active management such as plant propagation and reintroduction, fire control, non-native species removal, and ungulate fencing. Failure to implement these active management measures, all of which require voluntary landowner support and participation, virtually assures the extinction of these species. Many of these types of conservation actions in these areas of Molokai are carried out as part of TNCH's participation with landowner incentive-based programs and by actions taken on the landowner's initiative. These activities, which are described in more detail below, require substantial voluntary cooperation by TNCH and other cooperating landowners and local residents.

The following analysis describes the likely conservation benefits of a critical habitat designation compared to the conservation benefits without critical habitat designation. The Service paid particular attention to the following issues: to what extent a critical habitat designation would confer regulatory conservation benefits on these species; to what extent the designation would educate members of the public such that conservation efforts would be noticeably enhanced; and whether a critical habitat designation would have a positive, neutral, or negative impact on voluntary conservation efforts on this privately-owned TNCH land as well as other non-Federal lands on Molokai that could contribute to recovery.

If a critical habitat designation reduces the likelihood that voluntary conservation activities will be carried out on Molokai, and at the same time fails to confer a counter-balancing positive regulatory or educational benefit to the species, then the benefits of excluding such areas from critical habitat outweigh the benefits of including them. Although the results of this type of evaluation will vary significantly depending on the landowners, geographic areas, and species involved, we believe the TNCH lands on Molokai merit this evaluation.

(1) Benefits of Inclusion

Suitable habitat in TNCH's Kamakou, Moomomi, and Pelekunu Preserves exists for the following species: *Bidens wiebkei, Canavalia molokaiensis, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *brevipes, Cyanea mannii, Cyanea procera, Hedyotis mannii, Labordia triflora, Lysimachia maxima, Mariscus fauriei, Melicope mucronulata, Phyllostegia mannii, Phyllostegia mollis, Platanthera holochila, Schiedea sarmentosa, Silene alexandrii, Stenogyne bifida, Tetramolopium rockii,* and *Vigna o—wahuense.* The primary direct benefit of inclusion of these lands as critical habitat would result from the requirement under section 7 of the Act that Federal agencies consult with us to ensure that any proposed Federal actions do not destroy or adversely modify critical habitat.

The benefit of a critical habitat designation would ensure that any actions authorized, funded, or carried out by a Federal agency would not likely destroy or adversely modify any critical habitat. Without critical habitat, some site-specific projects might not trigger consultation requirements under the Act in areas where species are not currently present; in contrast, Federal actions in areas occupied by listed species would still require consultation under section 7 of the Act.

Seventy-four percent of the area on these lands is already occupied habitat for 14 of the 19 listed species. Therefore, any Federal activities that may affect these areas will in all likelihood require section 7 consultation. Historically, we have conducted 19 informal and no formal consultations under section 7 on the entire island of Molokai for any of these plant species. None of these consultations involved the TNCH lands. As a result of the low level of previous Federal activity on these TNCH lands, and after considering the future Federal activities that might occur on these lands, it is the Service's opinion that there is likely to be a low number of future Federal activities that would negatively affect habitat on TNCH lands. The land is in permanent conservation and is not expected to be developed. Section 7 is expected to be limited to Federal funding for conservation activities to improve the habitat for these species, not adversely modify it. The possibility of such activity cannot be ruled out entirely, but it can best be described as having a low likelihood of occurrence. Therefore, we anticipate little additional regulatory benefits from including these preserves in critical habitat beyond what is already provided by the existing section 7 nexus for habitat areas occupied by the listed extant species.

Another possible benefit is that the designation of critical habitat can serve to educate the public regarding the potential conservation value of an area, and this may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation value for certain species. Information about the 19 species for which suitable habitat was identified on TNCH lands on Molokai that reaches a wide audience, including other parties engaged in conservation activities, could have a positive conservation benefit.

While we believe this educational outcome is important for the conservation of these 19 species, we believe it has already been achieved through the existing management, education, and public outreach efforts carried out by TNCH and their conservation partners. The Nature Conservancy of Hawaii has a well-developed public outreach infrastructure that includes magazines, newsletters, and well-publicized public events on Molokai and throughout Hawaii. These and other media extol and explain the conservation importance of these Molokai reserves and their conservation value. A final designation of critical habitat would add little to this effort and would simply affirm what is already known and widely accepted by Hawaii's conservationists, public agencies, and much of the general public concerning the conservation value of these lands. The following discussion on each of the three preserves demonstrates that the public is already aware of the importance of this area for the conservation of these 19 species.

Nineteen species (*Bidens wiebkei, Canavalia molokaiensis, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *brevipes, Cyanea mannii, Cyanea procera, Hedyotis mannii, Labordia triflora, Lysimachia maxima, Mariscus fauriei, Melicope mucronulata, Phyllostegia mannii, Phyllostegia mollis, Platanthera holochila, Schiedea sarmentosa, Silene alexandrii, Stenogyne bifida, Tetramolopium rockii, Vigna o-wahuense*) are reported from TNCH's Moomomi, Kamakou, and Pelekunu Preserves, which are located on Molokai's northwest coast (Moomomi) and in the East Molokai mountains (Kamakou and Pelekunu) (GDSI 2000; HINHP database 2000; TNCH 1993, 1994a, 1994b, 1997, 1999a, 1999b, 1999c). Two of the preserves (Moomomi and Pelekunu) are owned by TNCH, while Kamakou was established by a grant of a perpetual conservation easement from the private landowner to TNCH. All three preserves are included in the State's Natural Area Partnership (NAP) program, which provides matching funds for the management of private lands that have been permanently dedicated to conservation

(TNCH 1993, 1994a, 1994b, 1997, 1999a, 1999b, 1999c).

Under the NAP program, the State of Hawaii provides matching funds on a two-to-one basis for management of private lands dedicated to conservation. In order to qualify for this program, the land must be dedicated in perpetuity through transfer of fee title or a conservation easement to the State or a cooperating entity. The land must be managed by the cooperating entity or a qualified landowner according to a detailed management plan approved by the Board of Land and Natural Resources. Once approved, the 6-year partnership agreement between the State and the managing entity is automatically renewed each year so that there are always 6 years remaining in the term, although the management plan is updated and funding amounts are re-authorized by the board at least every 6 years. By April 1 of any year, the managing partner may notify the State that it does not intend to renew the agreement; however, in such case, the partnership agreement remains in effect for the balance of the existing 6-year term, and the conservation easement remains in full effect in perpetuity. The conservation easement may be revoked by the landowner only if State funding is terminated without the concurrence of the landowner and cooperating entity. Prior to terminating funding, the State must conduct one or more public hearings. The NAP program is funded through real estate conveyance taxes which are placed in a Natural Area Reserve Fund. Participants in the NAP program must provide annual reports to the DLNR and DLNR makes annual inspections of the work in the reserve areas. *See* Haw. Rev. Stat. Secs. 195–1–195–11 and Hawaii Administrative Rules Secs. 13–210.

Management programs within the three preserves are documented in long-range management plans and yearly operational plans. These plans detail management measures that protect, restore, and enhance the rare plants and their habitats within the preserves and in adjacent areas (TNCH 1993, 1994a, 1994b, 1997, 1999a, 1999b, 1999c). These management measures address the factors which led to the listing of the 19 species including control of non-native species of ungulates, rodents, weeds, and fire control. In addition, habitat restoration and monitoring are also included in these plans.

Kamakou Preserve

The primary management goals within Kamakou Preserve are to prevent degradation of native forest by reducing feral ungulate damage; suppress wildfires; and improve or maintain the integrity of native ecosystems in selected areas of the preserve by reducing the effects of non-native plants.

Specific management actions to address feral ungulate impacts include the construction of fences, including strategic fencing (fences placed in proximity to natural barriers such as cliffs); staff hunting; and implementation of organized hunting through the Molokai Hunters Working Group. By monitoring ungulate activity within the preserve, the staff are able to direct hunters to problem areas, thereby increasing hunting success. If increased hunting pressure does not reduce feral ungulate activity in the preserve, the preserve staff will work with the hunting group to identify and implement alternative methods (TNCH 1994, 1999).

The non-native plant control program within Kamakou Preserve focuses on habitat-modifying non-native plants (weeds) and prioritizes them according to the degree of threat to native ecosystems. A weed priority list has been compiled for the preserve, and control and monitoring of the highest priority species are ongoing. Weeds are controlled manually, chemically, or through a combination of both. Preventive measures (prevention protocol) are required by all who enter the preserve. This protocol includes such things as brushing footgear before entering the preserve to remove seeds of non-native plants. In addition, the staff are actively promoting awareness of aggressive non-native plants in Hawaii and their impacts to native ecosystems in the local communities on Molokai through public education at schools, fairs, and displays at the airport.

Wildfire pre-suppression and response plans are coordinated with the Maui County Fire Department and the DOFAW Maui District Forester. The Kamakou Wildfire Management Plan is reviewed annually with the fire department and updated as necessary (TNCH 1994, 1999). In the event of fires in areas bordering the preserve, staff from Kamakou assist with fire suppression in concert with DOFAW staff.

Natural resource monitoring and research address the need to track the biological and physical resources of the preserve and evaluate changes in these resources to guide management programs. Vegetation is monitored throughout the preserve to document long-term ecological changes; rare plant species are monitored to assess population status; and, following fires on the boundaries or within the preserve, burned areas are assessed for ingress of weeds and recovery of native plants. In addition, the preserve staff provide logistical support to scientists and others who are conducting research within the preserve.

In addition, TNCH, DOFAW, the Service and other Federal agencies including the National Park Service, and neighboring landowners of East Molokai's watershed areas have formed a partnership (East Molokai Watershed Partnership) through a memorandum of understanding to ensure the protection of over 8,903 ha (22,000 ac) of land on the island. While the partnership is still in its infancy, the members have agreed, in principle, to participate in cooperative management activities within the East Molokai watershed because they believe that effective management is best achieved through the coordinated actions of all major landowners in the watershed.

Kamakou Preserve provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *Bidens wiebkei;* four populations of 300 mature, reproducing individuals of the short-lived perennial *Canavalia molokaiensis;* two populations of 300 mature, reproducing individuals of the short-lived perennial *Clermontia oblongifolia* ssp. *brevipes;* five populations of 300 mature, reproducing individuals of the short-lived perennial *Cyanea mannii;* four populations of 300 mature, reproducing individuals of the short-lived perennial *Cyanea procera;* four populations of 300 mature, reproducing individuals of the short-lived perennial *Labordia triflora;* one population of 300 mature, reproducing individuals of the short-lived perennial *Lysimachia maxima;* three populations of 300 mature, reproducing individuals of the short-lived perennial *Schiedea sarmentosa;* three populations of 300 mature, reproducing individuals of the short-lived perennial *Silene alexandri;* and three populations of 300 mature, reproducing individuals of the short-lived perennial *Stenogyne bifida.* Critical habitat is designated for these 10 island-endemic species elsewhere on Molokai within their historical ranges to reach the recovery goal of 8 to 10 populations for each species (*see* ''*Descriptions of Critical Habitat Units*'' section). This preserve provides habitat for three populations of 500 mature, reproducing individuals of the short-lived perennial *Mariscus fauriei;* three populations of 100 mature, reproducing individuals of the long-lived perennial *Melicope mucronulata;* and one population of 300 mature, reproducing individuals of the short-lived perennial

Phyllostegia mannii. Critical habitat is designated for these multi-island species elsewhere on Molokai, and proposed on other islands within their historical range to reach the recovery goal of 8 to 10 populations for each species (*see* ''*Descriptions of Critical Habitat Units*'' section).

Kamakou Preserve provides unoccupied habitat for four populations of 300 mature, reproducing individuals of the short-lived perennial *Hedyotis mannii.* Critical habitat is proposed for this multi-island species on Maui and recovery habitat is provided for this species on Lanai under terms of a Memorandum of Agreement with the private landowner (68 FR 1220) within its historical range to reach the recovery goal of 8 to 10 populations. This preserve provides unoccupied habitat for three populations of 300 mature, reproducing individuals of the short-lived perennial *Phyllostegia mollis.* Critical habitat is proposed for this multi-island species on other islands within its historical range to reach the recovery goal of 8 to 10 populations. This preserve provides unoccupied habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *Platanthera holochila.* Critical habitat is also being designated for this multi-island species on Kauai and is proposed on other islands within its historical range to reach the recovery goal of 8 to 10 populations. Lastly, this preserve provides unoccupied habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Vigna o-wahuensis.* Critical habitat is proposed for this multi-island species on other islands within its historical range to reach the recovery goal of 8 to 10 populations.

Moomomi Preserve

The primary management goals within Moomomi Preserve are to prevent degradation of natural communities by reducing feral ungulate damage, and improve or maintain the integrity of native ecosystems in selected areas of the preserve by reducing the effects of non-native plants (TNCH 1999).

Specific management actions to address feral ungulate impacts include the construction of a perimeter fence to keep out livestock and an agreement with the neighboring landowner, Molokai Ranch, in which they will remove livestock within 48 hours of ingress. Analysis of monitoring data collected within the axis deer exclosure will guide future management strategies (TNCH 1999).

As with Kamakou Preserve, the non-native plant control program within Moomomi Preserve focuses on habitat-modifying non-native plants and prioritizes them according to the degree of threat to native ecosystems. A weed priority list has been compiled for the preserve, and control and monitoring of the highest priority species are on-going. Weeds are controlled manually, chemically, or a through a combination of both. Preventive measures (prevention protocol) are required by all who enter the preserve. This protocol includes such things as brushing footgear before entering the preserve to remove seeds of non-native plants. In addition, the staff are actively promoting awareness of aggressive non-native plants in Hawaii and their impacts to native ecosystems in the local communities on Molokai through public education at schools, fairs, and displays at the airport (TNCH 1999).

Natural resource monitoring and research address the need to track the biological and physical resources of the preserve and evaluate changes in these resources to guide management programs. Vegetation is monitored throughout the preserve to document long-term ecological changes; rare plant species are monitored to assess population status. In addition, the preserve staff provide logistical support to scientists and others who are conducting research within the preserve (TNCH 1999).

Moomomi Preserve provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Tetramolopium rockii.* Critical habitat is designated for this island-endemic species elsewhere on Molokai within its historical range (*see* ''*Descriptions of Critical Habitat Units*'' section). This preserve provides habitat for one population of 500 mature, reproducing individuals of the annual *Centaurium sebaeoides.* Critical habitat is designated for this species elsewhere on Molokai, on Kauai, and is proposed on other islands within its historical range to reach the recovery goal of 8 to10 populations (*see* ''*Descriptions of Critical Habitat Units*'' section).

Pelekunu Preserve

The primary management goals within Pelekunu Preserve are to prevent degradation of native forest by reducing feral ungulate damage; and improve or maintain the integrity of native ecosystems in selected areas of the preserve by reducing the effects of non-native plants.

Specific management actions to address feral ungulate impacts include staff hunting; implementation of organized hunting through the Molokai Hunters Working Group; and quarterly transect and aerial monitoring of ungulate activity. By monitoring ungulate activity within the preserve, the staff are able to direct hunters to problem areas, thereby increasing hunting success. If increased hunting pressure does not reduce feral ungulate activity in the preserve, the preserve staff will work with the hunting group to identify and implement alternative methods (TNCH 1999).

As with the other two preserves on Molokai, the non-native plant control program within Pelekunu Preserve focuses on habitat-modifying non-native plants and prioritizes them according to the degree of threat to native ecosystems. A weed priority list has been compiled for the preserve, and control and monitoring of the highest priority species are ongoing. Weeds are controlled manually, chemically, or through a combination of both. Preventive measures (prevention protocol) are required by all who enter the preserve. This protocol includes such things as brushing footgear before entering the preserve to remove seeds of non-native plants. In addition, the staff are actively promoting awareness of aggressive non-native plants in Hawaii and their impacts to native ecosystems in the local communities on Molokai through public education at schools, fairs, and displays at the airport.

Natural resource monitoring and research address the need to track the biological and physical resources of the preserve and evaluate changes in these resources to guide management programs. Vegetation is monitored in the preserve to document long-term ecological changes; and rare plant species are monitored to assess population status. In addition, the preserve staff provide logistical support to scientists and others who are conducting research within the preserve.

Pelekunu Preserve provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *Bidens wiebkei;* one population of 300 mature, reproducing individuals of the short-lived perennial *Canavalia molokaiensis;* and four populations of 300 mature, reproducing individuals of the short-lived perennial *Stenogyne bifida.* Critical habitat is designated for these three island-endemic species elsewhere on Molokai within their historical ranges to reach the recovery goal of 8 to 10 populations for each species (*see* ''*Descriptions of Critical Habitat Units*'' section).

In sum, the Service believes that a critical habitat designation for listed

plants on TNCH lands on Molokai would provide a relatively low level of additional regulatory conservation benefit to each of the plant species beyond what is already provided by existing section 7 consultation requirements due to the physical presence of 14 of the 19 listed species. Any regulatory conservation benefits would accrue through the benefit associated with additional section 7 consultation associated with critical habitat. Based on a review of past consultations and consideration of the likely future activities in this specific area, there is little Federal activity expected to occur on this privately owned land that would trigger section 7 consultation. The Service also believes that a final critical habitat designation provides little additional educational benefits since the conservation value is already well known by the landowner, the State, Federal agencies, private organizations, and the general public, and the area has been identified as suitable and important to the conservation of 19 Molokai plant species through publication in the proposed critical habitat rule and in this final rule.

(2) Benefits of Exclusion

Proactive voluntary conservation efforts are necessary to prevent the extinction and promote the recovery of these listed plant species on Molokai and other Hawaiian islands (Shogren *et al.* 1999, Wilcove and Chen 1998, Wilcove *et al.* 1998). Consideration of this concern is especially important in areas where species have been extirpated and their recovery requires access and permission for reintroduction efforts (Bean 2002, Wilcove *et al.* 1998). For example, five of the 19 species associated with these preserves are extirpated from TNCH lands, and repopulation is likely not possible without human assistance and landowner cooperation.

As described earlier, TNCH has a history of entering into conservation agreements with various Federal and State agencies and other private organizations on their lands. The Nature Conservancy's mission is to preserve the plants, animals and natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive. The Service believes that each of the listed species within TNCH's preserves will benefit substantially from TNCH's voluntary management actions due to a reduction in ungulate browsing and habitat conversion, a reduction in competition with non-native weeds, a reduction in risk of fire, and the reintroduction of species currently extirpated from various areas and for which the technical ability to propagate these species currently exists or will be developed in the near future.

The conservation benefits of critical habitat are primarily regulatory or prohibitive in nature. But on Molokai, simply preventing ''harmful activities'' will not slow the extinction of listed plant species (Bean 2002). Where consistent with the discretion provided by the Act, the Service believes it is necessary to implement policies that provide positive incentives to private landowners to voluntarily conserve natural resources and that remove or reduce disincentives to conservation (Wilcove *et al.* 1998). Thus, we believe it is essential for the recovery of these 19 species to build on continued conservation activities such as these with a proven partner, and to provide positive incentives for other private landowners on Molokai who might be considering implementing voluntary conservation activities but have concerns about incurring incidental regulatory or economic impacts.

Approximately 80 percent of imperiled species in the United States occur partly or solely on private lands where the Service has little management authority (Wilcove *et al.* 1996). In addition, recovery actions involving the reintroduction of listed species onto private lands require the voluntary cooperation of the landowner (Bean 2002, James 2002, Knight 1999, Main *et al.* 1999, Norton 2000, Shogren *et al.* 1999, Wilcove *et al.* 1998). Therefore, ''a successful recovery program is highly dependent on developing working partnerships with a wide variety of entities, and the voluntary cooperation of thousands of non-Federal landowners and others is essential to accomplishing recovery for listed species'' (Crouse *et al.* 2002). Because the Federal government owns relatively little land on Molokai, and because large tracts of land suitable for conservation of threatened and endangered species are mostly owned by private landowners, successful recovery of listed species on Molokai is especially dependent upon working partnerships and the voluntary cooperation of non-Federal landowners.

(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the above considerations, and consistent with the direction provided in section 4(b)(2) of the Act and the recent Federal District Court decision concerning critical habitat (*Center for Biological Diversity* v. *Norton, Civ. No. 01–409 TUC DCB* D. Ariz. Jan. 13, 2003), we have determined that the benefits of excluding TNCH's Molokai preserves as critical habitat outweigh the benefits of including them as critical habitat for *Bidens wiebkei, Canavalia molokaiensis, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *brevipes, Cyanea mannii, Cyanea procera, Hedyotis mannii, Labordia triflora, Lysimachia maxima, Mariscus fauriei, Melicope mucronulata, Phyllostegia mannii, Phyllostegia mollis, Platanthera holochila, Schiedea sarmentosa, Silene alexandrii, Stenogyne bifida, Tetramolopium rockii,* and *Vigna o-wahuense.*

This conclusion is based on the following factors:

1. TNCH's mission is to preserve the plants, animals and natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive. Therefore, all of their preserve lands are currently being managed on a voluntary basis in cooperation with the Service, State, and other private organizations to achieve important conservation goals.

2. In the past, TNCH has cooperated with Federal and State agencies, and private organizations to implement voluntary conservation activities on their lands that have resulted in tangible conservation benefits.

3. Simple regulation of ''harmful activities'' is not sufficient to conserve these species. Landowner cooperation and support is required to prevent the extinction and promote the recovery of all of the listed species on Molokai due to the need to implement proactive conservation actions such as ungulate management, weed control, fire suppression, plant propagation, and outplanting. This need for landowner cooperation is especially acute because the preserves are unoccupied by five of the 19 species. Future conservation efforts, such as translocation of these five plant species back into unoccupied habitat on these lands and expansion of the extant species, will require the cooperation of TNCH and other non-Federal landowners on Molokai. Exclusion of TNCH lands from this critical habitat designation will help the Service maintain and improve this partnership by formally recognizing the positive contributions of TNC to plant recovery, and by streamlining or reducing unnecessary regulatory oversight.

4. Given the current partnership agreements between TNCH and many organizations, the Service believes the additional regulatory and educational benefits of including these lands as critical habitat are relatively small. The designation of critical habitat can serve to educate the general public as well as

conservation organizations regarding the potential conservation value of an area, but this goal is already being accomplished through the identification of this area in the management plans described above. Likewise, there will be little additional Federal regulatory benefit to the species because (a) there is a low likelihood that these proposed critical habitat units will be negatively affected to any significant degree by Federal activities requiring section 7 consultation, and (b) much are already occupied by 14 listed species and a section 7 nexus already exists. The Service is unable to identify any other potential benefits associated with critical habitat for these TNCH preserves.

5. It is well documented that publicly owned lands and lands owned by conservation organizations such as TNCH, alone, are too small and poorly distributed to provide for the conservation of most listed species (Bean 2002, Crouse *et al.* 2002). Excluding these TNCH lands from critical habitat may, by way of example, provide positive social, legal, and economic incentives to other non-Federal landowners on Molokai who own lands that could contribute to listed species recovery if voluntary conservation measures on these lands are implemented (Norton 2000, Main *et al.* 1999, Shogren *et al.* 1999, Wilcove and Chen 1998). As resources allow, the Service would be willing to consider future revisions or amendments to this final critical habitat rule if landowners affected by this rule develop conservation programs or partnerships (*e.g.*, Habitat Conservation Plans, Safe Harbor Agreements, conservation agreements, etc.) on their lands that outweigh the regulatory and educational benefits of a critical habitat designation.

In conclusion, we find that the exclusion of critical habitat on the TNCH Molokai preserves would most likely have a net positive conservation effect on the recovery and conservation of these 19 plant species when compared to the positive conservation effects of a critical habitat designation. As described above, the overall benefits to these species of a critical habitat designation for these TNCH areas are relatively small. In contrast, we believe that this exclusion will enhance our existing partnership with TNCH, and it will set a positive example and provide positive incentives to other non-Federal landowners who may be considering implementing voluntary conservation activities on their lands. We conclude there is a higher likelihood of beneficial conservation activities occurring in these and other areas of Molokai without designated critical habitat than there would be with designated critical habitat in these TNCH preserves.

(4) Exclusion of This Unit Will Not Cause Extinction of the Species

In considering whether or not exclusion of these Preserves might result in the extinction of any of these 19 species, the Service first considered the impacts to the 11 species endemic to Molokai (*Bidens wiebkei*, *Canavalia molokaiensis*, *Clermontia oblongifolia* ssp. *brevipes*, *Cyanea mannii*, *Cyanea procera*, *Labordia triflora*, *Lysimachia maxima*, *Schiedea sarmentosa*, *Silene alexandrii*, *Stenogyne bifida*, and *Tetramolopium rockii*), and second to the eight species known from Molokai and one or more other Hawaiian islands (*Centaurium sebaeoides*, *Hedyotis mannii*, *Mariscus fauriei*, *Melicope mucronulata*, *Phyllostegia mannii*, *Phyllostegia mollis*, *Platanthera holochila*, and *Vigna o-wahuense*).

For both the 11 endemic and the eight ''multi-island'' species, it is the Service's conclusion that the TNCH's mission and management plans will provide as much or more net conservation benefits as would be provided if these preserves were designated as critical habitat. These management plans, which are described above, will provide tangible proactive conservation benefits that will reduce the likelihood of extinction for the listed plants in these areas of Molokai and increase their likelihood of recovery. Extinction for any of these species as a consequence of this exclusion is unlikely because there are no known threats in these preserves due to any current or reasonably anticipated Federal actions that might be regulated under section 7 of the Act. Further, these areas are already occupied by 14 of the 19 species and thereby benefit from the section 7 protections of the Act, should such an unlikely Federal threat actually materialize. The exclusion of these preserves will not increase the risk of extinction to any of these species, and it may increase the likelihood these species will recover by encouraging other landowners to implement voluntary conservation activities as TNCH has done.

In addition, critical habitat is being designated on other areas of Molokai for all 11 of the endemic species (Molokai 6—*Bidens wiebkei*—a, Molokai 7—*Bidens wiebkei*—b, Molokai 8—*Bidens wiebkei*—c, Molokai 6—*Canavalia molokaiensis*—a, Molokai 6—*Canavalia molokaiensis*—b, Molokai 6—*Canavalia molokaiensis*—c, Molokai 6—*Clermontia oblongifolia* ssp. *brevipes*—a, Molokai 6—*Clermontia oblongifolia* ssp. *brevipes*—b, Molokai 6—*Cyanea mannii*—a, Molokai 6—*Cyanea mannii*—b, Molokai 6—*Cyanea mannii*—c, Molokai 6—*Cyanea mannii*—d, Molokai 6—*Cyanea mannii*—e, Molokai 6—*Cyanea procera*—a, Molokai 6—*Cyanea procera*—b, Molokai 6—*Labordia triflora*—a, Molokai 6—*Labordia triflora*—b, Molokai 6—*Labordia triflora*—c, Molokai 6—*Labordia triflora*—d, Molokai 6—*Lysimachia maxima*—a, Molokai 6—*Lysimachia maxima*—b, Molokai 6—*Schiedea sarmentosa*—a, Molokai 6—*Schiedea sarmentosa*—b, Molokai 6—*Silene alexandrii*—a, Molokai 6—*Silene alexandrii*—b, Molokai 6—*Stenogyne bifida*—a, Molokai 1—*Tetramolopium rockii*—a, Molokai 2—*Tetramolopium rockii*—b, Molokai 3—*Tetramolopium rockii*—c, Molokai 5—*Tetramolopium rockii*—d), and critical habitat has been designated elsewhere on Molokai, and or designated on other islands for the remaining eight multi-island species consistent with the guidance in recovery plans. These other designations identify conservation areas for the maintenance and expansion of the existing populations.

In sum, the above analysis concludes that an exclusion of TNCH lands from final critical habitat on Molokai will have a net beneficial impact with little risk of negative impacts. Therefore, the exclusion of these lands will not cause extinction and should in fact improve the chances of recovery for *Bidens wiebkei*, *Canavalia molokaiensis*, *Centaurium sebaeoides*, *Clermontia oblongifolia* ssp. *brevipes*, *Cyanea mannii*, *Cyanea procera*, *Hedyotis mannii*, *Labordia triflora*, *Lysimachia maxima*, *Mariscus fauriei*, *Melicope mucronulata*, *Phyllostegia mannii*, *Phyllostegia mollis*, *Platanthera holochila*, *Schiedea sarmentosa*, *Silene alexandrii*, *Stenogyne bifida*, *Tetramolopium rockii*, and *Vigna o-wahuense*.

Taxonomic Changes

At the time we listed *Cyanea grimesiana* ssp. *grimesiana*, *Hibiscus brackenridgei*, *Mariscus fauriei*, and *Phyllostegia mollis*, 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. Also, the soon-to-be-published book *Hawaii's Ferns and Fern Allies* (Palmer, in press) has changed the family name for *Ctenitis squamigera* (from Aspleniaceae to Dryopteridaceae). Due to the court-ordered deadlines, we are required to

publish this final rule to designate critical habitat on Molokai before we can prepare and publish a notice of taxonomic changes for these five species. We plan to publish a notice of taxonomic change for these five species after we have published the final critical habitat designations on Molokai.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, the Office of Management and Budget (OMB) has determined that this critical habitat designation is not a significant regulatory action. This rule will not have an annual economic effect of $100 million or more or adversely affect any economic sector, productivity, competition, jobs, the environment, or other units of government. This designation will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. It will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Finally, this designation will not raise novel legal or policy issues. Accordingly, OMB has not reviewed this final critical habitat designation.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

Based on the information in our economic analysis (draft economic analysis and addendum), we are certifying that the critical habitat designation for 41 Molokai plant species will not have a significant effect on a substantial number of small entities because a substantial number of small entities are not affected by the designation. In addition, the economic analysis concludes that the economic impacts from the designation of critical habitat would not be significant, based on the estimated cost of the designation which may result in potential direct economic costs of between $5,447 and $27,000 per year over the next 10 years.

Federal courts and Congress have indicated that an RFA/SBREFA analysis may be limited to all impacts to entities directly subject to the requirements of the regulation (Service 2002). As such, entities indirectly impacted by the plant listings and critical habitat and, therefore, not directly regulated by the listing or critical habitat designation are not considered in this section of the analysis.

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. The RFA/SBREFA defines ''small governmental jurisdiction'' as the government of a city, county, town, school district, or special district with a population of less than 50,000. By this definition, Maui County is not a small governmental jurisdiction because its population was 128,100 in 2000. Although certain State agencies, such as DLNR, Department of Agriculture (DOA), and Department of Transportation (DOT) may be affected by the critical habitat designation, State governments are considered independent sovereigns, not small governments, for the purposes of the RFA. 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.

The primary projects and activities that might be affected by the designation that could affect small entities include ranching operations and conservation projects. Based on our draft economic analysis and addendum, there were 170 cattle livestock operations in Maui County in 2000. The combined cattle sales of all of these operations in 2000 was about $3.2 million (Statistics of Hawaii Agriculture, 2000). Since this implies average annual cattle sales per business of $19,000, it is likely that all or almost all of the Maui County cattle operations, including those on Molokai, meet the definition of a small business (annual sales less than $750,000). Thus, our draft economic analysis concluded that the proposed critical habitat designation might affect two to three businesses out of 170 (one to two percent) of the small businesses in the cattle industry in Maui County. It also found that one community organization was likely to enter into section 7 consultation for coastal strand restoration due to the receipt of funding from the Service. Because the Service is also the funding entity and will likely provide technical assistance to the organization, the impact on this organization was found to be minimal. In addition, the consultation would have occurred regardless of designation of critical habitat. For these reasons, the draft economic analysis critical habitat designation would not be likely to affect small community organizations.

However, even though the proposed designation would not affect a ''substantial'' number of small businesses in each industry, an estimate of the impact was provided in the draft economic analysis. The cost of consultations with Pu'u o Hoku Ranch was estimated to be $15,300 to $25,800. The cost of the consultations with one to two unknown ranching operations was estimated to be $9,700 to $41,200. These costs reflect costs to the Service and NRCS to participate in the consultations; in general, none of the consultation costs are absorbed by the rancher. The estimated cost of consultations with Hui Malama o Mo'omomi was $5,200 to $10,400.

Again, these costs reflect costs to the Service to conduct the consultation.

The actual impacts of the final rule may even be smaller. These estimates were based on the proposed designations. However, this final rule designates 5,771 hectares (19,199 acres) less than had been proposed, or a 44 percent reduction.

These conclusions are supported by the history of consultations on Molokai. Since these 41 plant species were listed (between 1991 and 1999), we have conducted only 19 informal consultations and no formal consultations on the island of Molokai, in addition to consultations on Federal grants to State wildlife programs, which would not affect small entities. The 19 informal consultations have concerned seven of the 41 species (*Centaurium sebaeoides*, *Cyanea mannii*, *Cyanea procera*, *Eugenia koolauensis*, *Labordia triflora*, *Sesbania tomentosa*, and *Tetramolopium rockii*) and were conducted with the U.S. Department of the Navy (Navy), NRCS, State of Hawaii, Maui County, Corps, FCC, and private parties. One informal consultation was conducted with the U.S. Navy regarding a proposed U.S. Marine Corps training area on privately-owned leased land in west Molokai. Three of the 41 species, *Centaurium sebaeoides*, *Sesbania tomentosa*, and *Tetramolopium rockii*, were reported from the project area. One informal consultation was conducted on behalf of a private non-profit organization, requesting a species list for Kamalo and Kapualei. Three of the 41 species, *Cyanea mannii*, *Cyanea procera*, and *Labordia triflora*, were reported from this area. One informal consultation was conducted on behalf of a private consulting firm, requesting a species list for a proposed project regarding a VHF direction-finder in Mauna Loa. Two of the 41 species, *Eugenia koolauensis* and *Sesbania tomentosa*, were reported from the project area. Six informal consultations were conducted on behalf of private individuals or consulting firms, requesting species lists for different locations on Molokai. None of the 41 species were reported from these locations. Five informal consultations were conducted on behalf of the NRCS, requesting species lists or regarding revegetation or habitat restoration projects at different locations on Molokai. None of the 41 species were reported from these locations. Two informal consultations were conducted on behalf of the State of Hawaii and Maui County regarding proposed landfill projects. None of the 41 species were reported from these locations. Two informal consultations were conducted on behalf of the U.S. Army Corps of Engineers, regarding a stream restoration project and unexploded ordinance removal activities at Papohaku Rangelands Bombing Range and Punakua Land Target Area. None of the 41 species were reported from the project areas. One informal consultation was conducted on behalf of the FCC regarding an antenna cell site in Kaunakakai. None of the 41 species were reported from the project area.

Seven of the informal consultations may have concerned small entities (the private individuals, consulting firms, or the non-profit organization). However, these seven informal consultations were requests for species lists and not for our concurrence on a specific proposed project. We have determined that the State of Hawaii and Maui County are not small entities. The Corps, NRCS, FCC, and the Navy are not small entities. For the 12 informal consultations with the State of Hawaii, Maui County, and Federal agencies, we concurred with each agency's or entity's determination that the project, as proposed, was not likely to adversely affect listed species. Although four of the NRCS projects are ongoing, they do not directly affect nor concern small entities.

In addition, on Molokai, 49 percent of the designations are on private lands, 50 percent of the designations are on State lands, and 1 percent of the designations are on Federal lands. Nearly all of the land within the critical habitat units is unsuitable for development, land uses, and activities. This is due to their remote locations, lack of access, and rugged terrain. Approximately 89 percent of this land is within the State Conservation District where State land-use controls severely limit development and most activities.

Even where the requirements of section 7 might apply due to critical habitat, 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 under section 7—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.

For these reasons, we are certifying that the designation of critical habitat for *Adenophorus periens*, *Alectryon macrococcus*, *Bidens wiebkei*, *Brighamia rockii*, *Canavalia molokaiensis*, *Centaurium sebaeoides*, *Clermontia oblongifolia* ssp. *brevipes*, *Ctenitis squamigera*, *Cyanea dunbarii*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyanea mannii*, *Cyanea procera*, *Diellia erecta*, *Diplazium molokaiense*, *Eugenia koolauensis*, *Flueggea neowawraea*, *Hesperomannia arborescens*, *Hibiscus arnottianus* ssp. *immaculatus*, *Hibiscus brackenridgei*, *Ischaemum byrone*, *Isodendrion pyrifolium*, *Labordia triflora*, *Lysimachia maxima*, *Mariscus fauriei*, *Melicope mucronulata*, *Melicope reflexa*, *Neraudia sericea*, *Peucedanum sandwicense*, *Phyllostegia mannii*, *Plantago princeps*, *Pteris lidgatei*, *Schiedea lydgatei*, *Schiedea nuttallii*, *Schiedea sarmentosa*, *Sesbania tomentosa*, *Silene alexandri*, *Silene lanceolata*, *Spermolepis hawaiiensis*, *Stenogyne bifida*, *Tetramolopium rockii*, and *Zanthoxylum hawaiiense* 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))

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. Our detailed assessment of the economic effects of this designation are described in the draft economic analysis and the final addendum to the economic analysis. Based on the effects identified in these documents, we believe that this rule will not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final addendum to the 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 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 production supply and distribution facilities because no energy production, supply, and distribution facilities are included within designated critical habitat. Further, for the reasons described in the economic analysis, we do not believe that designation of critical habitat for the 41 Molokai plants

will affect future energy production. 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) For reasons described in an economic analysis, this rule 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 direct obligations on State or local governments.

(b) This rule will not ''significantly or uniquely'' affect small governments so 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.

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 41 species from Molokai in a takings implications assessment. The takings implications assessment concludes that this final rule does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, this final 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 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 do not alter where and what federally sponsored activities may occur, they 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 Department of the Interior's Office of the Solicitor has determined that this 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 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 the 41 plant species from Molokai.

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 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. 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. We have determined that there are no Tribal lands essential for the conservation of these 41 plant species. Therefore, designation of critical habitat for these 41 species does not involve any Tribal lands.

References Cited

A complete list of all references cited in this final rule is available upon request from the Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section).

Authors

The authors of this final rule are staff of the Pacific Islands 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, 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. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h), the List of Endangered and Threatened Plants, as set forth below:

a. Under the table's heading FLOWERING PLANTS, by revising the entries for *Alectryon macrococcus, Bidens wiebkei, Brighamia rockii, Canavalia molokaiensis, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *brevipes, Cyanea dunbarii, Cyanea grimesiana* ssp. *grimesiana, Cyanea mannii, Cyanea procera, Eugenia koolauensis, Flueggea neowawraea, Hesperomannia arborescens, Hibiscus arnottianus* ssp. *immaculatus, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Labordia triflora, Lysimachia maxima, Mariscus fauriei, Melicope mucronulata, Melicope reflexa, Neraudia sericea, Peucedanum sandwicense, Phyllostegia mannii, Plantago princeps, Schiedea lydgatei, Schiedea nuttallii, Schiedea sarmentosa, Sesbania tomentosa, Silene alexandri, Silene lanceolata, Spermolepis hawaiiensis, Stenogyne bifida, Tetramolopium rockii,* and *Zanthoxylum hawaiiense,* to read as follows; and

b. Under the table's heading FERNS AND ALLIES, by revising the entries for *Adenophorus periens, Ctenitis squamigera, Diellia erecta, Diplazium molokaiense,* and *Pteris lidgatei,* 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							
*	*	*	*	*	*	*	
Alectryon macroccoccus.	Mahoe	U.S.A. (HI)	Sapindaceae	E	467	17.99(a) (1) and (c)	NA
*	*	*	*	*	*	*	
Bidens wiebkei	Kookoolau	U.S.A. (HI)	Asteraceae	E	480	17.99(c)	NA
*	*	*	*	*	*	*	
Brighamia rockii	Puaala	U.S.A. (HI)	Campanulaceae	E	480	17.99(c)	NA
*	*	*	*	*	*	*	
Canavalia molokaiensis.	Awikiwiki	U.S.A. (HI)	Fabaceae	E	480	17.99(c)	NA
*	*	*	*	*	*	*	
Centaurium sebaeoides.	Awiwi	U.S.A. (HI)	Gentianaceae	E	448	17.99(a) (1) and (c)	NA
*	*	*	*	*	*	*	
Clermontia oblongifolia ssp. *brevipes*.	Oha wai	U.S.A. (HI)	Campanulaceae	E	480	17.99(c)	NA
*	*	*	*	*	*	*	
Cyanea dunbarii	Haha	U.S.A. (HI)	Campanulaceae	E	594	17.99(c)	NA
*	*	*	*	*	*	*	
Cyanea grimesiana ssp. *grimesiana*.	Haha	U.S.A. (HI)	Campanulaceae	E	592	17.99(c)	NA
*	*	*	*	*	*	*	
Cyanea mannii	Haha	U.S.A. (HI)	Campanulaceae	E	480	17.99(c)	NA
*	*	*	*	*	*	*	
Cyanea procera	Haha	U.S.A. (HI)	Campanulaceae	E	480	17.99(c)	NA
*	*	*	*	*	*	*	
Eugenia koolauensis	Nioi	U.S.A. (HI)	Myrtaceae	E	536	17.99(c)	NA
*	*	*	*	*	*	*	
Flueggea neowawraea.	Mehamehame	U.S.A. (HI)	Euphorbiaceae	E	559	17.99(a) (1) and (c)	NA
*	*	*	*	*	*	*	
Hesperomannia arborescens.	None	U.S.A. (HI)	Asteraceae	E	536	17.99(c)	NA
*	*	*	*	*	*	*	
Hibiscus arnottianus ssp. *immaculatus*.	Kokio keokeo	U.S.A. (HI)	Malvaceae	E	480	17.99(c)	NA
*	*	*	*	*	*	*	
Hibiscus brackenridgei.	Mao hau hele	U.S.A. (HI)	Malvaceae	E	559	17.99(c)	NA
*	*	*	*	*	*	*	
Ischaemum bryone	Hilo ischaemum	U.S.A. (HI)	Poaceae	E	532	17.99(a) (1) and (c)	NA
*	*	*	*	*	*	*	
Isodendrion pyrifolium.	Wahine noho kula	U.S.A. (HI)	Violaceae	E	532	17.99(c)	NA
*	*	*	*	*	*	*	
Labordia triflora	Kamakahala	U.S.A. (HI)	Loganiaceae	E	666	17.99(c)	NA
*	*	*	*	*	*	*	
Lysimachia maxima	None	U.S.A. (HI)	Primulaceae	E	594	17.99(c)	NA
*	*	*	*	*	*	*	
Mariscus fauriei	None	U.S.A. (HI)	Cyperaceae	E	532	17.99(c)	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*		*
Melicope mucronulata.	Alani	U.S.A. (HI)	Rutaceae	E	467	17.99(c)	NA
*	*	*	*	*	*		*
Melicope reflexa	Alani	U.S.A. (HI)	Rutaceae	E	480	17.99(c)	NA
*	*	*	*	*	*		*
Neraudia sericea	None	U.S.A. (HI)	Urticaceae	E	559	17.99(c)	NA
*	*	*	*	*	*		*
Peucedanum sandwicense.	Makou	U.S.A. (HI)	Apiaceae	T	530	17.99(a)(1) and (c)	NA
*	*	*	*	*	*		*
Phyllostegia mannii	None	U.S.A. (HI)	Lamiaceae	E	480	17.99(c)	NA
*	*	*	*	*	*		*
Plantago princeps	Laukahi kuahiwi	U.S.A. (HI)	Plantaginaceae	E	559	17.99(a)(1) and (c)	NA
*	*	*	*	*	*		*
Schiedea lydgatei	None	U.S.A. (HI)	Caryophyllaceae	E	480	17.99(c)	NA
*	*	*	*	*	*		*
Schiedea nuttallii	None	U.S.A. (HI)	Caryophyllaceae	E	592	17.99(a)(1) and (c)	NA
Schiedea sarmentosa.	None	U.S.A. (HI)	Caryophyllaceae	E	594	17.99(c)	NA
*	*	*	*	*	*		*
Sesbania tomentosa	Ohai	U.S.A. (HI)	Fabaceae	E	559	17.99(a)(1) and (c)	NA
*	*	*	*	*	*		*
Silene alexandri	None	U.S.A. (HI)	Caryophyllaceae	E	480	17.99(c)	NA
*	*	*	*	*	*		*
Silene lanceolata	None	U.S.A. (HI)	Caryophyllaceae	E	480	17.99(c)	NA
*	*	*	*	*	*		*
Spermolepis hawaiiensis.	None	U.S.A. (HI)	Apiaceae	E	559	17.99(a)(1) and (c)	NA
*	*	*	*	*	*		*
Stenogyne bifida	None	U.S.A. (HI)	Lamiaceae	E	480	17.99(c)	NA
*	*	*	*	*	*		*
Tetramolopium rockii	None	U.S.A. (HI)	Asteraceae	T	480	17.99(c)	NA
*	*	*	*	*	*		*
Zanthoxylum hawaiiense.	Ae	U.S.A. (HI)	Rutaceae	E	532	17.99(a)(1) and (c)	NA
*	*	*	*	*	*		*
FERNS AND ALLIES							
Adenophorus periens	Pendant kihi fern	U.S.A. (HI)	Grammitidaceae	E	559	17.99(a)(1) and (c)	NA
*	*	*	*	*	*		*
Ctenitis squamigera	Pauoa	U.S.A. (HI)	Aspleniaceae	E	553	17.99(a)(1) and (c)	NA
*	*	*	*	*	*		*
Diellia erecta	Asplenium-leaved diellia.	U.S.A. (HI)	Aspleniaceae	E	559	17.99(a)(1) and (c)	NA
*	*	*	*	*	*		*
Diplazium molokaiense.	None	U.S.A. (HI)	Aspleniaceae	E	553	17.99(a)(1) and (c)	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*		*
Pteris lidgatei	None	U.S.A. (HI)	Adiantaceae	E	553	17.99(c)	NA
*	*	*	*	*	*		*

3. Amend § 17.99 as set forth below:

a. By revising the section heading and the heading for paragraph (a) to read as follows; and

b. By adding new paragraphs (c) and (d) to read as follows.

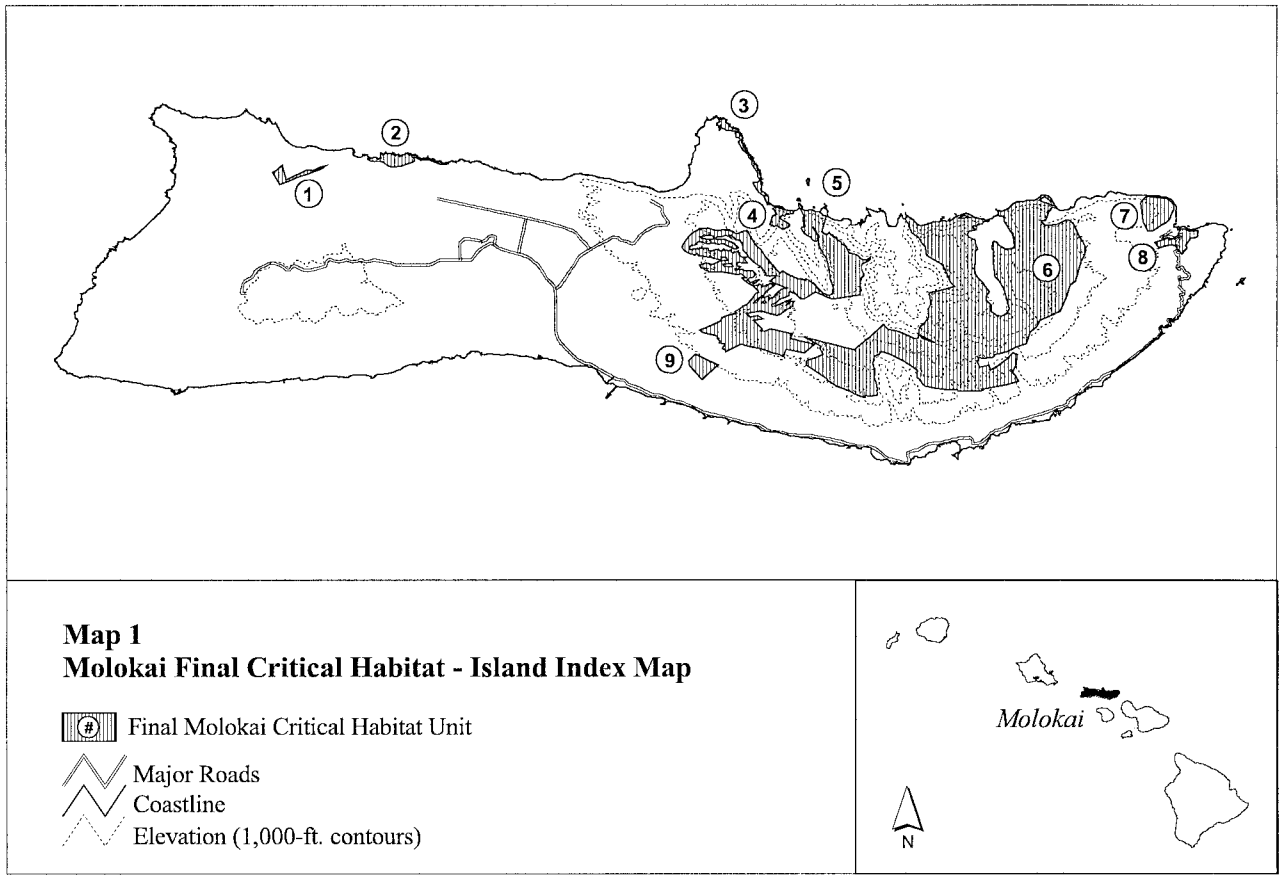
§ 17.99 Critical habitat; plants on the islands of Kauai, Niihau, and Molokai, HI..

(a) *Maps and critical habitat unit descriptions for the islands of Kauai and Niihau, HI.* * * *

* * * * *

(c) *Maps and critical habitat unit descriptions for the island of Molokai, HI.* The following paragraphs contain the legal descriptions of the critical habitat units designated for the island of Molokai, HI. Existing manmade features and structures within the critical habitat units, such as buildings; roads; aqueducts and other watersystem features, including but not limited to reservoirs, diversions, flumes, pumping stations, irrigation ditches, pipelines, siphons, tunnels, water tanks, gaging stations, intakes, and wells; telecommunications equipment towers and associated structures, electrical power transmission lines and distribution and regularly maintained associated rights-of-way and access ways; radars and telemetry antennas; missile launch sites; campgrounds; existing trails; arboreta and gardens, heiau (indigenous places of worship or shrines) and other archaeological sites; airports; other paved areas; lawns and other rural residential landscaped areas do not contain the primary constituent elements described for each species in paragraph (d) of this section and therefore are not included in the critical habitat designations. Coordinates are in UTM Zone 4 with units in meters using North American Datum of 1983 (NAD83). The following map shows the general locations of the 88 critical habitat units designated on the island of Molokai.

(1) **Note:** Map 1–Index map follows:

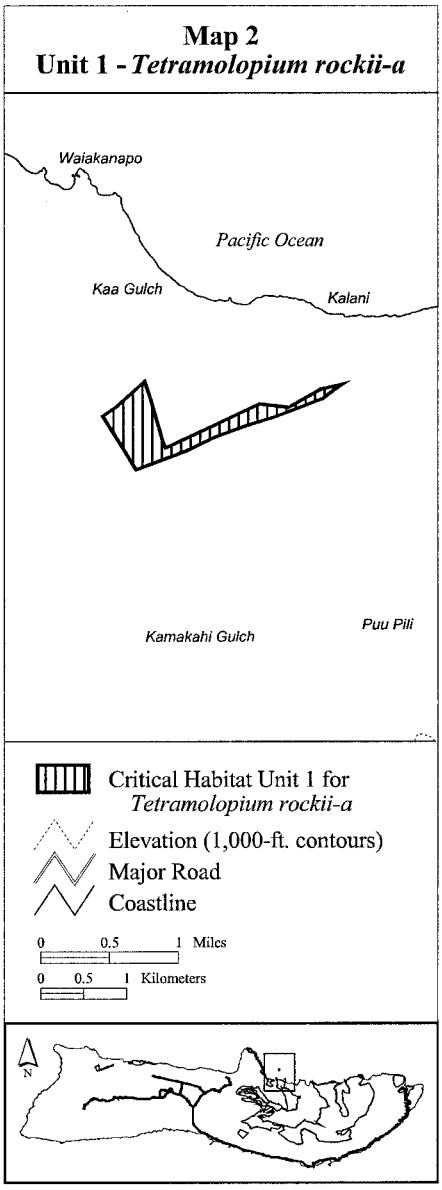


(2) Molokai 1—*Tetramolopium rockii*—a (68 ha; 167 ac)

(i) Unit consists of the following 18 boundary points: Start at 689772, 2344661; 689621, 2344539; 689052, 2344319; 688718, 2344221; 688327, 2344075; 688023, 2343926; 687408, 2343701; 687025, 2344327; 687025, 2344327; 687188, 2344441; 687513, 2344733; 687571, 2344549; 687727, 2344013; 687757, 2343953; 688857, 2344469; 689205, 2344430; 689575,

2344638; 689833, 2344699; return to starting point.

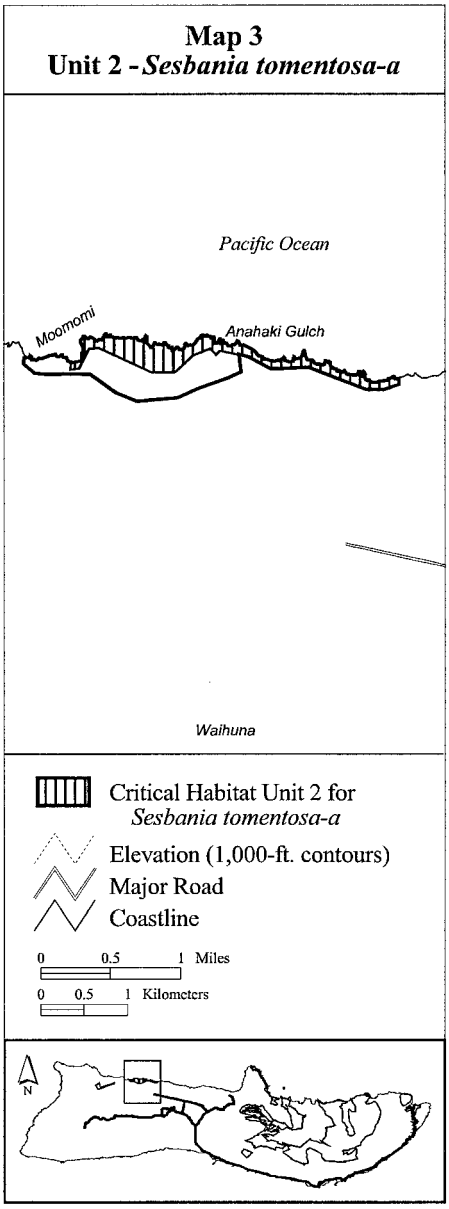
(ii) **Note:** Map 2 follows:



(3) Molokai 2—*Sesbania tomentosa*—a (58 ha; 143 ac)

(i) Unit consists of the following 16 boundary points and the intermediate coastline: Start at 696391, 2344805; 696219, 2344744; 696015, 2344744; 6953, 2345000; 694917, 2344983; 694654, 2345127; 694330, 2345195; 694288, 2345144; 694220, 2345221; 694024, 2345136; 693811, 2344940; 693548, 2344940; 692944, 2345229; 692833, 2345221; 692714, 2344991; 692614, 2344974; follow coastline and return to starting point.

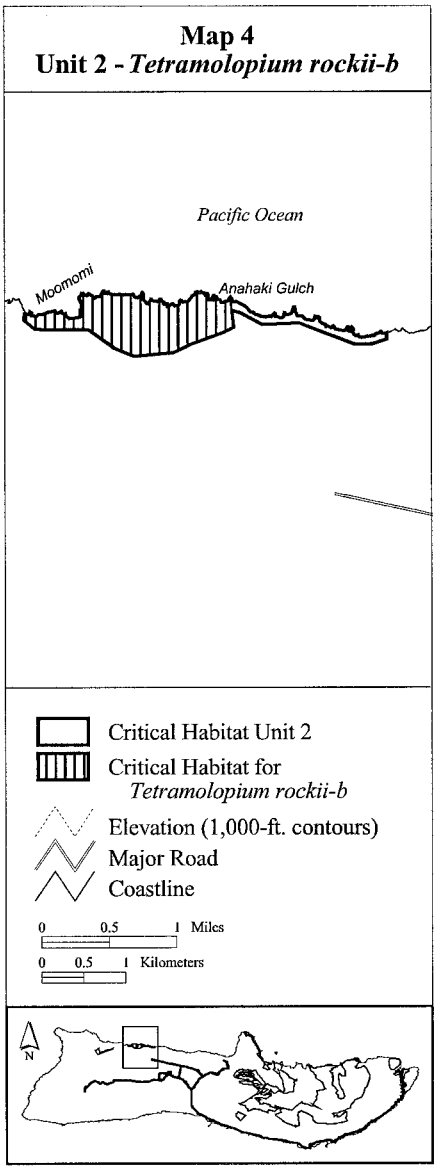
(ii) **Note:** Map 3 follows:



(4) Molokai 2—*Tetramolopium rockii*—b (112 ha; 278 ac)

(i) Unit consists of the following 13 boundary points and the intermediate coastline: Start at 694570, 2344946; 694440, 2344889; 694073, 2344750; 693846, 2344653; 693382, 2344612; 693146, 2344702; 692844, 2344921; 692641, 2344929; 692389, 2344922; 692389, 2344921; 692356, 2344921; 692201, 2344938; 692071, 2345043; follow coastline and return to starting point.

(ii) **Note:** Map 4 follows:

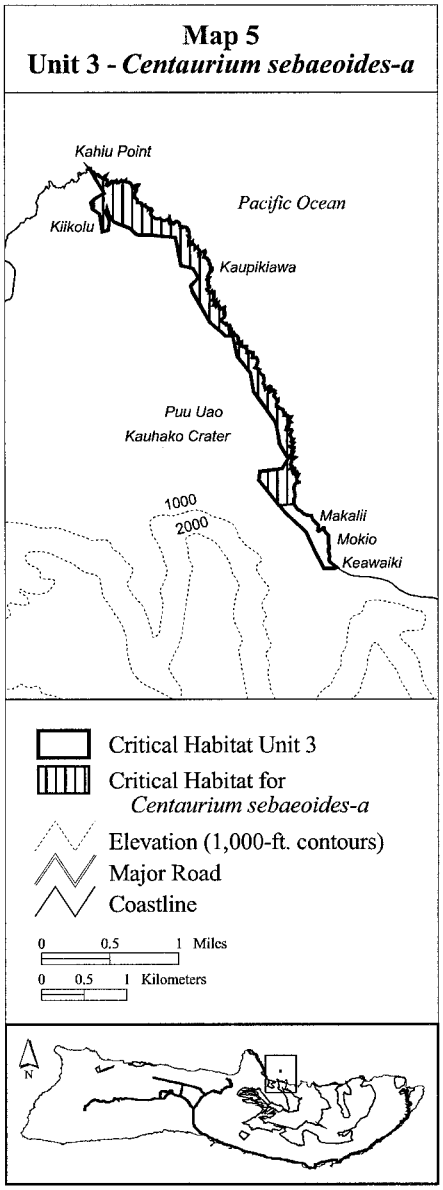


(5) Molokai 3—*Centaurium sebaeoides*—a (96 ha; 238 ac)

(i) Unit consists of the following 38 boundary points and the intermediate coastline: Start at 710676, 2347273; 712999, 2343399; 712824, 2343386; 712590, 2343678; 712603, 2343781; 712863, 2343820; 712941, 2343944; 712837, 2344106; 712792, 2344340; 712668, 2344541; 712526, 2344729; 712493, 2344936; 712337, 2345131; 712279, 2345365; 712214, 2345371; 712035, 2345519; 711799, 2345942; 711883, 2346053; 711827, 2346164; 711683, 2346195; 711618, 2346528; 711159, 2346569; 711092, 2346637; 710917, 2346701; 710858, 2346756; 710816, 2346864; 710811, 2346802; 710845, 2346718; 710832, 2346611; 710768, 2346591; 710734, 2346806; 710652, 2346855; 710629, 2346935; 710676, 2346982; 710788, 2347050; 710636, 2347297; 710642, 2347291;

710661, 2347288; follow coastline and return to starting point.

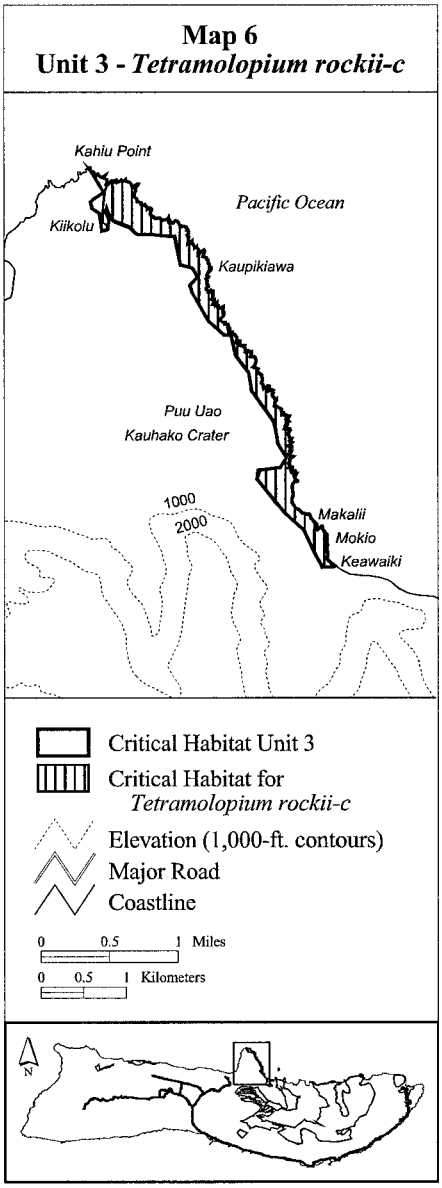
(ii) **Note:** Map 5 follows:



(6) Molokai 3—*Tetramolopium rockii*—c (106 ha; 260 ac)

(i) Unit consists of the following 34 boundary points and the intermediate coastline: Start at 713501, 2342654; 713473, 2342635; 713351, 2342635; 713245, 2342841; 713138, 2343077; 712902, 2343290; 712773, 2343465; 712591, 2343679; 712625, 2343781; 712863, 2343814; 712934, 2343924; 712831, 2344099; 712805, 2344327; 712526, 2344716; 712500, 2344936; 712337, 2345131; 712279, 2345365; 712208, 2345371; 712019, 2345540; 711819, 2345873; 711799, 2345962; 711883, 2346040; 711838, 2346156; 711689, 2346202; 711624, 2346539; 711169, 2346559; 711098, 2346649; 710890, 2346727; 710817, 2346864; 710810, 2346810; 710849, 2346706; 710832, 2346656; 710759, 2346712; 710802, 2347065; follow coastline and return to starting point.

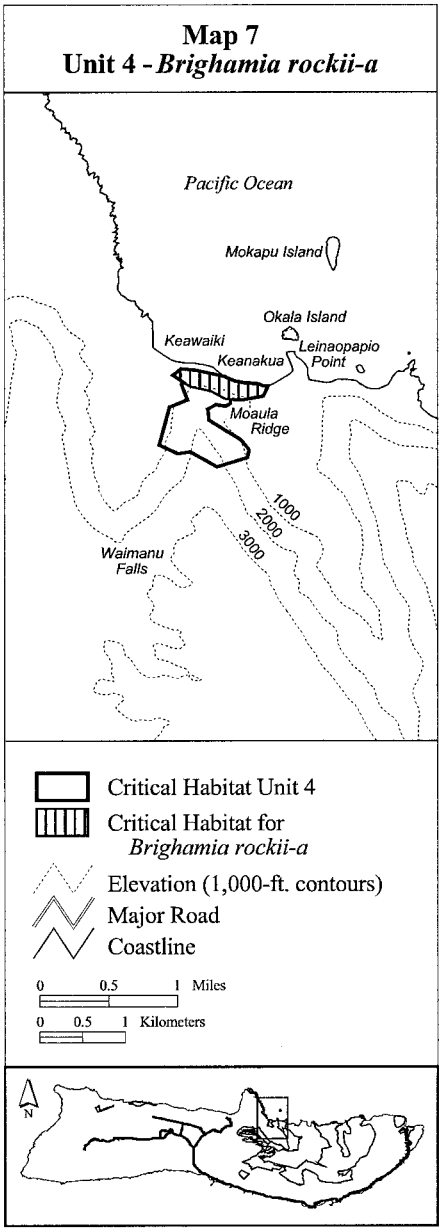
(ii) **Note:** Map 6 follows:



(7) Molokai 4—*Brighamia rockii*—a (20 ha; 51 ac)

(i) Unit consists of the following 9 boundary points and the intermediate coastline: Start at 714246, 2342381; 714703, 2342153; 714446, 2342101; 714255, 2342116; 714094, 2342204; 713837, 2342263; 713646, 2342395; 713740, 2342469; 713902, 2342456; follow coastline and return to starting point.

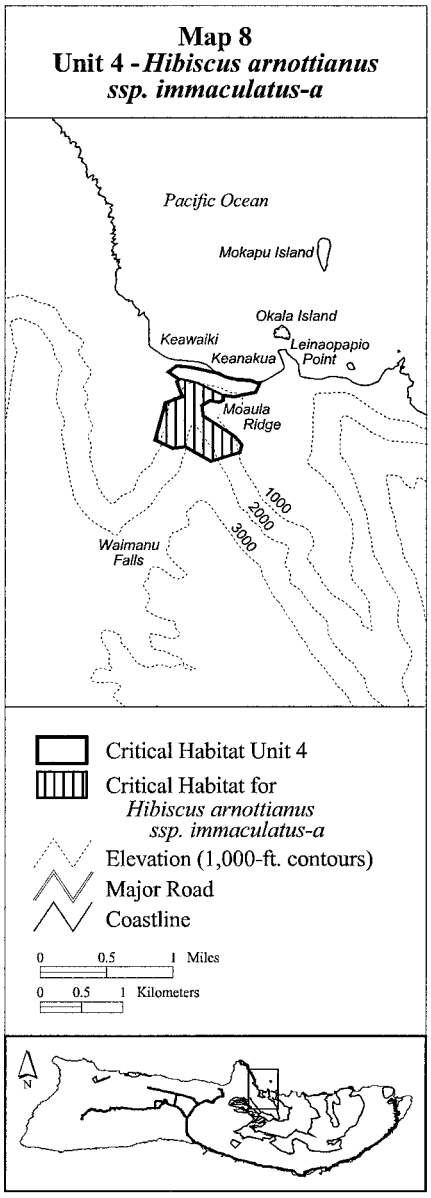
(ii) **Note:** Map 7 follows:



(8) Molokai 4—*Hibiscus arnottianus* ssp. *immaculatus*—a (56 ha; 139 ac)

(i) Unit consists of the following 20 boundary points: Start at 714313, 2342111; 714313, 2342061; 714263, 2342030; 714146, 2342049; 714053, 2341993; 714065, 2341869; 714443, 2341627; 714530, 2341522; 714511, 2341429; 714158, 2341318; 713848, 2341497; 713697, 2341473; 713483, 2341578; 713601, 2342024; 713813, 2342101; 713769, 2342222; 713769, 2342222; 713743, 2342284; 713786, 2342315; 713991, 2342266; return to starting point.

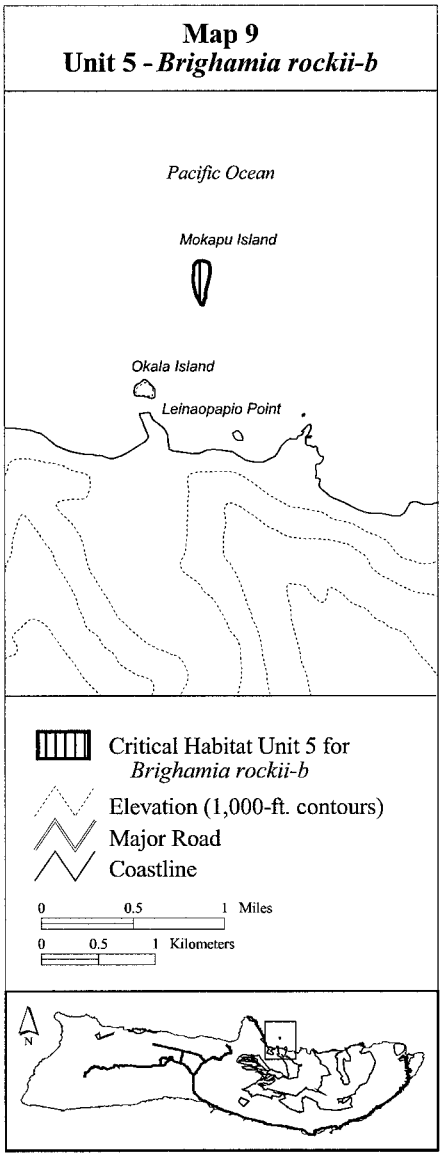
(ii) **Note:** Map 8 follows:



(9) Molokai 5—*Brighamia rockii*—b (4 ha; 10 ac)

(i) Area consists of the entire offshore island located at approximately: 715517, 2343847.

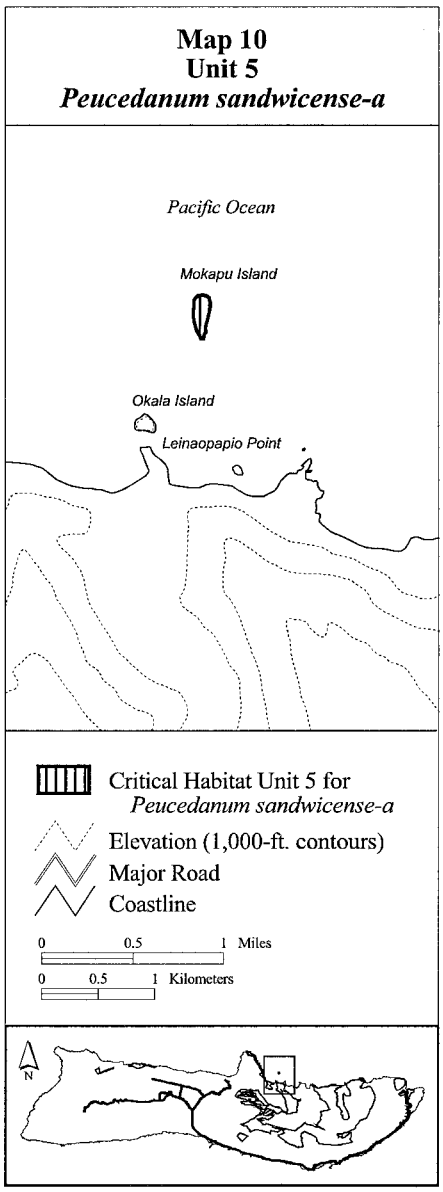
(ii) **Note:** Map 9 follows:



(10) Molokai 5—*Peucedanum sandwicense*—a (4 ha; 10 ac)

(i) Area consists of the entire offshore island located at approximately: 715517, 2343847.

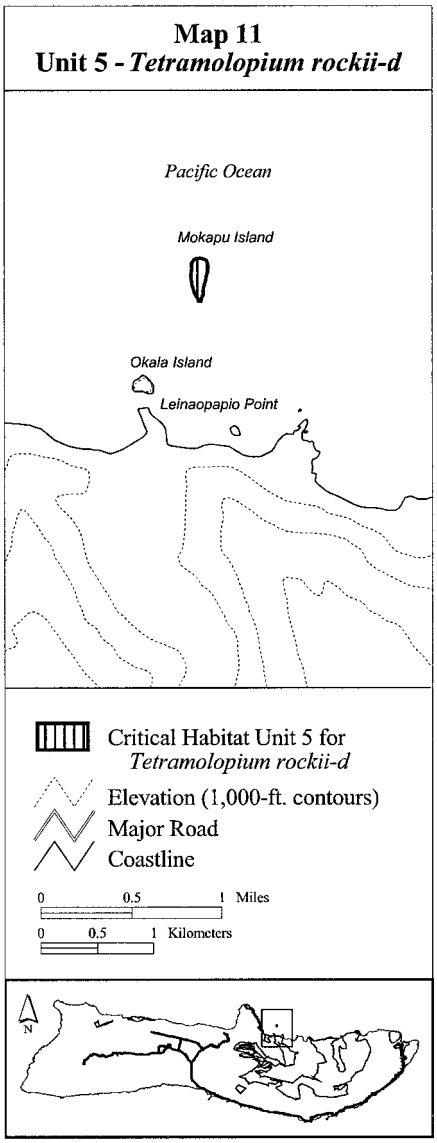
(ii) **Note:** Map 10 follows:



(11) Molokai 5—*Tetramolopium rockii*—d (4 ha; 10 ac)

(i) Area consists of the entire offshore island located at approximately: 715517, 2343847.

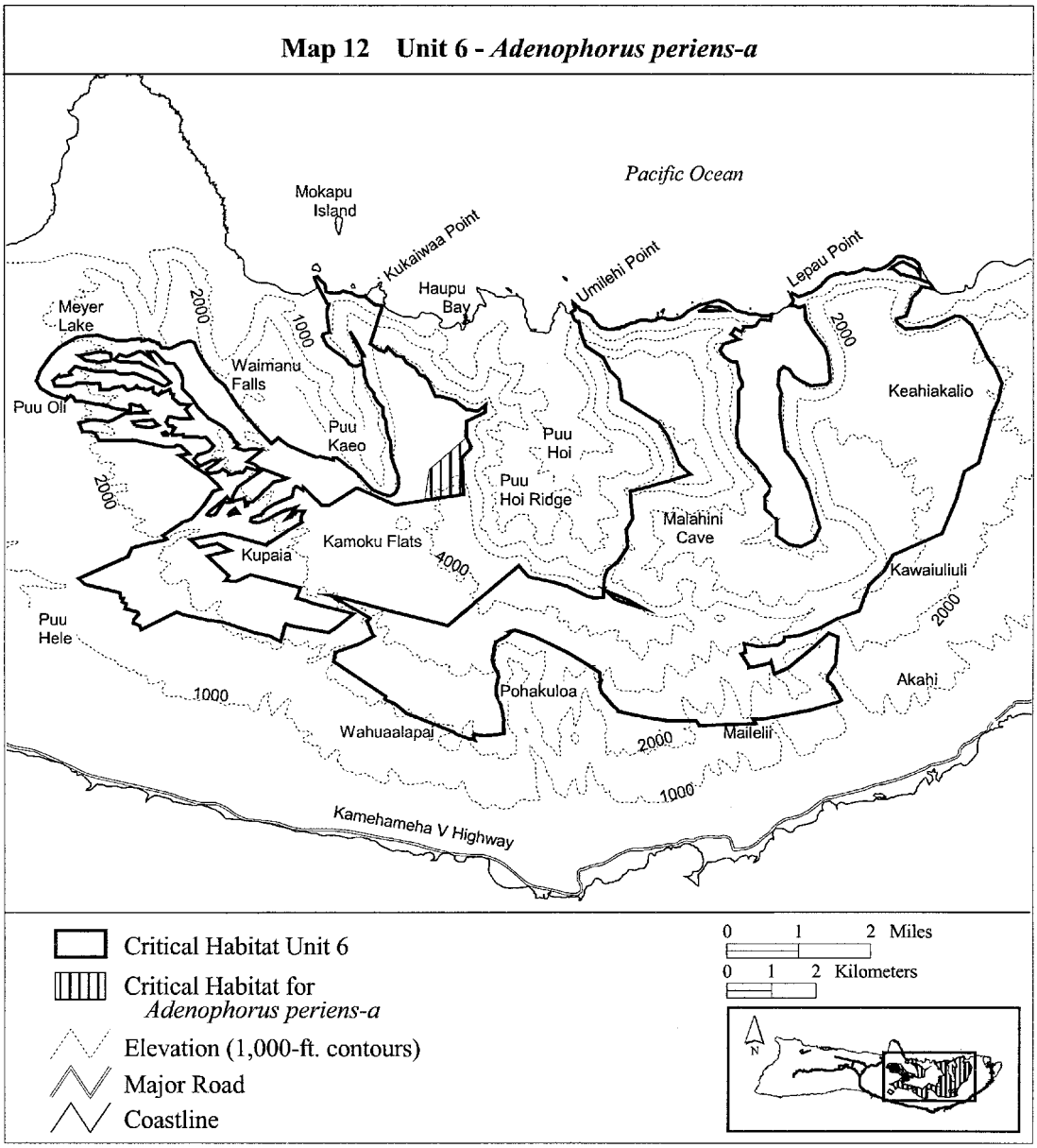
(ii) **Note:** Map 11 follows:



(12) Molokai 6—*Adenophorus periens*—a (79 ha; 194 ac)

(i) Unit consists of the following 6 boundary points: Start at 718366, 2339098; 718483, 2338864; 718272, 2338643; 718311, 2337817; 717446, 2337682; 717549, 2338376; return to starting point.

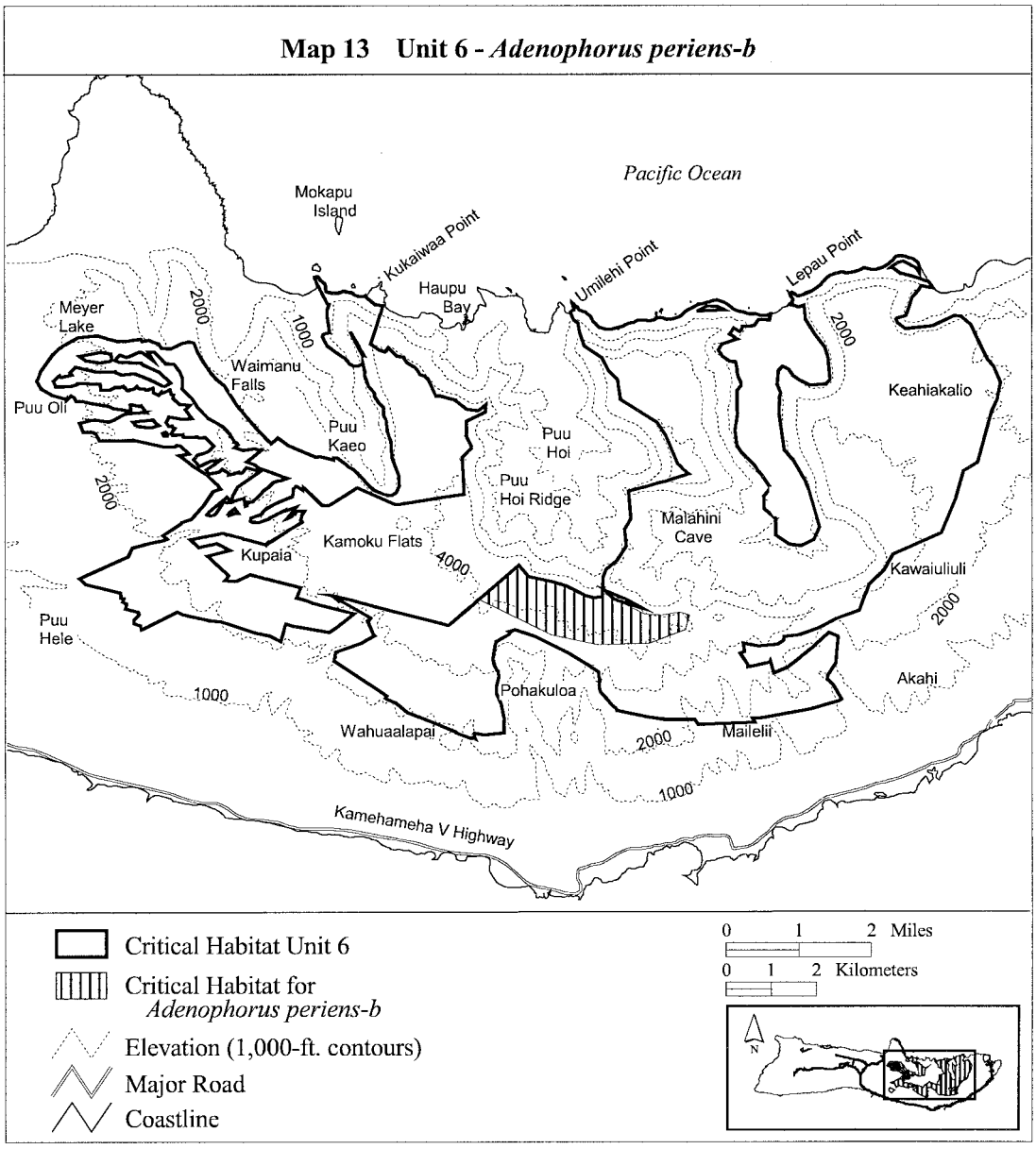
(ii) **Note:** Map 12 follows:



(13) Molokai 6—*Adenophorus periens*—b (396 ha; 980 ac)

(i) Unit consists of the following 19 boundary points: Start at 721394, 2335607; 722329, 2335129; 722733, 2335104; 723117, 2335165; 723342, 2335105; 723236, 2334774; 723034, 2334703; 722442, 2334466; 721281, 2334442; 720262, 2334655; 718639, 2335464; 719529, 2336227; 719749, 2335976; 720611, 2335749; 721062, 2335514; 721066, 2335513; 721206, 2335488; 721387, 2335499; 721388, 2335510; return to starting point.

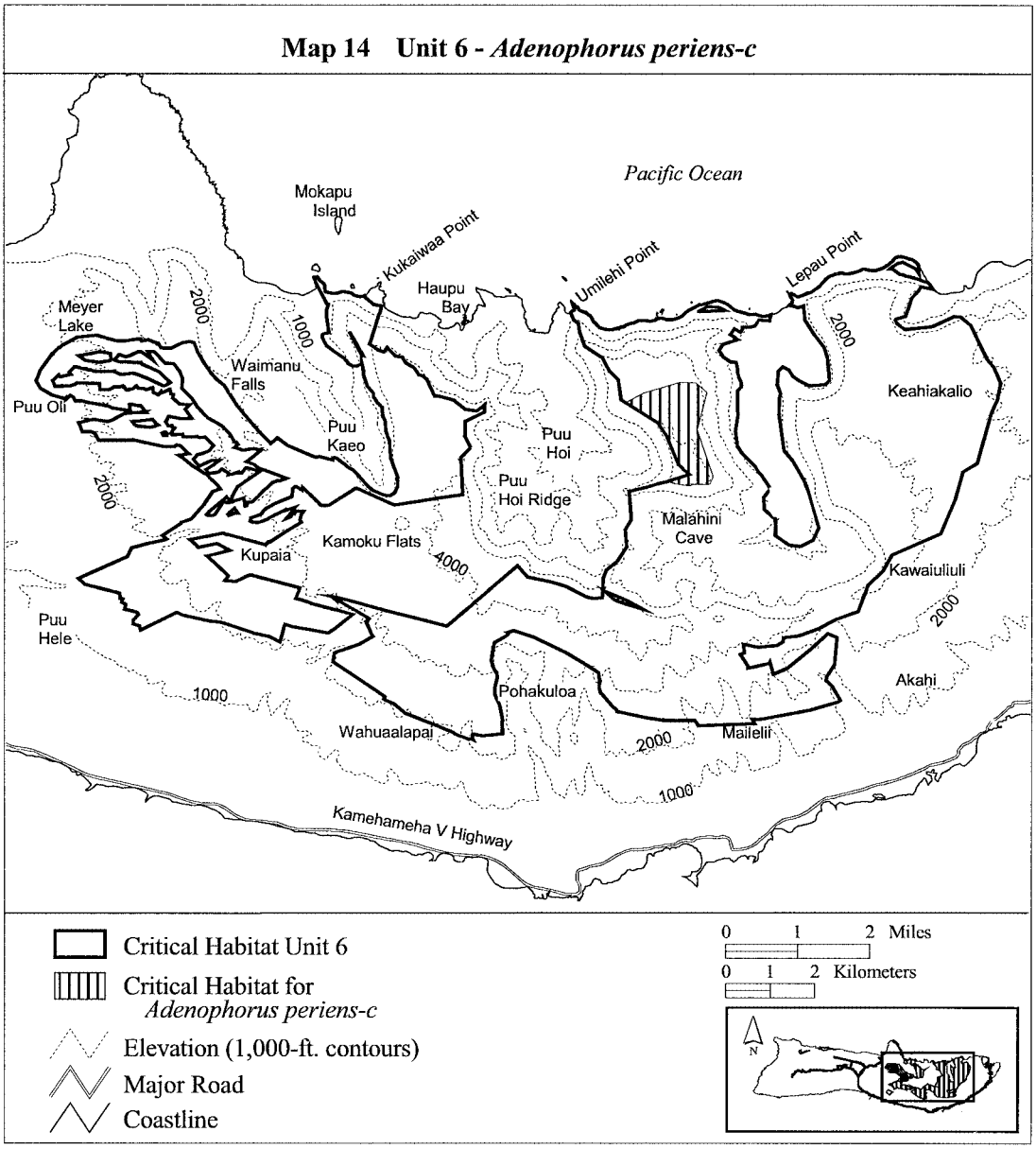
(ii) **Note:** Map 13 follows:



(14) Molokai 6—*Adenophorus periens*—c (214 ha; 530 ac)

(i) Unit consists of the following 20 boundary points: Start at 723720, 2340102; 723501, 2339267; 723764, 2338476; 723865, 2338213; 723777, 2338050; 723639, 2338043; 723426, 2338056; 723331, 2338018; 722967, 2338062; 722873, 2338122; 723352, 2338246; 723352, 2338246; 723351, 2338247; 723088, 2338481; 722803, 2339144; 722612, 2339432; 721900, 2339870; 722315, 2340090; 723124, 2340328; 723469, 2340315; return to starting point.

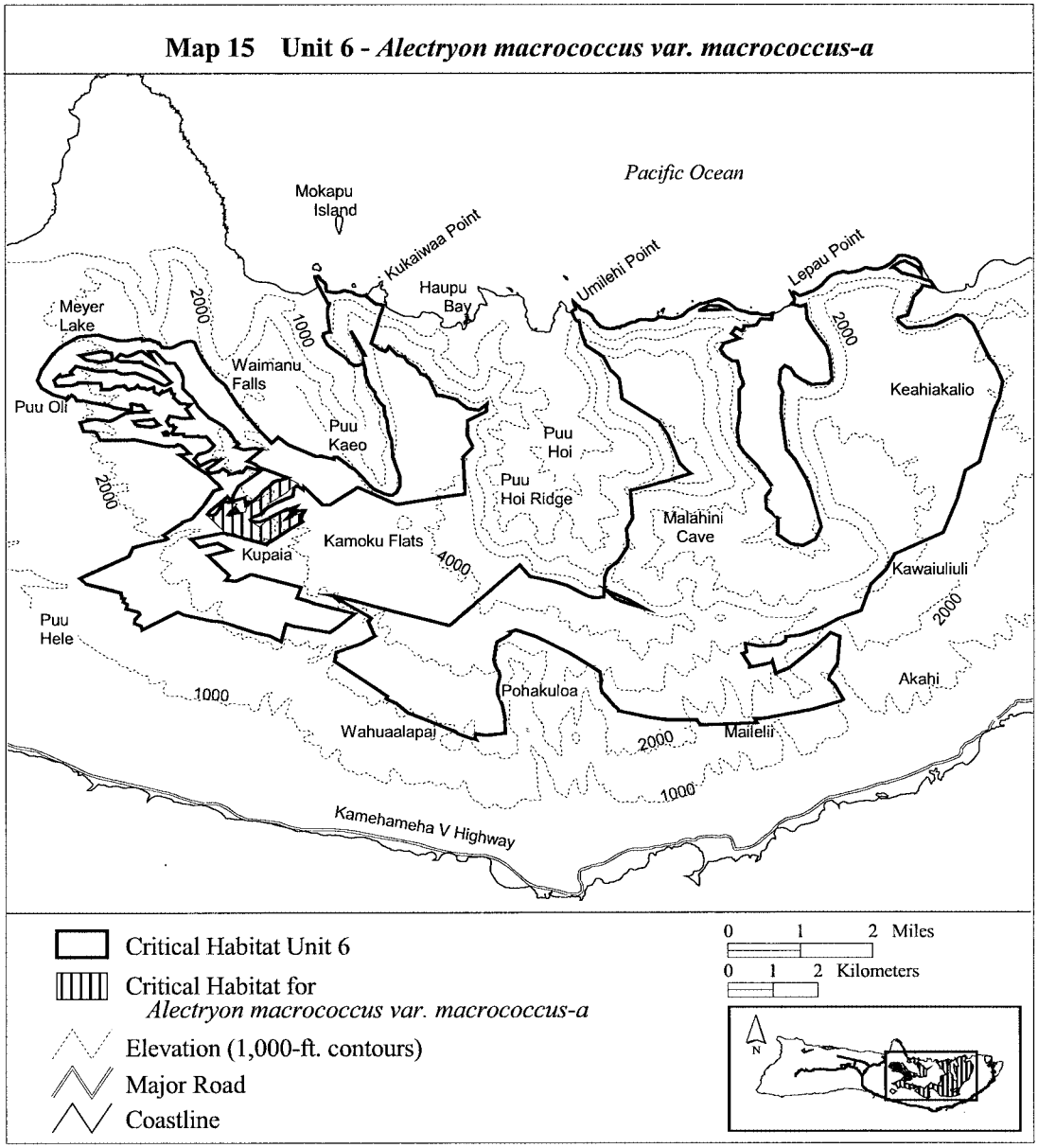
(ii) **Note:** Map 14 follows:



(15) Molokai 6—*Alectryon macrococcus*—a (125 ha; 309 ac)

(i) Unit consists of the following 38 boundary points: Start at 712844, 2337089; 712698, 2337229; 712592, 2337339; 712695, 2337321; 712881, 2337456; 712940, 2337659; 713244, 2337600; 712999, 2337330; 713210, 2337389; 713430, 2337414; 713497, 2337642; 713742, 2337668; 713818, 2337870; 714080, 2338090; 714258, 2338132; 714331, 2338177; 714454, 2338134; 714593, 2338051; 714604, 2338018; 714460, 2337955; 714325, 2337836; 713954, 2337608; 713818, 2337397; 713489, 2337254; 713742, 2337076; 713970, 2337296; 714283, 2337448; 714553, 2337532; 714359, 2337279; 714722, 2337423; 714604, 2337228; 714660, 2337178; 714025, 2336784; 713852, 2336821; 713844, 2336766; 713421, 2336814; 713160, 2336950; 713033, 2336916; return to starting point.

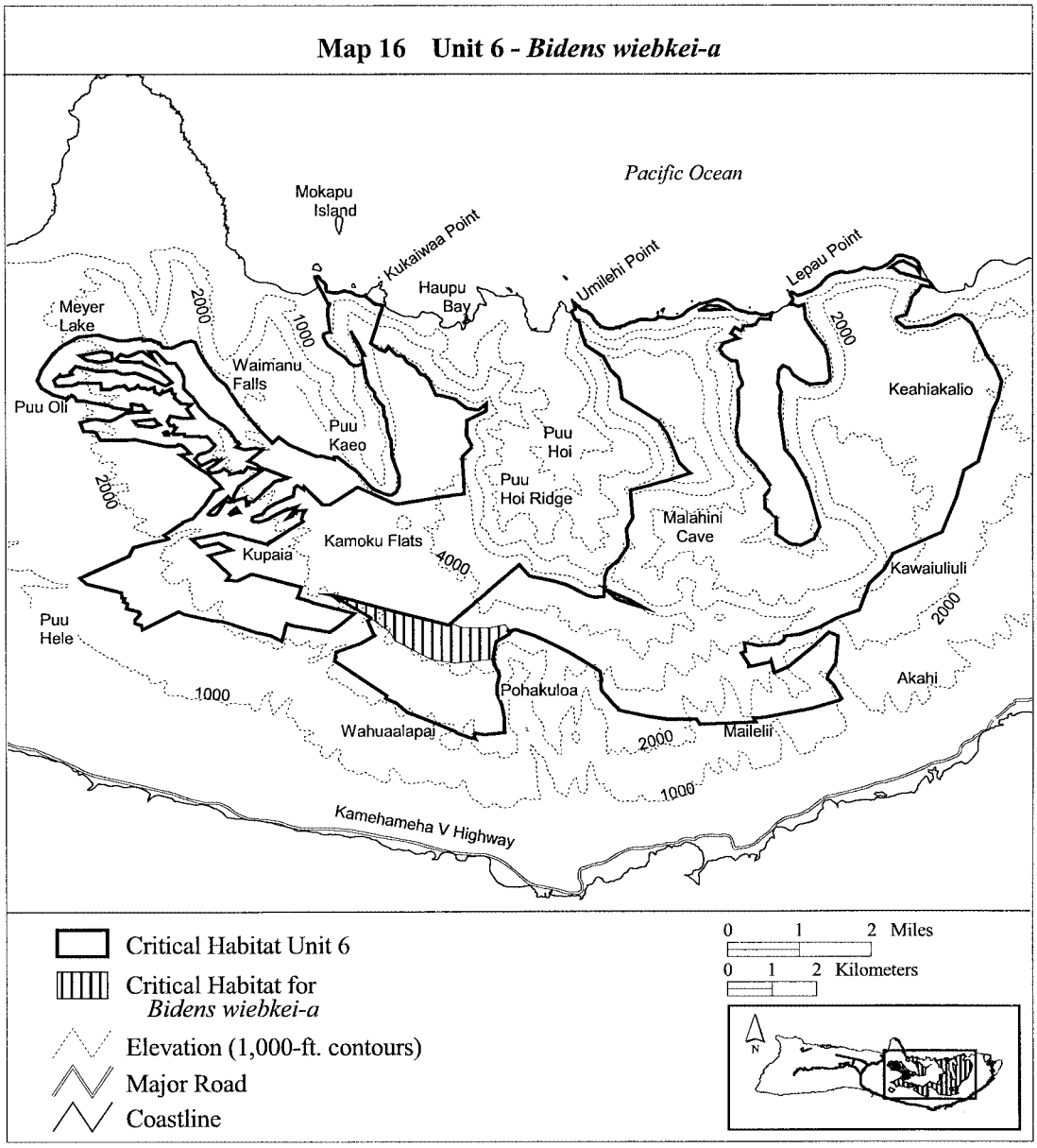
(ii) **Note:** Map 15 follows:



(16) Molokai 6—*Bidens wiebkei*—a (219 ha; 542 ac)

(i) Unit consists of the following 20 boundary points: Start at 718006, 2334920; 718258, 2334825; 718858, 2334816; 719204, 2334884; 719331, 2334723; 719289, 2334656; 719289, 2334656; 719020, 2334504; 719018, 2334503; 719018, 2334503; 719018, 2334503; 718994, 2334425; 718934, 2334106; 718097, 2334022; 717573, 2334098; 716744, 2334529; 716634, 2334732; 716135, 2335095; 715347, 2335551; 717956, 2334877; return to starting point.

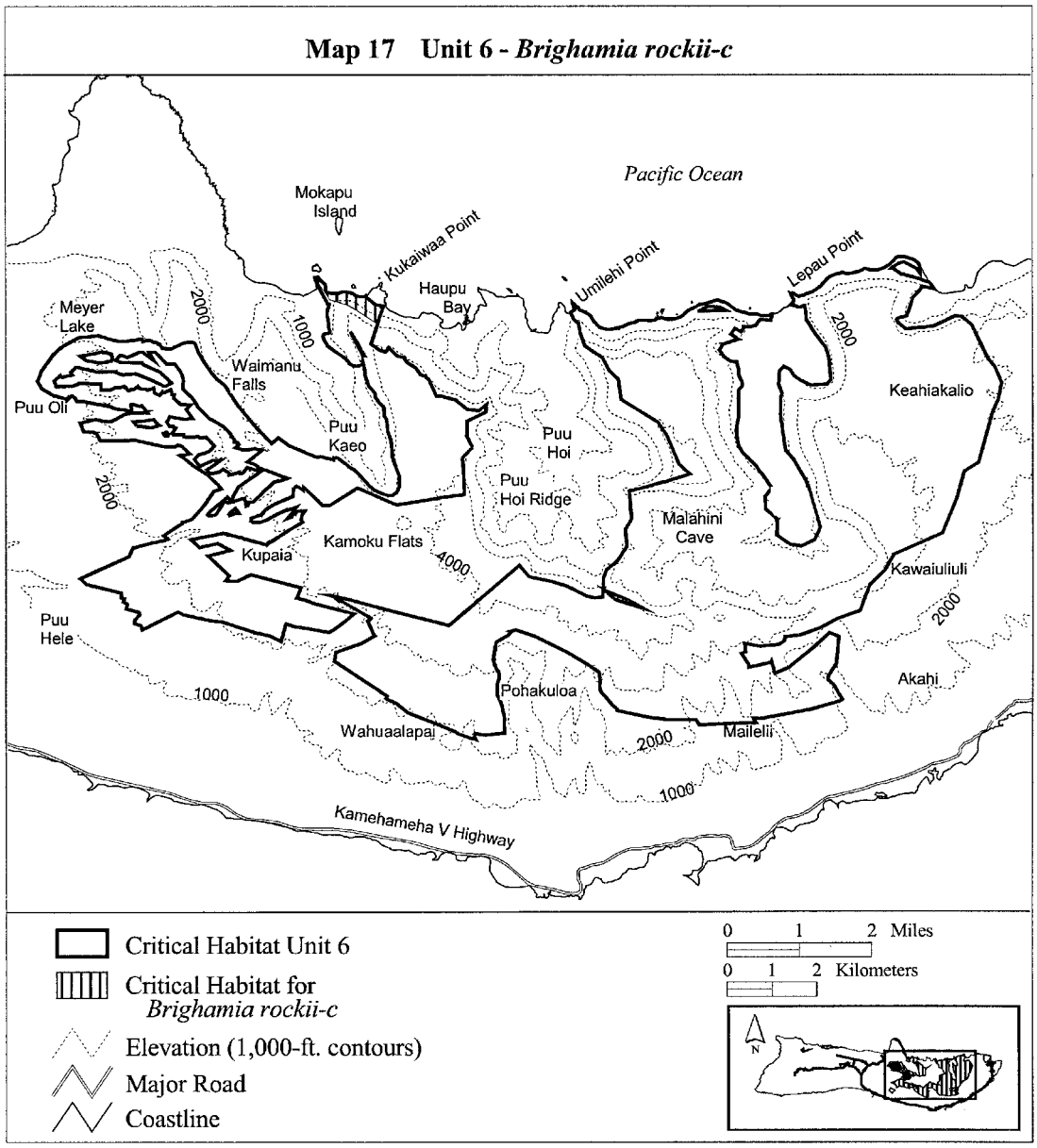
(ii) **Note:** Map 16 follows:



(17) Molokai 6—*Brighamia rockii*—c (38 ha; 95 ac)

(i) Unit consists of the following 9 boundary points and the intermediate coastline: Start at 716089, 2342247; 716263, 2342102; 716347, 2341969; 716482, 2341996; 716375, 2341657; 716328, 2341655; 715888, 2341942; 715686, 2342053; 715313, 2342170; follow coastline and return to starting point.

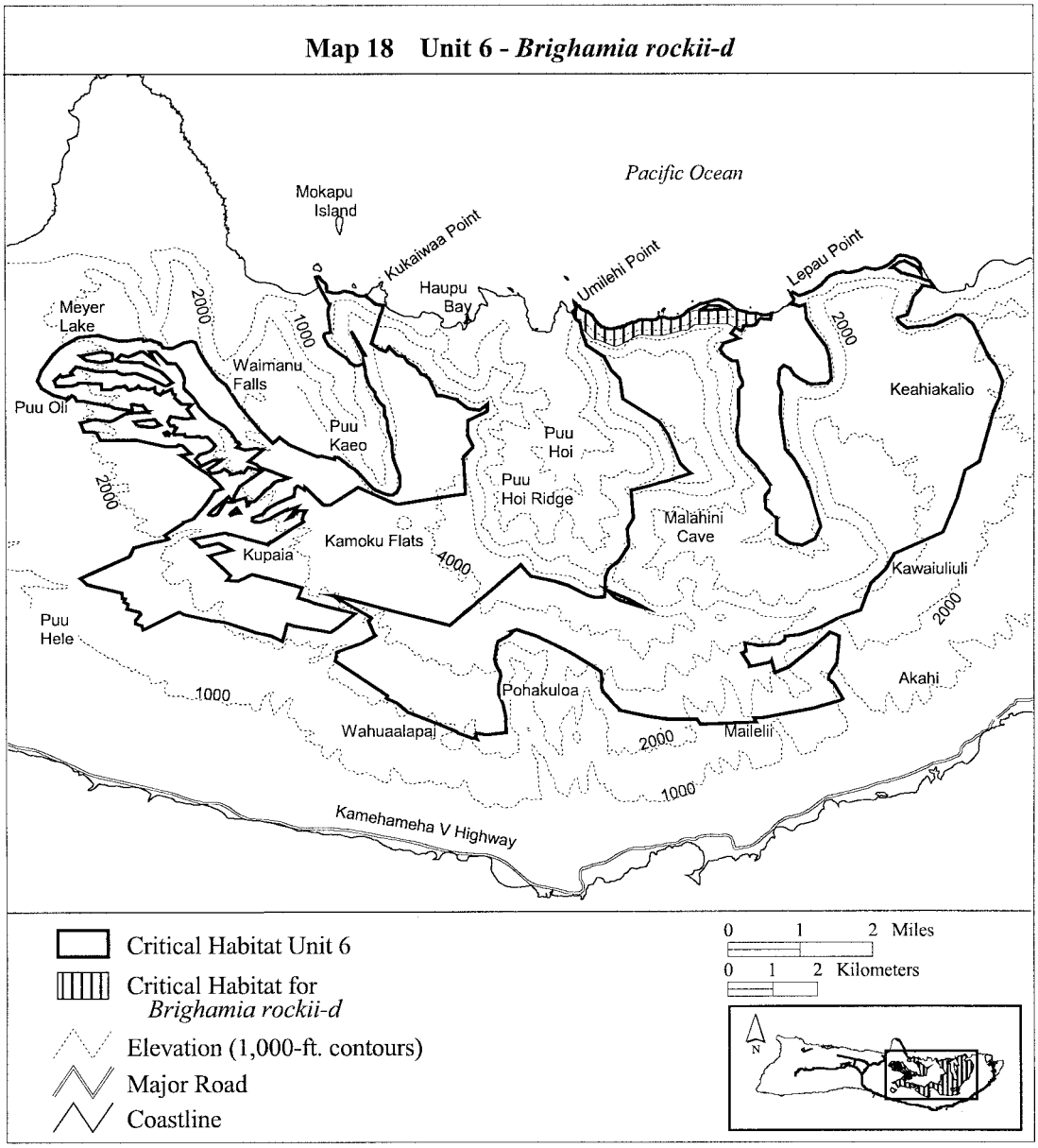
(ii) **Note:** Map 17 follows:



(18) Molokai 6—*Brighamia rockii*—d (145 ha; 358 ac)

(i) Unit consists of the following 35 boundary points and the intermediate coastline: Start at 720770, 2341981; 723204, 2341840; 723220, 2341842; 723377, 2341891; 724326, 2341946; 724920, 2341803; 724885, 2341725; 724781, 2341588; 724671, 2341562; 724262, 2341549; 724190, 2341601; 723996, 2341614; 723405, 2341582; 723256, 2341465; 723139, 2341465; 722691, 2341348; 722509, 2341348; 722158, 2341374; 721756, 2341147; 721620, 2341102; 721256, 2341251; 721139, 2341270; 720872, 2341522; 720861, 2341600; 720856, 2341640; 720767, 2341699; 720682, 2341883; 720682, 2341883; 720682, 2341883; 720690, 2341897; 720716, 2341917; 720755, 2341929; 720769, 2341936; 720777, 2341952; 720777, 2341970; follow coastline and return to starting point.

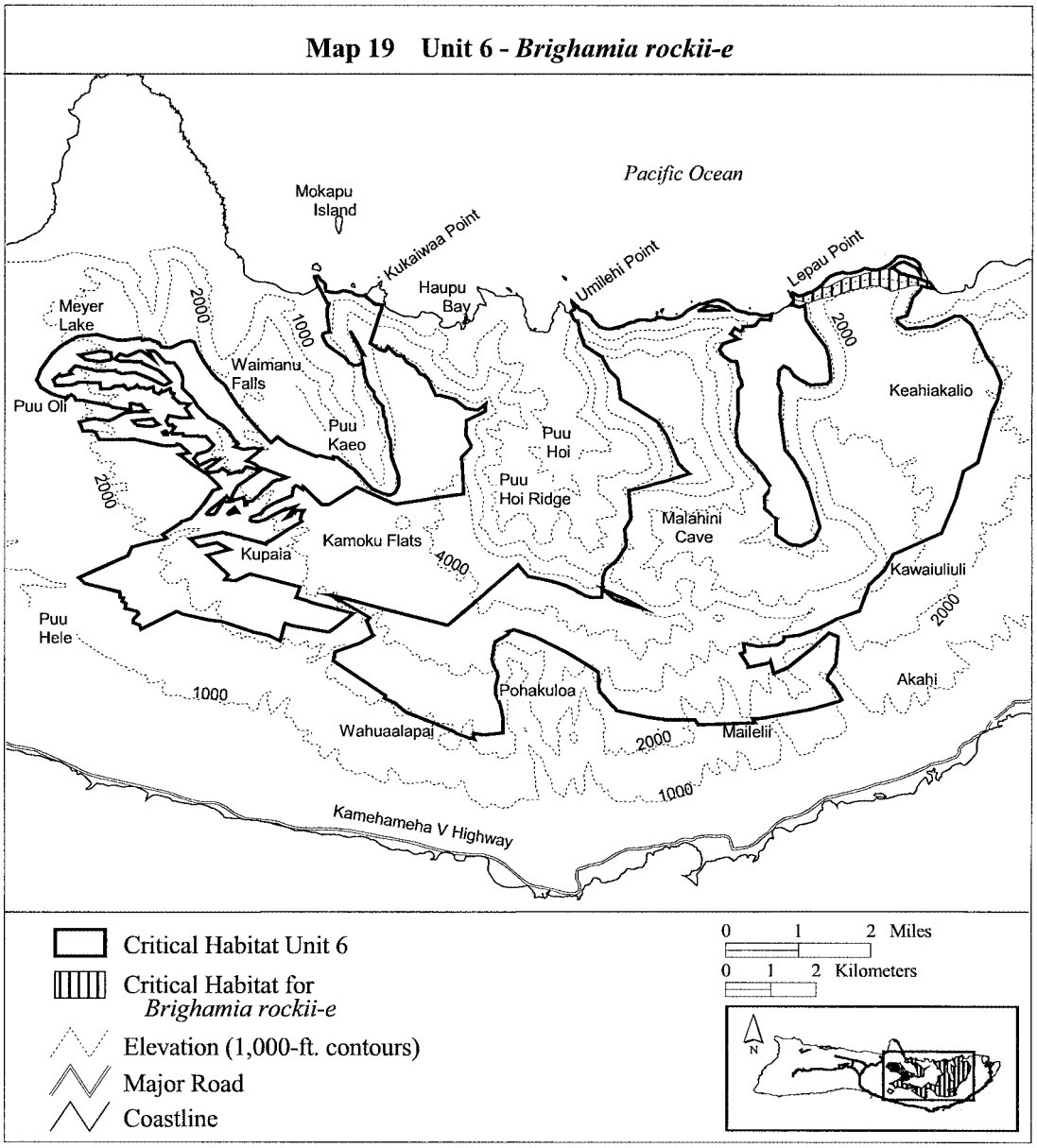
(ii) **Note:** Map 18 follows:



(19) Molokai 6—*Brighamia rockii*—e (83 ha; 206 ac)

(i) Unit consists of the following 24 boundary points and the intermediate coastline: Start at 726360, 2342420; 726777, 2342655; 726909, 2342655; 727223, 2342748; 727399, 2342787; 727757, 2342861; 727860, 2342856; 728070, 2342704; 728207, 2342694; 728394, 2342640; 728580, 2342567; 728635, 2342558; 728678, 2342429; 728305, 2342483; 727815, 2342351; 727571, 2342464; 727394, 2342478; 726860, 2342366; 726591, 2342258; 726194, 2342170; 725949, 2342077; 725660, 2342155; 725633, 2342168; 725632, 2342174; follow coastline and return to starting point.

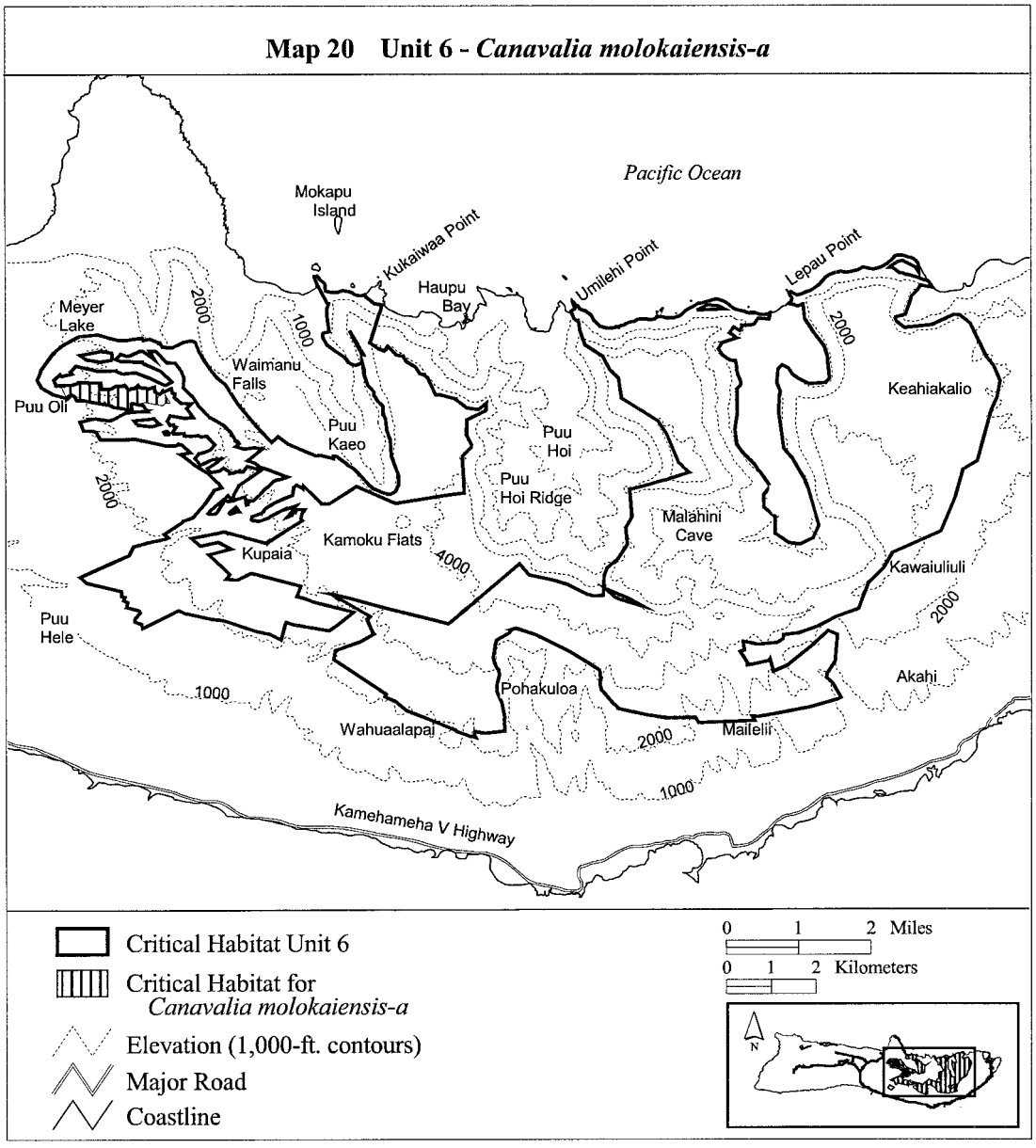
(ii) **Note:** Map 19 follows:



(20) Molokai 6—*Canavalia molokaiensis*—a (80 ha; 197 ac)

(i) Unit consists of the following 28 boundary points: Start at 711585, 2340110; 711750, 2339841; 711652, 2339833; 711589, 2339786; 711148, 2339857; 711062, 2339810; 710951, 2339857; 710881, 2339810; 710881, 2339715; 710487, 2339755; 710251, 2339841; 709913, 2339873; 709574, 2340038; 709469, 2339940; 709322, 2340226; 709637, 2340243; 709724, 2340298; 710220, 2340290; 710227, 2340156; 710338, 2340109; 710542, 2340211; 710778, 2340219; 710818, 2340125; 710936, 2340125; 711077, 2340188; 711376, 2340133; 711463, 2340038; 711455, 2339952; return to starting point.

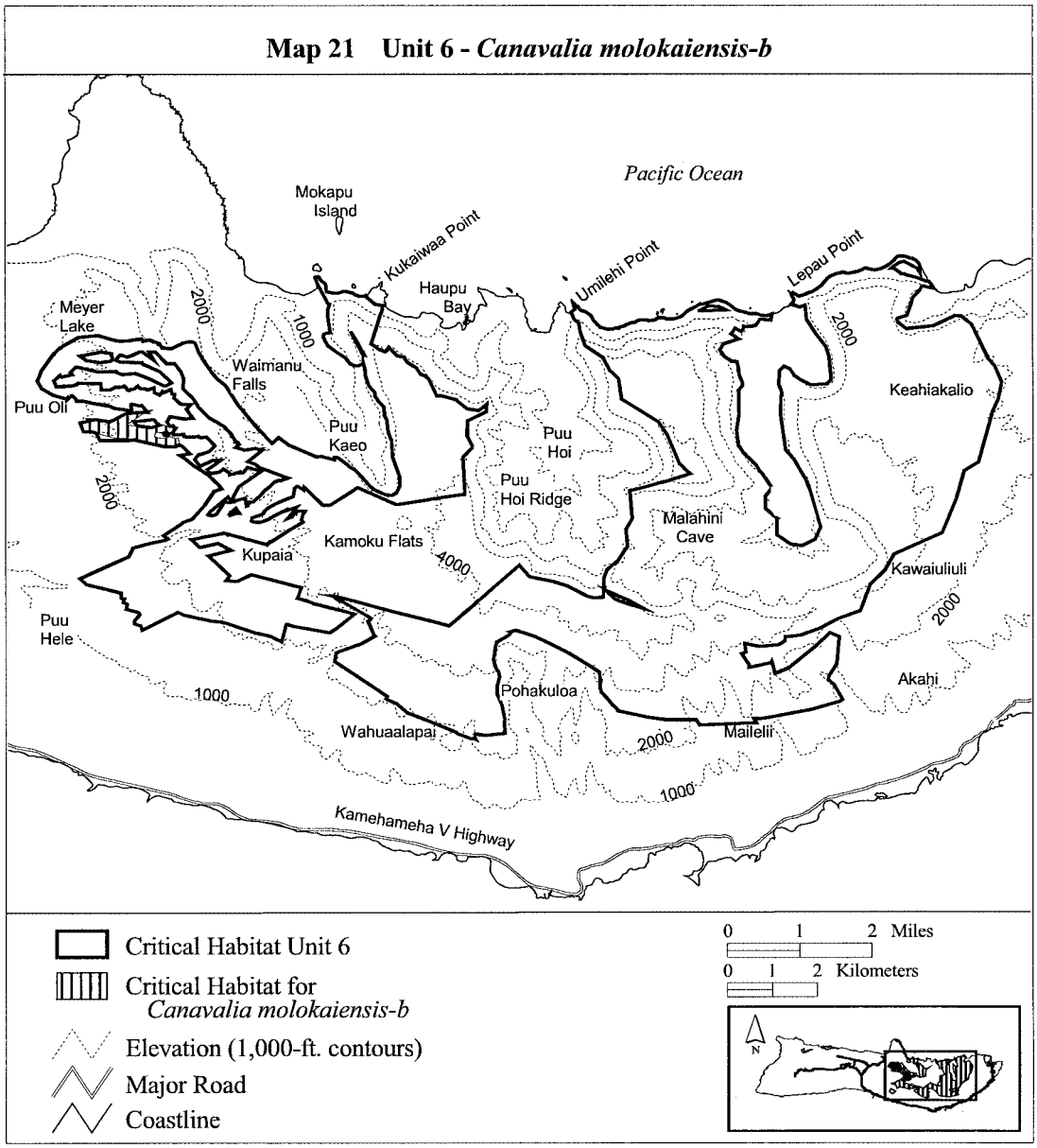
(ii) **Note:** Map 20 follows:



(21) Molokai 6—*Canavalia molokaiensis*—b (76 ha; 187 ac)

(i) Unit consists of the following 27 boundary points: Start at 711826, 2339337; 711860, 2339273; 711809, 2339212; 711431, 2339196; 711408, 2339109; 711589, 2339062; 711746, 2339109; 711880, 2339062; 711947, 2339066; 711971, 2338928; 711873, 2338886; 711654, 2338886; 710802, 2339069; 710534, 2339069; 710041, 2339210; 709997, 2339210; 709997, 2339210; 709837, 2339210; 709751, 2339417; 710102, 2339495; 710424, 2339432; 710763, 2339613; 711203, 2339660; 710794, 2339377; 711258, 2339283; 711573, 2339377; 711778, 2339330; return to starting point.

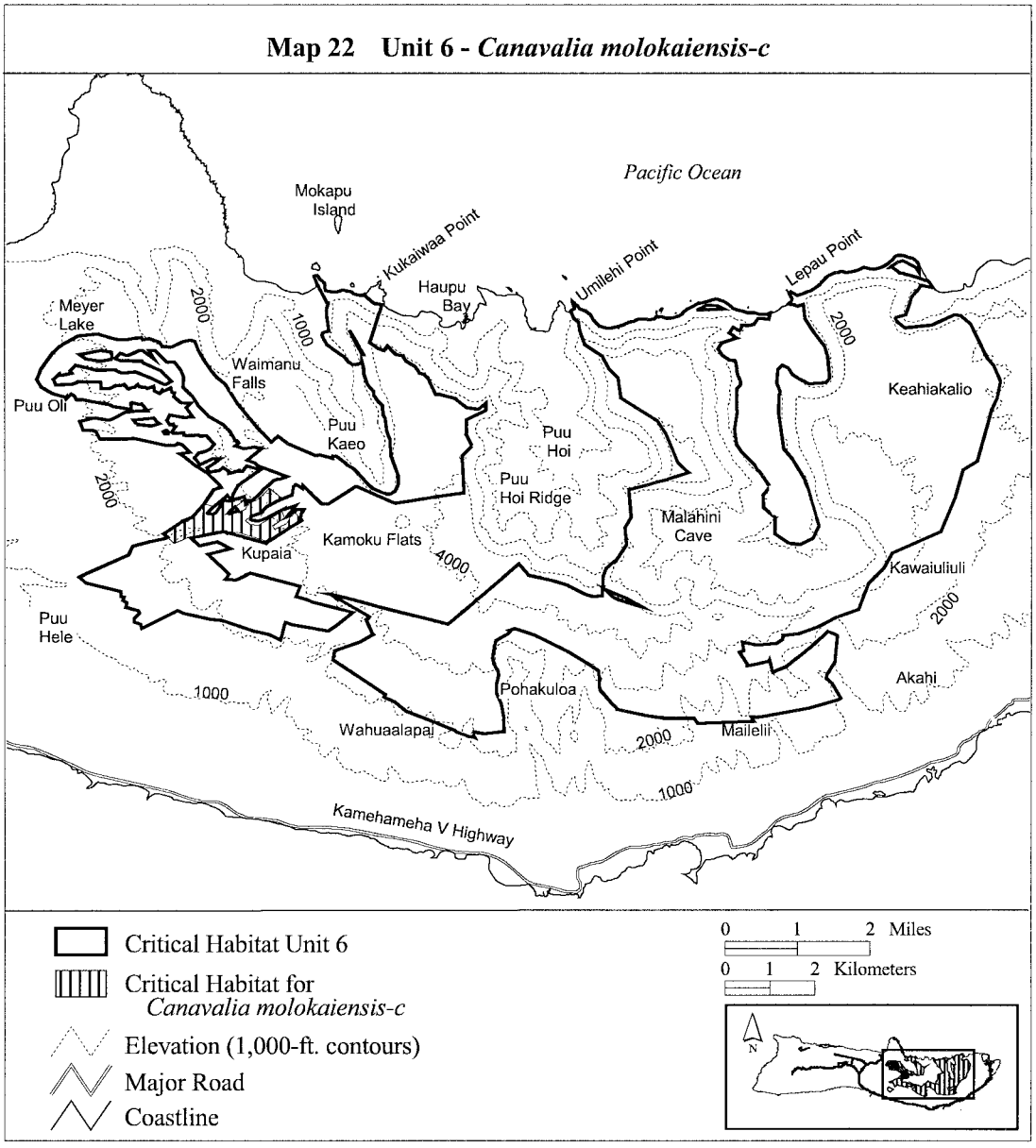
(ii) **Note:** Map 21 follows:



(22) Molokai 6—*Canavalia molokaiensis*—c (150 ha; 371 ac)

(i) Unit consists of the following 36 boundary points: Start at 711848, 2336679; 711615, 2336901; 712021, 2337169; 712152, 2337176; 712518, 2337570; 712704, 2337521; 712587, 2337356; 712746, 2337335; 712939, 2337632; 713415, 2337666; 712987, 2337335; 713236, 2337363; 713457, 2337452; 713477, 2337590; 713678, 2337653; 713919, 2337860; 713966, 2337927; 714259, 2337694; 713940, 2337542; 713781, 2337363; 713512, 2337266; 713443, 2337197; 713533, 2337114; 713719, 2337087; 713995, 2337252; 714250, 2337404; 714299, 2337252; 714043, 2337073; 714085, 2336997; 714354, 2337121; 714517, 2337419; 714705, 2337206; 713938, 2336730; 713284, 2336921; 712794, 2336955; 712139, 2336804; return to starting point.

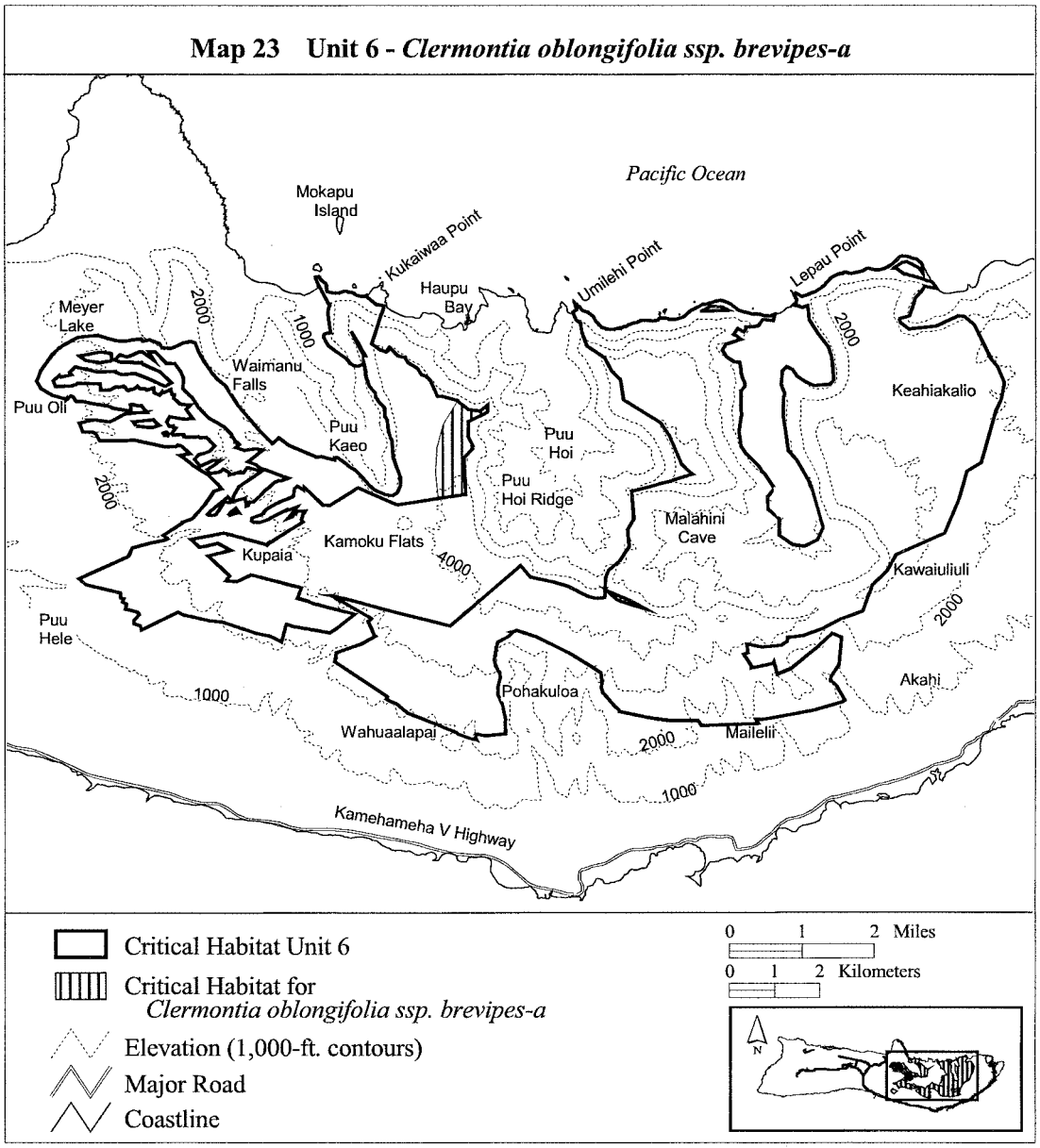
(ii) **Note:** Map 22 follows:



(23) Molokai 6—*Clermontia oblongifolia* ssp. *brevipes*—a (131 ha; 325 ac)

(i) Unit consists of the following 14 boundary points: Start at 717701, 2337728; 717628, 2338298; 717674, 2338869; 717807, 2339393; 718126, 2339914; 718369, 2339712; 718630, 2339684; 718798, 2339820; 718794, 2339660; 718369, 2339448; 718361, 2339127; 718483, 2338864; 718272, 2338643; 718311, 2337817; return to starting point.

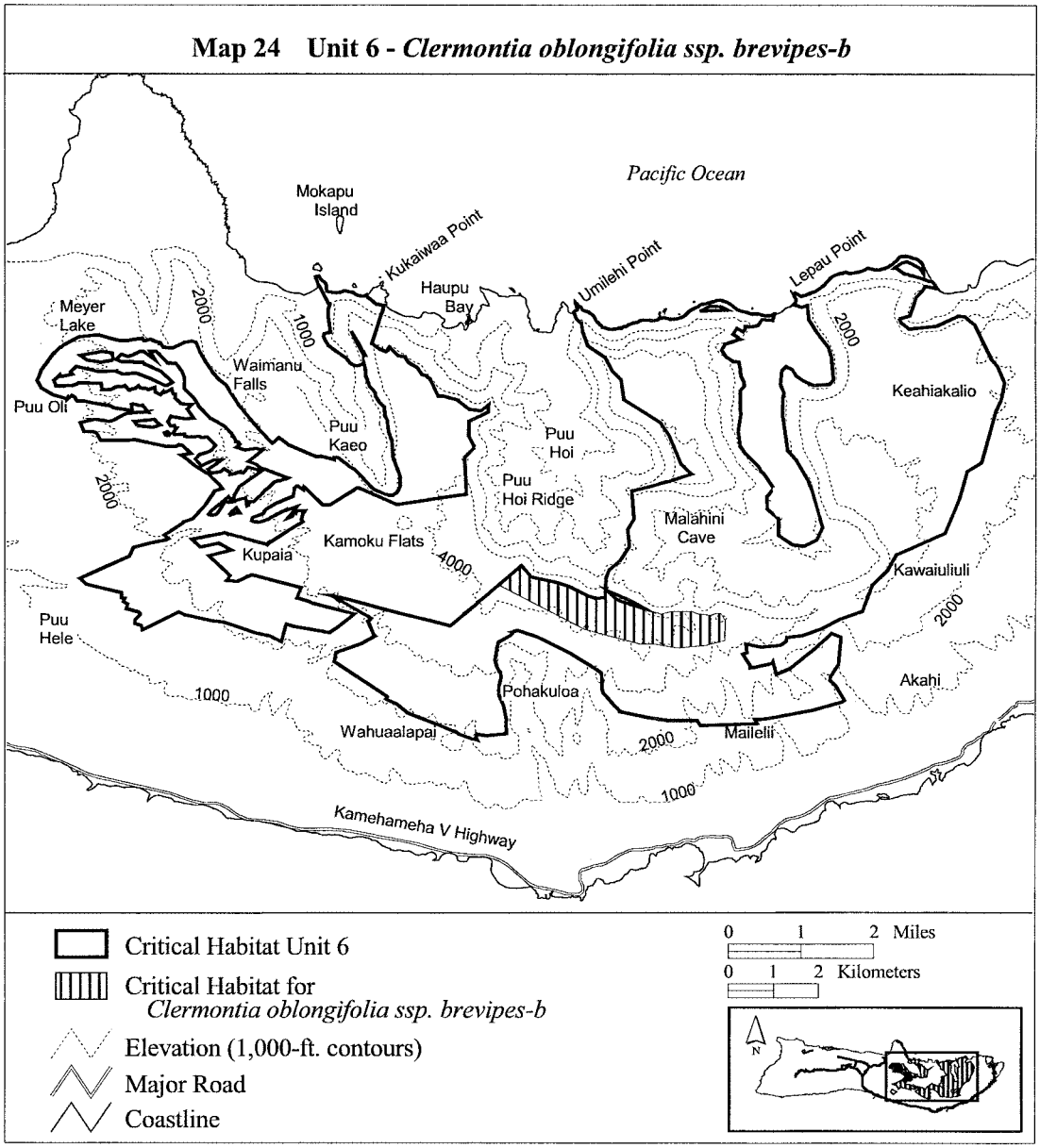
(ii) **Note:** Map 23 follows:



(24) Molokai 6—*Clermontia oblongifolia* ssp. *brevipes*—b (358 ha; 884 ac)

(i) Unit consists of the following 27 boundary points: Start at 721397, 2335692; 721668, 2335452; 721947, 2335359; 722644, 2335147; 722856, 2335193; 723314, 2335207; 723493, 2335140; 723765, 2335120; 723904, 2335173; 723977, 2335160; 724070, 2335007; 724063, 2334550; 723652, 2334443; 723002, 2334377; 722511, 2334470; 722166, 2334470; 720938, 2334795; 719017, 2335788; 719529, 2336227; 719749, 2335976; 720611, 2335749; 720920, 2335559; 721062, 2335514; 721066, 2335513; 721206, 2335488; 721388, 2335510; 721396, 2335678; return to starting point.

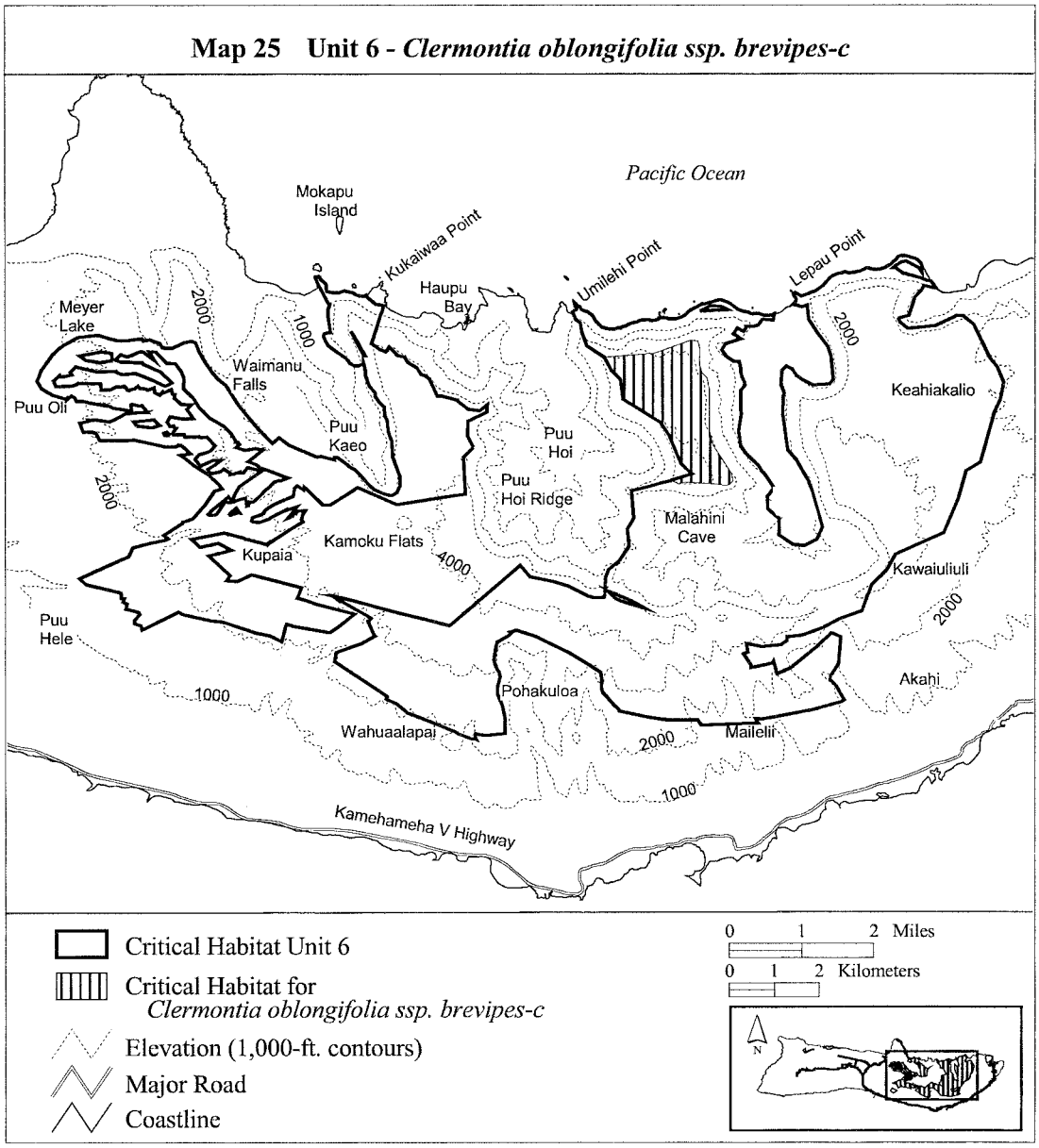
(ii) **Note:** Map 24 follows:



(25) Molokai 6—*Clermontia oblongifolia* ssp. *brevipes*—c (427 ha; 1,054 ac)

(i) Unit consists of the following 28 boundary points: Start at 722484, 2340959; 723300, 2341251; 723453, 2341231; 723499, 2341052; 723492, 2340727; 723539, 2340534; 723652, 2340415; 723711, 2340170; 723718, 2339871; 723711, 2339267; 723778, 2338922; 724196, 2338272; 724229, 2338099; 724149, 2338033; 724063, 2338006; 723844, 2338046; 723174, 2338080; 723028, 2338046; 722869, 2338119; 722868, 2338120; 723331, 2338266; 723088, 2338481; 722803, 2339144; 722612, 2339432; 721796, 2339934; 721731, 2340378; 721548, 2340570; 721380, 2340876; return to starting point.

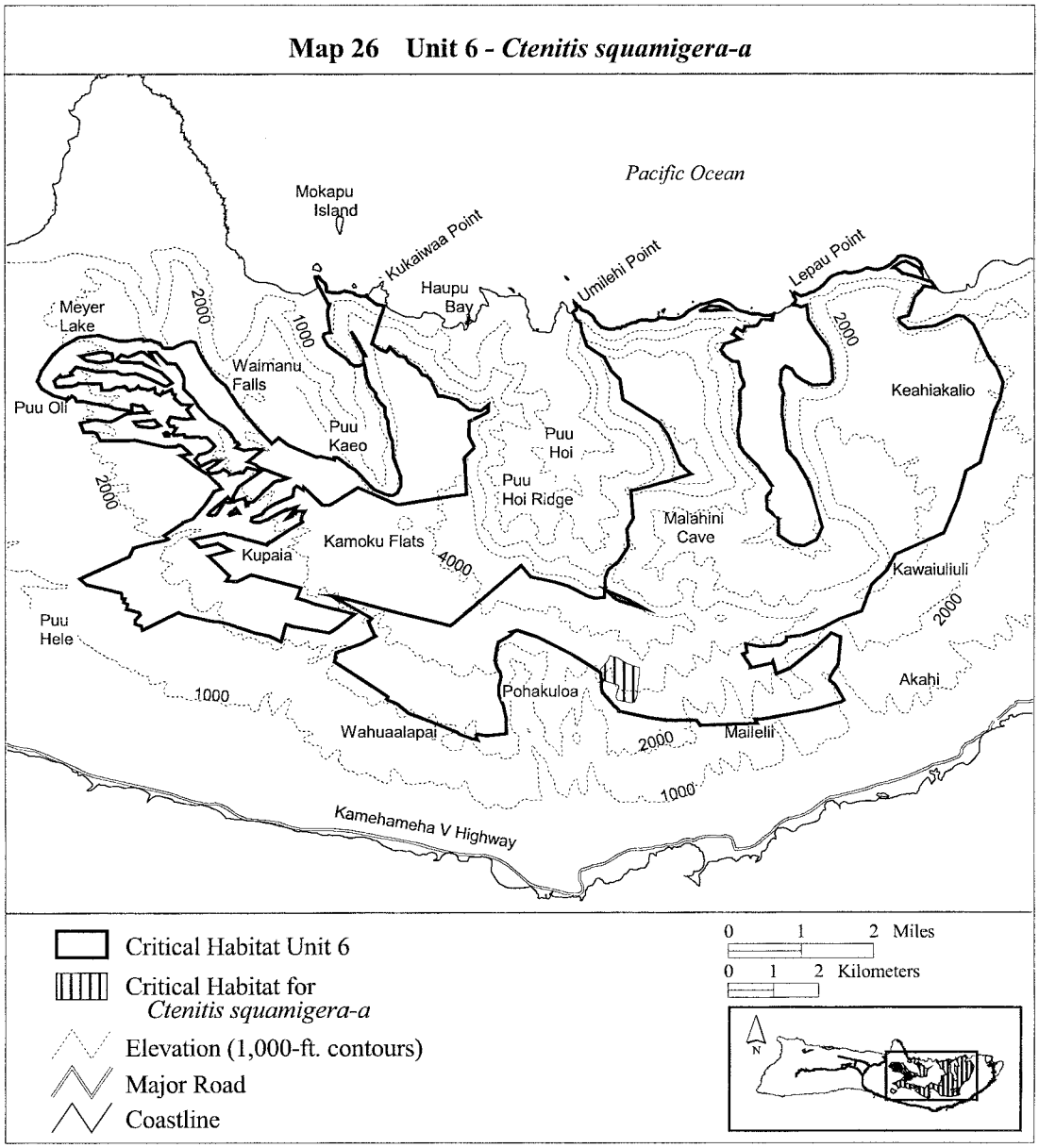
(ii) **Note:** Map 25 follows:



(26) Molokai 6—*Ctenitis squamigera*—a (58 ha; 144 ac)

(i) Unit consists of the following 21 boundary points: Start at 721326, 2333655; 721317, 2333769; 721287, 2333895; 721466, 2334108; 721505, 2334200; 721670, 2334169; 721897, 2334030; 722041, 2333969; 722176, 2333943; 722167, 2333799; 722145, 2333638; 722128, 2333429; 722119, 2333298; 722054, 2333159; 721988, 2333146; 721692, 2333207; 721666, 2333237; 721644, 2333298; 721697, 2333464; 721714, 2333525; 721679, 2333560; return to starting point.

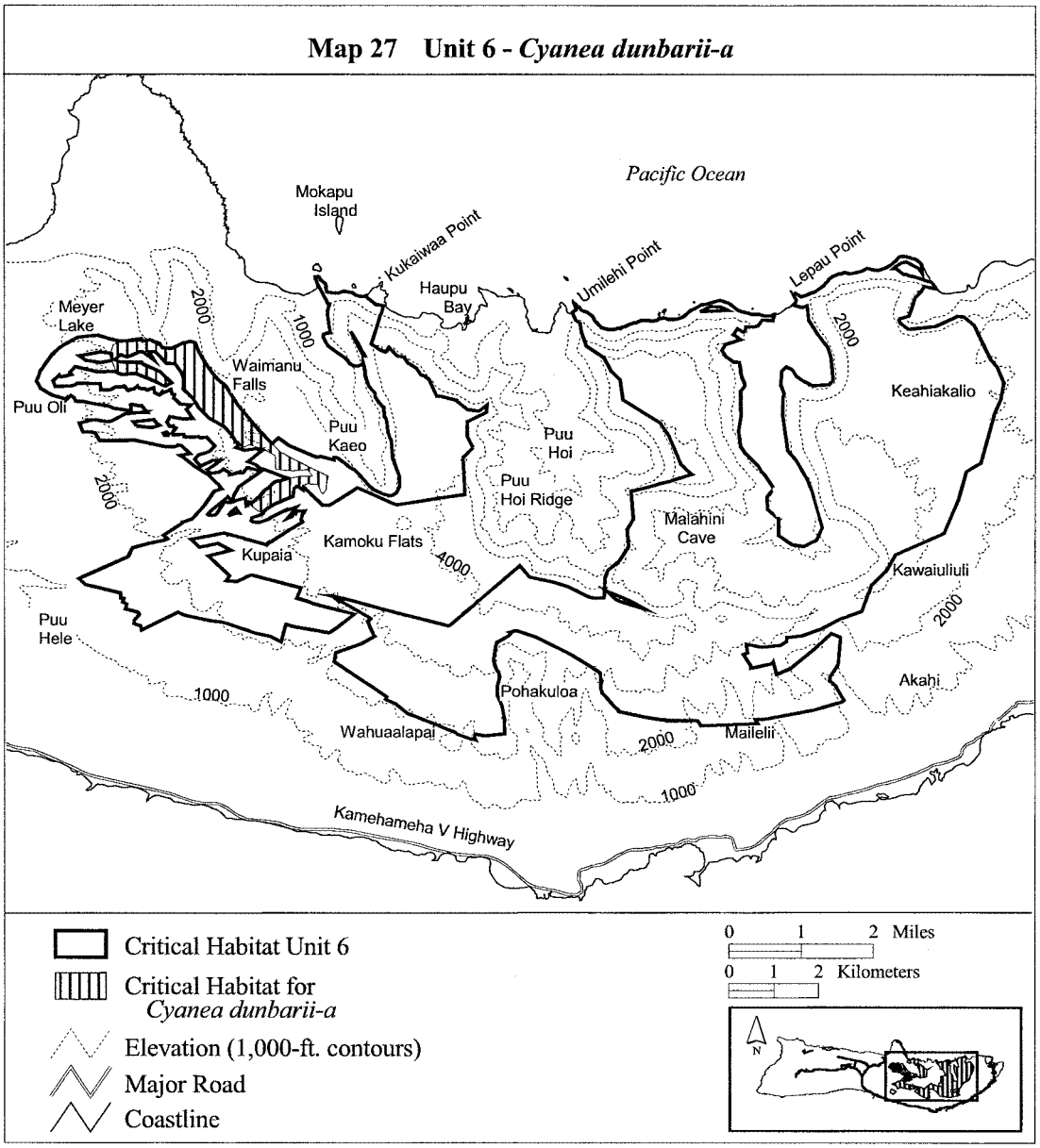
(ii) **Note:** Map 26 follows:



(27) Molokai 6—*Cyanea dunbarii*—a (328 ha; 810 ac)

(i) Unit consists of the following 90 boundary points: Start at 712383, 2341010; 712509, 2340781; 712677, 2340542; 712803, 2340388; 712971, 2340262; 713243, 2339841; 713266, 2339806; 713715, 2339259; 714220, 2338754; 714297, 2338733; 714374, 2338677; 714760, 2338473; 715273, 2338222; 715234, 2338101; 715225, 2337922; 715157, 2337836; 715115, 2337848; 715023, 2338037; 714756, 2338059; 714707, 2337911; 714567, 2338002; 714503, 2337946; 714489, 2337777; 714272, 2337679; 713969, 2337560; 713829, 2337426; 713749, 2337418; 713485, 2337618; 713716, 2337686; 713906, 2337932; 714103, 2338087; 714609, 2338220; 714918, 2338213; 714813, 2338368; 714419, 2338347; 714103, 2338389; 714089, 2338684; 713829, 2338832; 713499, 2338930; 713358, 2338860; 713246, 2338979; 713158, 2339000; 713210, 2339000; 713105, 2339162; 712936, 2339352; 712620, 2339534; 712395, 2339759; 712248, 2339991; 712044, 2340188; 712051, 2340406; 711988, 2340567; 711861, 2340729; 711679, 2340743; 711433, 2341003; 711081, 2340996; 710800, 2340884; 710660, 2340940; 710547, 2340827; 710653, 2340778; 710856, 2340778; 711123, 2340743; 711531, 2340560; 711791, 2340321; 711666, 2340244; 711599, 2340252; 711348, 2340378; 711130, 2340462; 710976, 2340525; 710695, 2340497; 710564, 2340545; 710482, 2340767; 710454, 2340998; 710489, 2341159; 710587, 2341201; 711050, 2341229; 711309, 2341265; 711407, 2341229; 711520, 2341187; 711520, 2341187; 711590, 2341089; 711621, 2341088; 711621, 2341088; 711786, 2341082; 712007, 2341178; 712060, 2341201; 712183, 2341226; 712235, 2341236; 712236, 2341236; 712305, 2341201; 712382, 2341012; return to starting point.

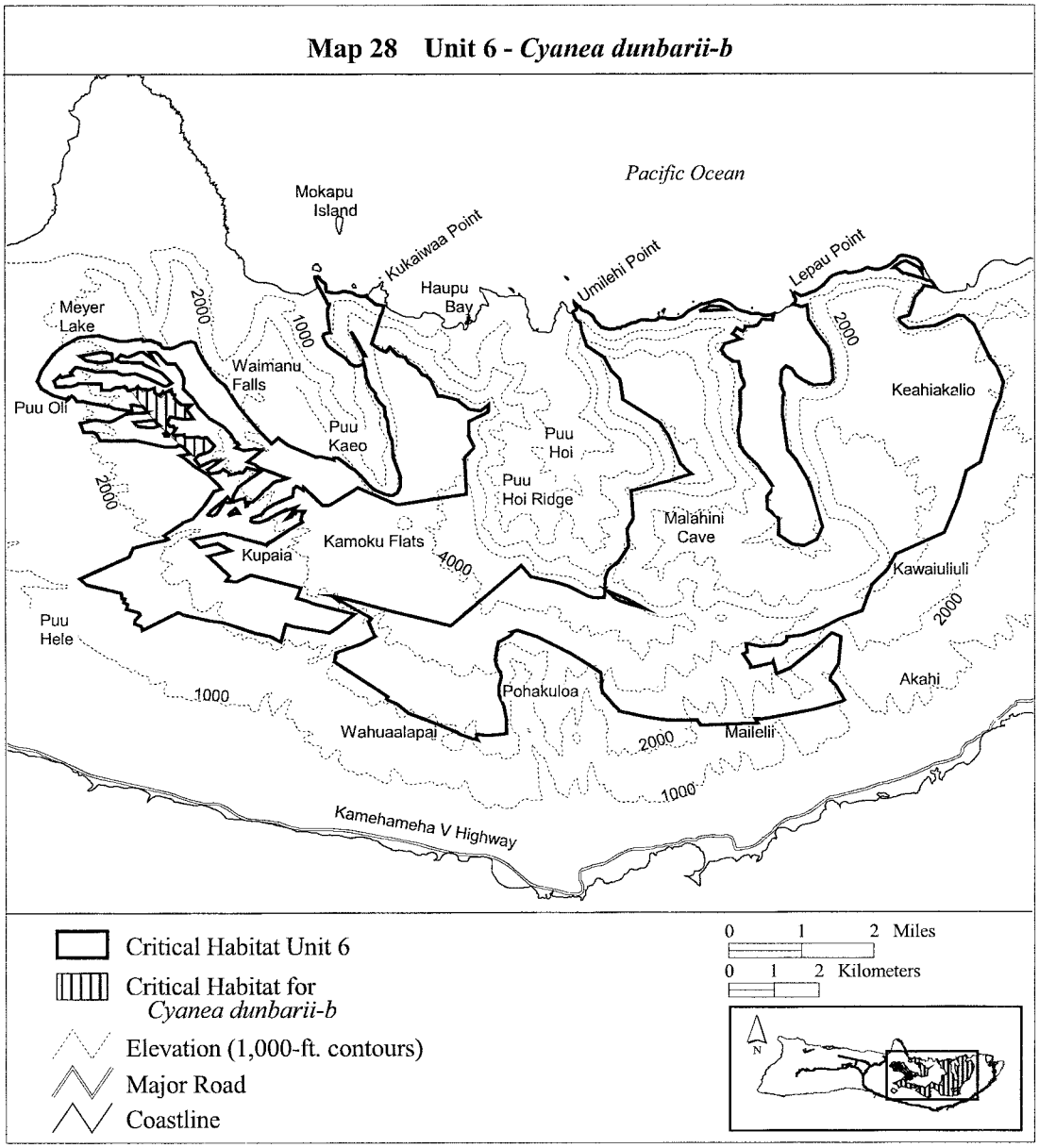
(ii) **Note:** Map 27 follows:



(28) Molokai 6—*Cyanea dunbarii*—b (88 ha; 218 ac)

(i) Unit consists of the following 38 boundary points: Start at 712268, 2338661; 711464, 2339411; 711167, 2339755; 710877, 2340154; 710985, 2340181; 711039, 2340242; 711079, 2340187; 711133, 2340181; 711133, 2340113; 711295, 2340160; 711397, 2340201; 711410, 2340052; 711545, 2339985; 711687, 2340106; 711849, 2340046; 711836, 2339971; 711991, 2339830; 712227, 2339823; 712119, 2339721; 712261, 2339519; 712059, 2339505; 711755, 2339553; 711687, 2339445; 711748, 2339343; 711829, 2339350; 711843, 2339309; 711883, 2339303; 711802, 2339181; 711843, 2339120; 712011, 2339134; 712140, 2339087; 712194, 2339080; 712383, 2339114; 712423, 2339087; 712565, 2339093; 712741, 2338904; 712639, 2338796; 712525, 2338742; return to starting point.

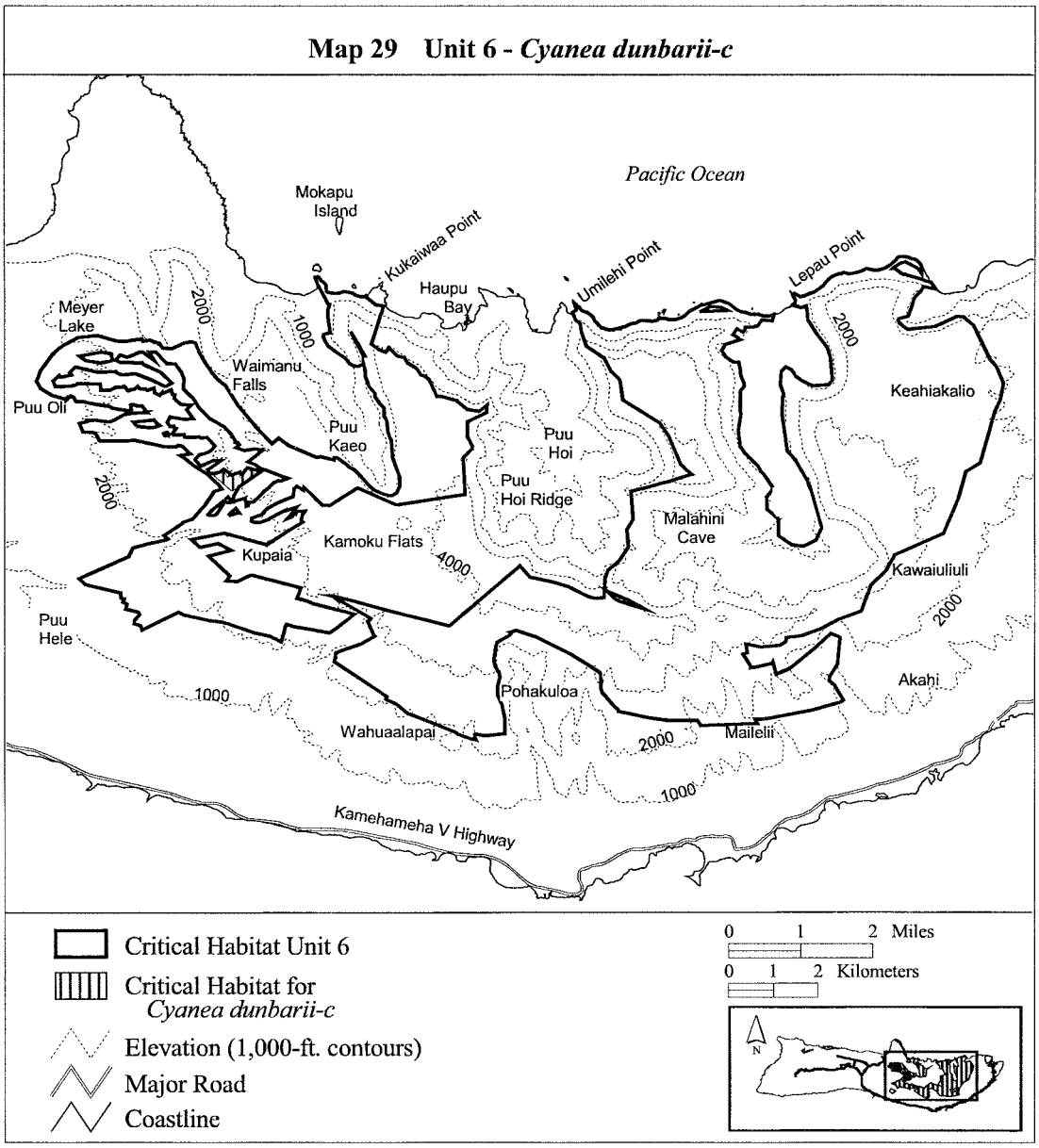
(ii) **Note:** Map 28 follows:



(29) Molokai 6—*Cyanea dunbarii*—c (23 ha; 56 ac)

(i) Unit consists of the following 8 boundary points: Start at 713119, 2337891; 712721, 2338242; 712943, 2338337; 713018, 2338202; 713295, 2338323; 713301, 2338229; 713470, 2338418; 713767, 2338337; return to starting point.

(ii) **Note:** Map 29 follows:

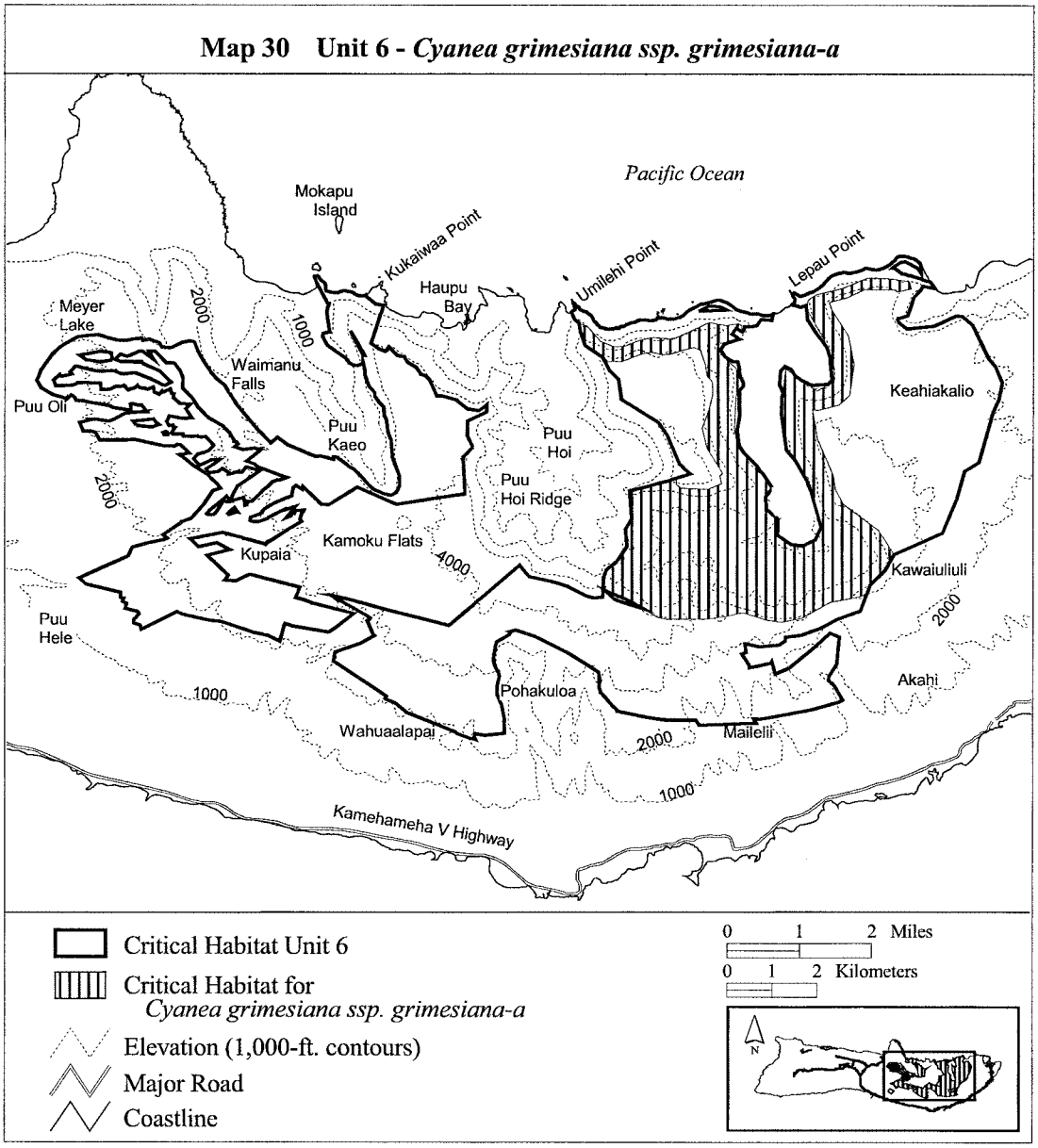


(30) Molokai 6—*Cyanea grimesiana* ssp. *grimesiana*—a (2,133 ha; 5,272 ac)

(i) Unit consists of the following 147 boundary points: Start at 724402, 2341280; 724061, 2341168; 723989, 2341034; 724140, 2340797; 724323, 2340631; 724436, 2340432; 724436, 2340432; 724485, 2340334; 724485, 2340334; 724485, 2340334; 724496, 2340239; 724495, 2340236; 724406, 2340142; 724406, 2340141; 724328, 2339992; 724289, 2339246; 724392, 2338911; 724498, 2338755; 724498, 2338755; 724580, 2338634; 724934, 2338251; 725144, 2337958; 724994, 2337760; 725003, 2337485; 725003, 2337479; 725003, 2337479; 725257, 2337263; 725252, 2336892; 725552, 2336696; 725813, 2336660; 726097, 2336793; 726225, 2337071; 726132, 2337378; 725950, 2337999; 725950, 2337999; 725948, 2337998; 725947, 2337998; 725906, 2338120; 725645, 2338566; 725448, 2338803; 725338, 2339603; 725350, 2340002; 725368, 2340078; 725368, 2340079; 725431, 2340616; 726134, 2340129; 726517, 2340344; 726517, 2340585; 726288, 2341264; 725894, 2341967; 725924, 2342152; 726122, 2342269; 726708, 2342417; 727260, 2342635; 727711, 2342629; 728174, 2342570; 728226, 2342394; 727905, 2342331; 727855, 2342374; 727164, 2342368; 726825, 2342214; 726406, 2342096; 726455, 2341942; 726831, 2341350; 726961, 2340727; 726862, 2340024; 726619, 2339809; 726149, 2339695; 726027, 2339695; 726106, 2339243; 726139, 2339057; 726506, 2338221; 726534, 2337929; 726712, 2337601; 727511, 2336999; 727854, 2336466; 727650, 2336110; 727313, 2335793; 727248, 2335596; 727088, 2335525; 726421, 2335393; 725792, 2335036; 725341, 2334952; 725013, 2334999; 724477, 2335168; 724109, 2335080; 723632, 2335018; 722824, 2335018; 722627, 2335055; 721913, 2335459; 721396, 2335678; 721470, 2336127; 721713, 2336326; 721929, 2336656; 721893, 2337028; 722037, 2337255; 721980, 2337890; 722331, 2337981; 723022, 2338160; 723014, 2338043; 723114, 2337949; 723297, 2337942; 723717, 2337932; 724017, 2338052; 723979, 2338221; 724036, 2338277; 723697, 2338841; 723585, 2339283; 723733, 2339688; 723818, 2340054; 723803, 2340329; 723696, 2340449; 723662,

2340693; 723538, 2341038; 723396, 2341086; 723176, 2341034; 722908, 2340945; 722675, 2340943; 722677, 2340938; 722661, 2340941; 722639, 2340938; 722637, 2340946; 722457, 2340989; 722243, 2340955; 721785, 2340772; 721651, 2340790; 721486, 2340778; 721475, 2340813; 720997, 2341127; 720995, 2341131; 720861, 2341600; 720942, 2341609; 721062, 2341540; 721334, 2341227; 721651, 2341103; 721861, 2341113; 722188, 2341248; 722488, 2341323; 722939, 2341279; 723503, 2341530; 723727, 2341654; 724109, 2341592; 724378, 2341623; 724450, 2341588; 724473, 2341445; 724325, 2341519; 724244, 2341392; return to starting point.

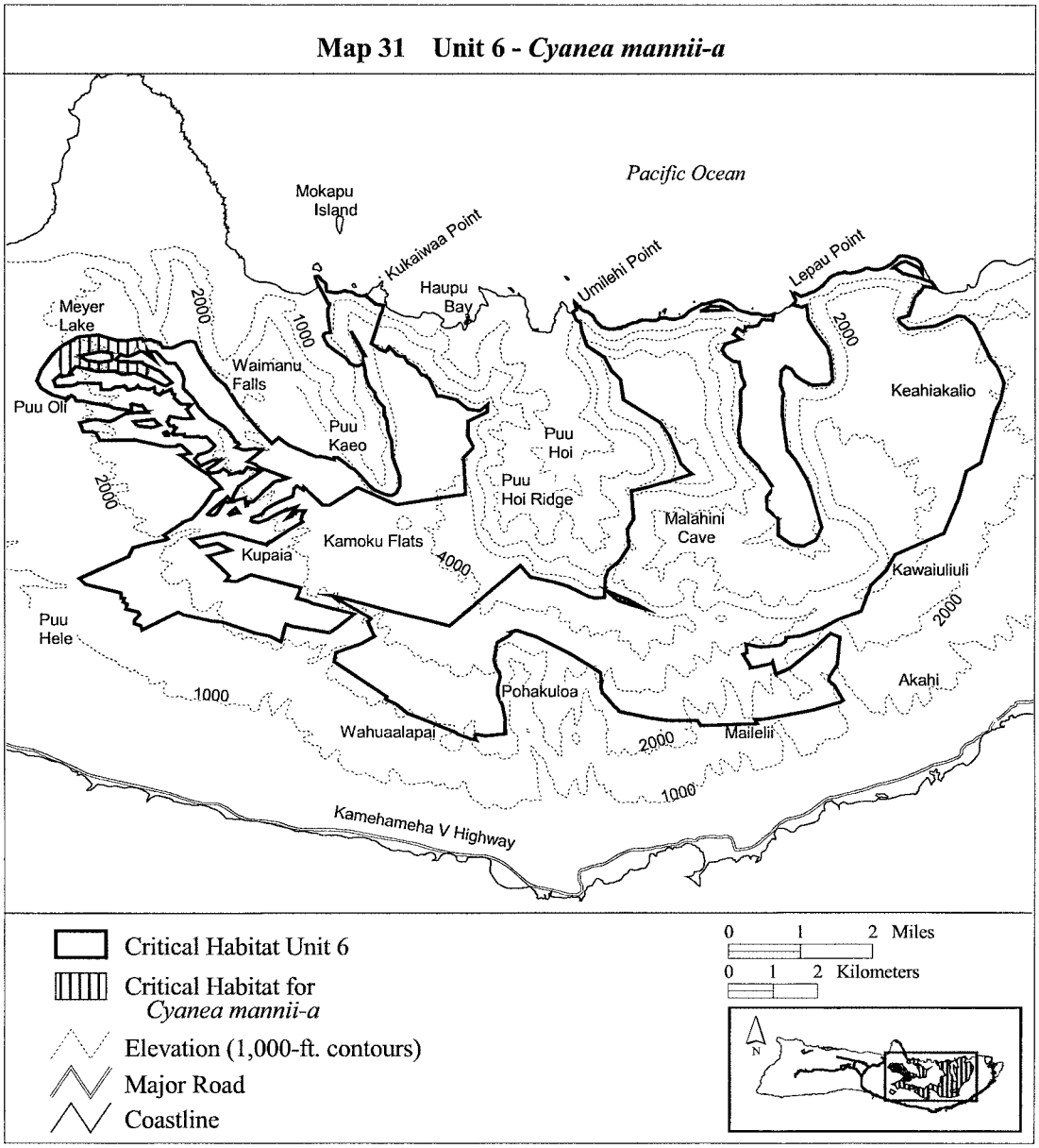
(ii) **Note:** Map 30 follows:



(31) Molokai 6—*Cyanea mannii*—a (110 ha; 272 ac)

(i) Unit consists of the following 31 boundary points: Start at 709340, 2340505; 709294, 2340681; 709294, 2340850; 709317, 2341088; 709693, 2341288; 710007, 2341357; 710238, 2341334; 710614, 2341241; 710790, 2341242; 710928, 2341272; 711128, 2341288; 711412, 2340812; 711005, 2341103; 710913, 2340927; 710215, 2341004; 709647, 2340888; 709977, 2340773; 710084, 2340781; 710199, 2340766; 710491, 2340812; 710783, 2340750; 710867, 2340758; 711136, 2340758; 711297, 2340581; 711235, 2340428; 711005, 2340520; 710783, 2340543; 710575, 2340566; 710146, 2340551; 709670, 2340666; 709462, 2340482; return to starting point.

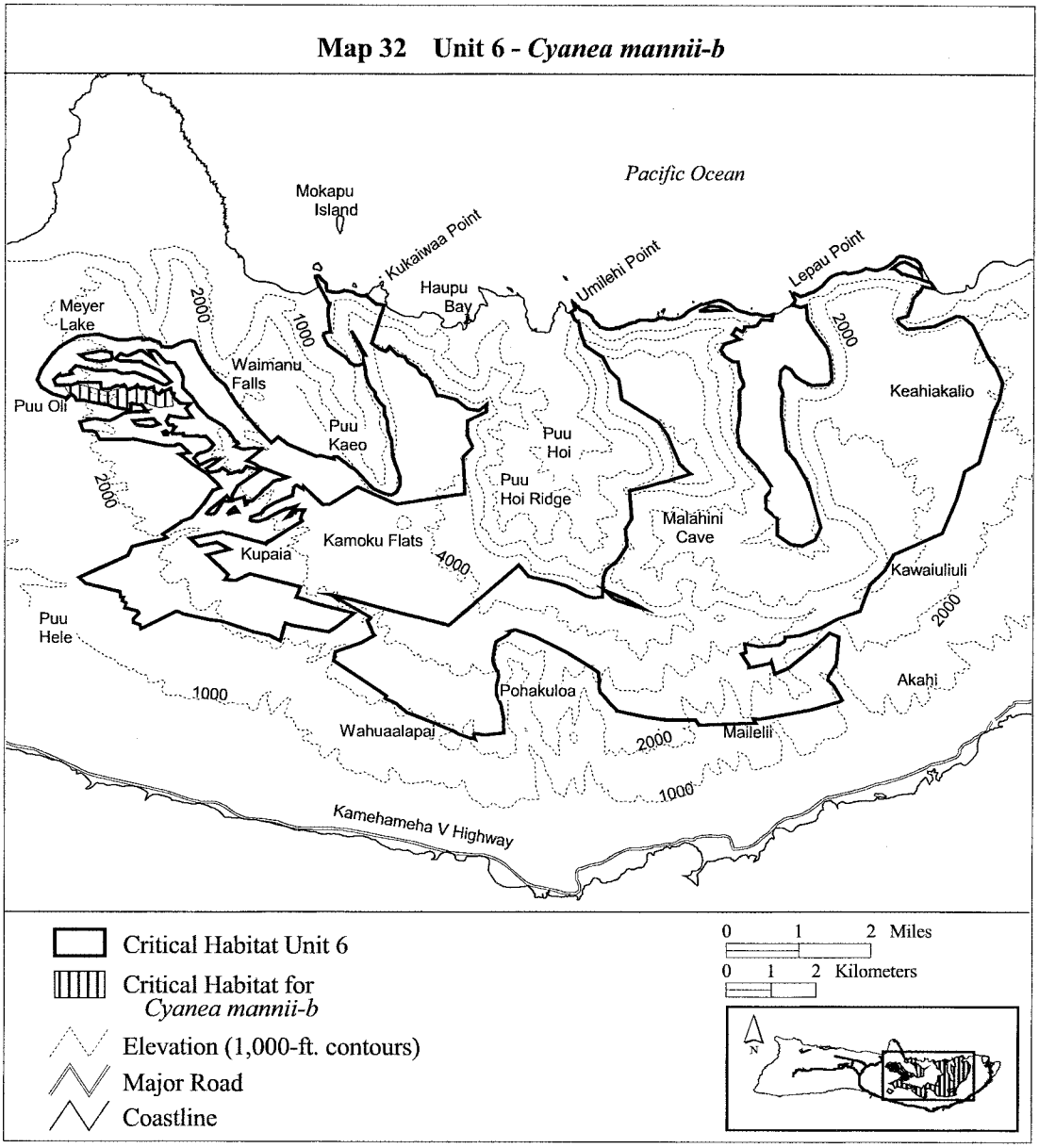
(ii) **Note:** Map 31 follows:



(32) Molokai 6—*Cyanea mannii*—b (81 ha; 199 ac)

(i) Unit consists of the following 25 boundary points: Start at 709386, 2340236; 709700, 2340251; 709777, 2340244; 710360, 2340090; 710721, 2340190; 710890, 2340113; 711036, 2340244; 711105, 2340121; 711312, 2340129; 711527, 2340036; 711780, 2340167; 711842, 2339768; 711527, 2339729; 711205, 2339837; 711082, 2339791; 710890, 2339837; 710905, 2339683; 710583, 2339737; 710499, 2339745; 710391, 2339791; 709992, 2339860; 709839, 2339891; 709685, 2339898; 709624, 2339983; 709501, 2340067; return to starting point.

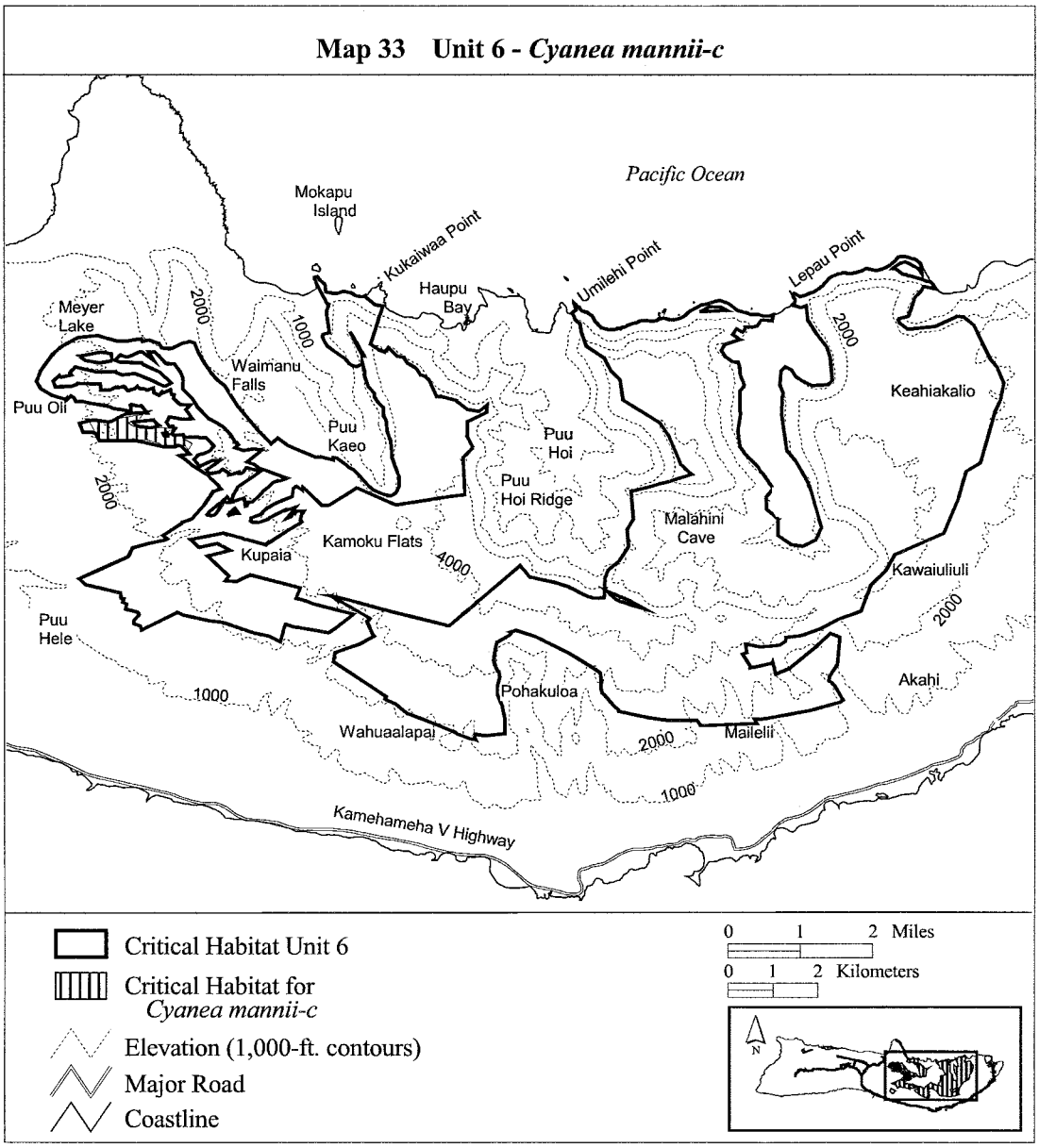
(ii) **Note:** Map 32 follows:



(33) Molokai 6—*Cyanea mannii*—c (78 ha; 192 ac)

(i) Unit consists of the following 25 boundary points: Start at 709961, 2339476; 710399, 2339438; 710644, 2339522; 710867, 2339568; 711159, 2339607; 711059, 2339476; 710821, 2339422; 710951, 2339353; 711320, 2339315; 711673, 2339307; 711865, 2339284; 711612, 2339184; 711642, 2339131; 712057, 2339154; 712087, 2339062; 712256, 2338962; 712172, 2338816; 712103, 2338900; 711888, 2338916; 711719, 2338931; 711581, 2338908; 711542, 2338954; 711220, 2339039; 710836, 2339023; 710207, 2339023; return to starting point.

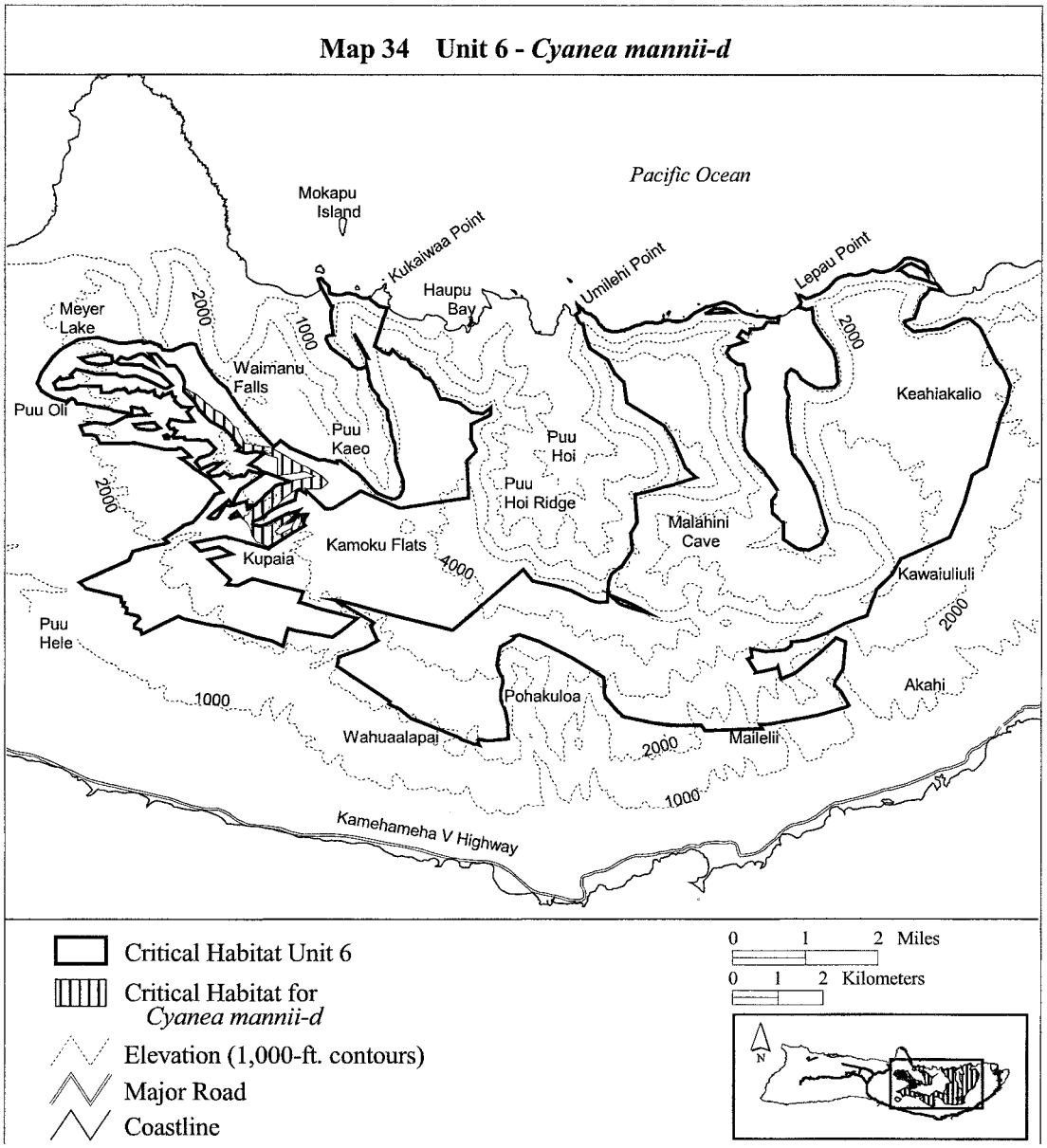
(ii) **Note:** Map 33 follows:



(34) Molokai 6—*Cyanea mannii*—d (160 ha; 396 ac)

(i) Unit consists of the following 73 boundary points: Start at 712661, 2339820; 712658, 2339819; 712672, 2339802; 712901, 2339679; 713065, 2339521; 713151, 2339406; 713247, 2339345; 713227, 2339338; 713378, 2339028; 713664, 2338964; 713937, 2338939; 713943, 2338936; 714265, 2338754; 714620, 2338553; 714721, 2338508; 715049, 2338303; 715206, 2338154; 715047, 2338011; 714522, 2338019; 714260, 2337828; 714038, 2337597; 713569, 2337288; 713537, 2337168; 713934, 2337192; 714324, 2337470; 714403, 2337375; 714038, 2337065; 714141, 2337001; 714379, 2337129; 714570, 2337438; 714753, 2337438; 714586, 2337240; 714581, 2337183; 714556, 2337183; 714560, 2337116; 713942, 2336733; 713867, 2336746; 713697, 2336822; 713650, 2336839; 713539, 2336980; 713504, 2337120; 713445, 2337255; 713334, 2337337; 713308, 2337344; 713372, 2337417; 713426, 2337415; 713553, 2337613; 713775, 2337812; 714022, 2338058; 714459, 2338209; 714912, 2338297; 714697, 2338392; 714101, 2338305; 714101, 2338519; 714101, 2338702; 713903, 2338766; 713648, 2338845; 713402, 2338805; 713210, 2338869; 713291, 2338925; 713171, 2339131; 712925, 2339354; 712655, 2339521; 712369, 2339783; 712266, 2340021; 712094, 2340230; 712094, 2340233; 712204, 2340159; 712321, 2340118; 712461, 2339995; 712575, 2339895; 712590, 2339902; 712650, 2339829; return to starting point.

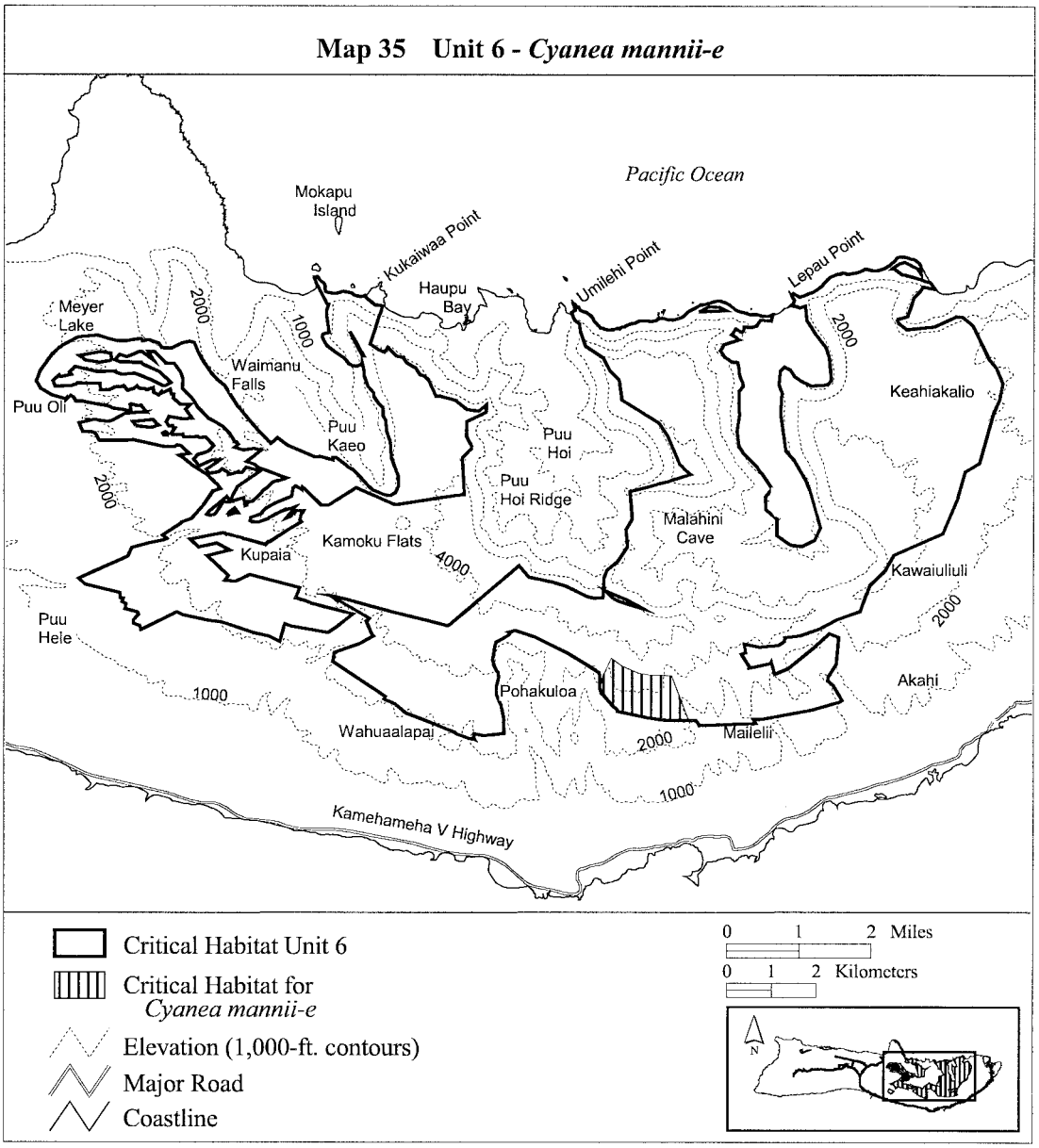
(ii) **Note:** Map 34 follows:



(35) Molokai 6—*Cyanea mannii*—e (168 ha; 416 ac)

(i) Unit consists of the following 18 boundary points: Start at 721578, 2334150; 721818, 2333970; 722169, 2333818; 722450, 2333777; 722673, 2333777; 722910, 2333761; 723049, 2333401; 723285, 2332769; 722714, 2332764; 722368, 2332823; 721718, 2332957; 721694, 2332993; 721595, 2333086; 721408, 2333315; 721338, 2333379; 721314, 2333467; 721314, 2333577; 721414, 2333839; return to starting point.

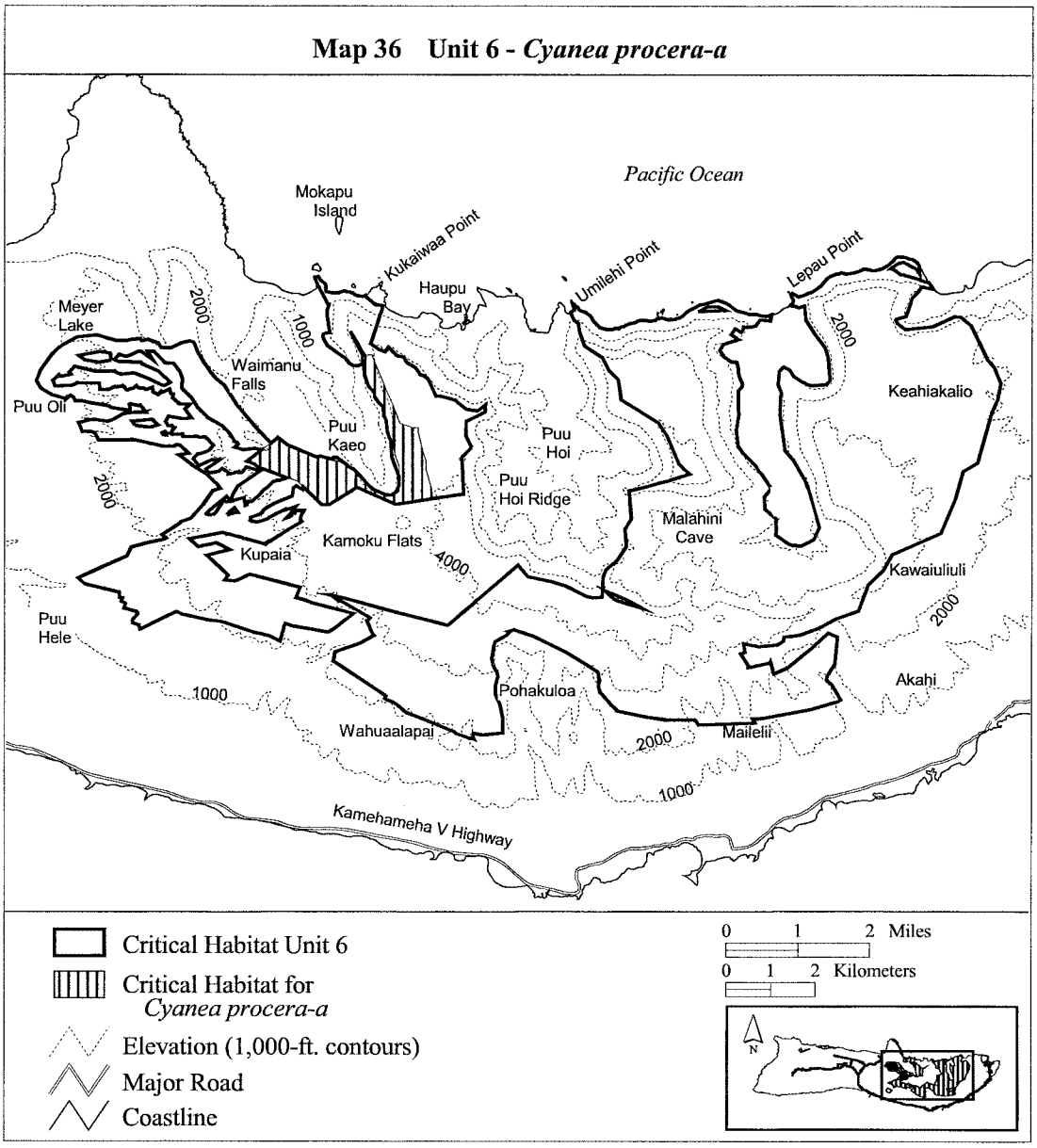
(ii) **Note:** Map 35 follows:



(36) Molokai 6—*Cyanea procera*—a (348 ha; 860 ac)

(i) Unit consists of the following 64 boundary points: Start at 717603, 2337808; 717607, 2337707; 717538, 2337697; 717493, 2337690; 716789, 2337580; 715922, 2337961; 715922, 2337961; 715899, 2337947; 715302, 2337577; 715148, 2337577; 714597, 2338100; 714254, 2338220; 713860, 2338374; 713740, 2338408; 713648, 2338488; 713476, 2338552; 714171, 2339082; 714385, 2338922; 715008, 2338648; 715099, 2338665; 715512, 2338547; 715842, 2338374; 716007, 2338202; 716190, 2338008; 716282, 2337911; 716533, 2337808; 716653, 2337785; 716801, 2337820; 716864, 2337877; 716864, 2338048; 716859, 2338282; 716854, 2338447; 716801, 2338608; 716716, 2338911; 716636, 2339105; 716596, 2339225; 716567, 2339476; 716516, 2339568; 716499, 2339773; 716390, 2339888; 716316, 2340002; 716310, 2340070; 716167, 2340242; 716093, 2340453; 716087, 2340602; 716047, 2340762; 716005, 2340909; 716252, 2340933; 716289, 2340900; 716266, 2340906; 716562, 2340165; 716724, 2339814; 716872, 2339396; 717182, 2339302; 717290, 2339294; 717293, 2339185; 717390, 2338768; 717464, 2338534; 717470, 2338534; 717470, 2338517; 717470, 2338385; 717470, 2338340; 717577, 2337948; 717601, 2337860; return to starting point.

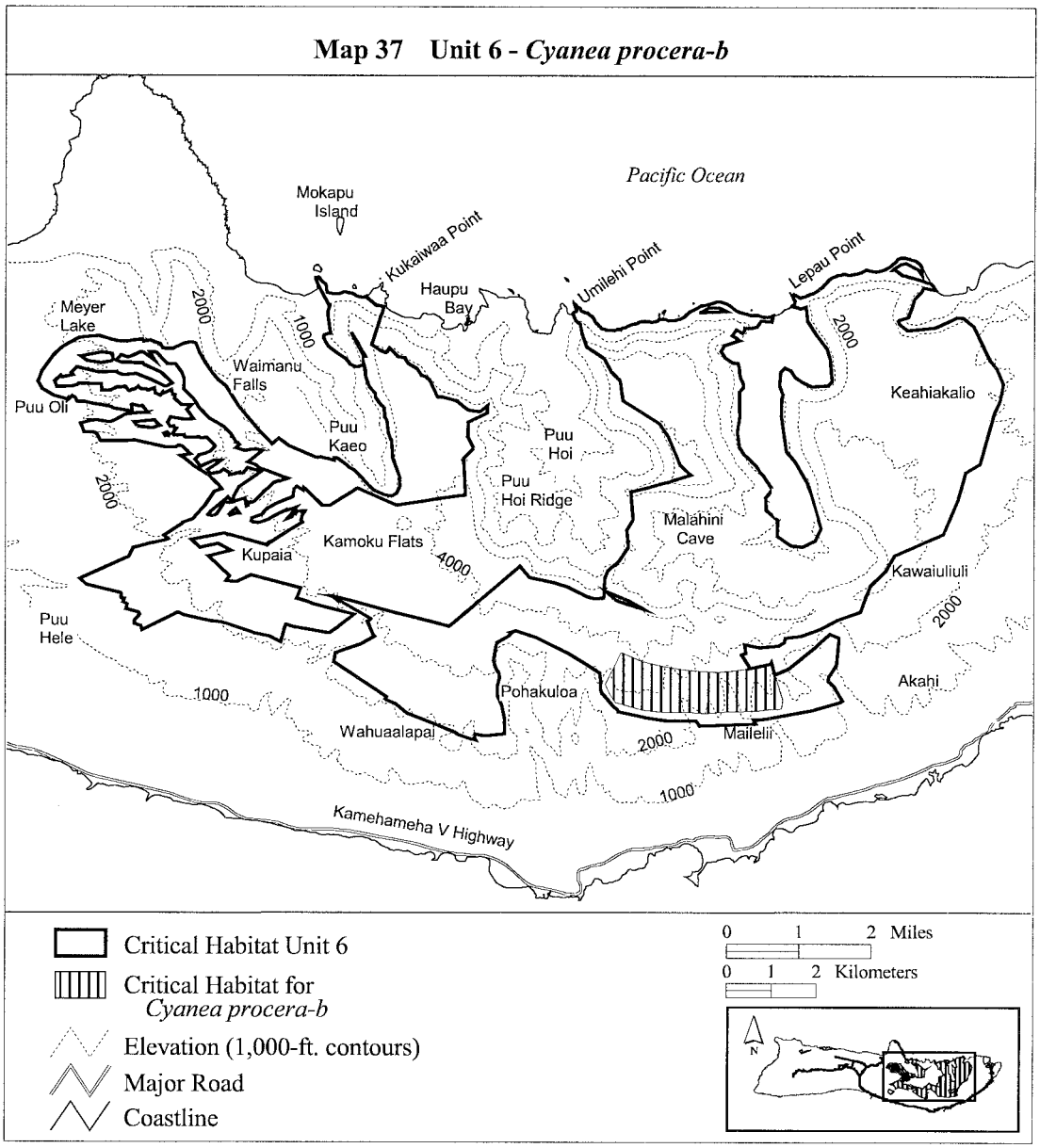
(ii) **Note:** Map 36 follows:



(37) Molokai 6—*Cyanea procera*—b (373 ha; 921 ac)

(i) Unit consists of the following 24 boundary points: Start at 721773, 2334290; 722229, 2334092; 722786, 2333963; 723322, 2333892; 723936, 2333849; 724350, 2333885; 724757, 2333956; 725114, 2334042; 725130, 2334067; 725385, 2333227; 725353, 2333037; 725264, 2333013; 725228, 2333013; 725035, 2333013; 724850, 2332985; 724514, 2332971; 724100, 2332956; 723650, 2332921; 723357, 2332942; 722765, 2332949; 722244, 2332999; 721637, 2333171; 721522, 2333349; 721417, 2333581; return to starting point.

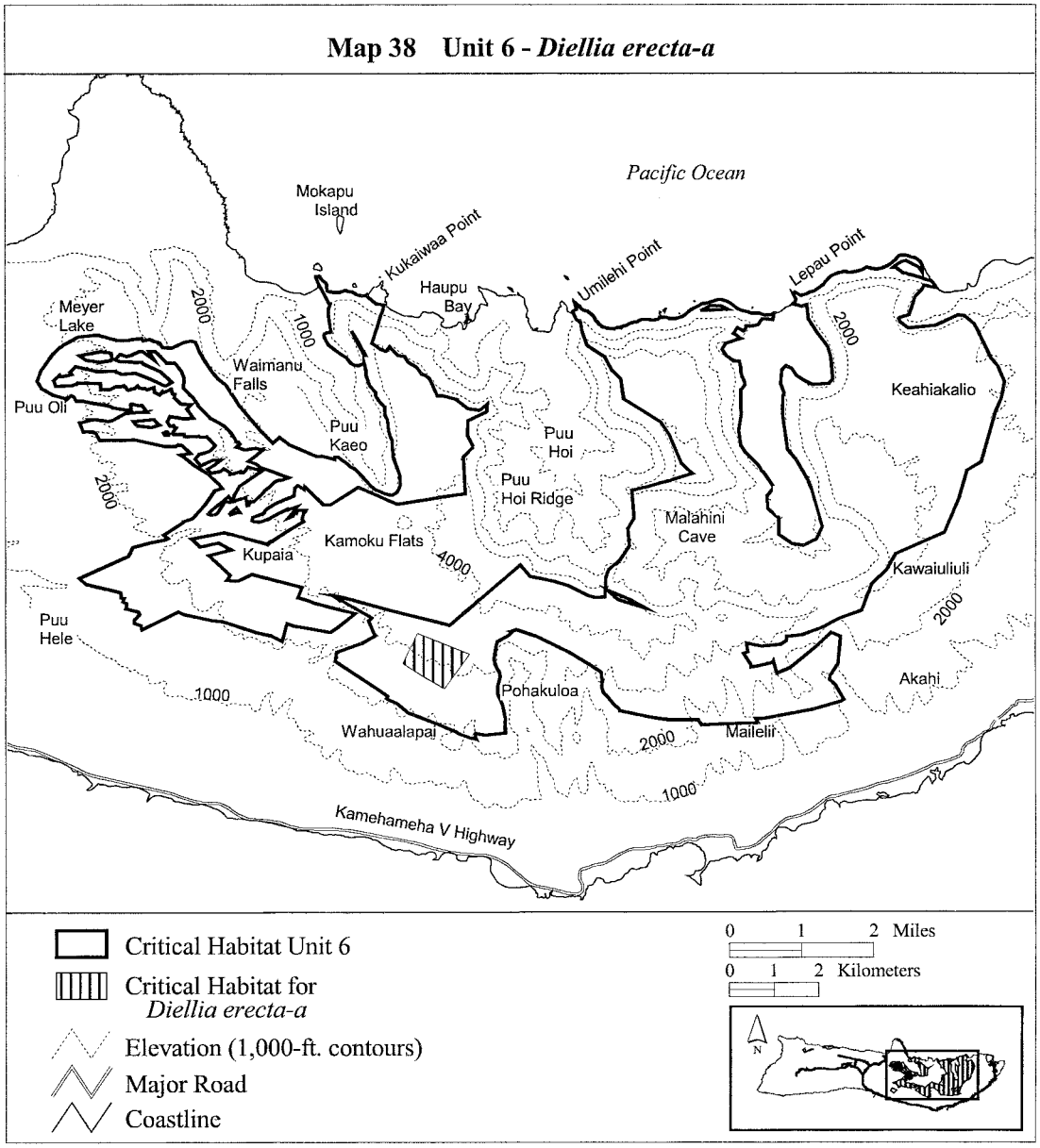
(ii) **Note:** Map 37 follows:



(38) Molokai 6—*Diellia erecta*—a (99 ha; 244 ac)

(i) Unit consists of the following 5 boundary points: Start at 717246, 2334694; 718399, 2334223; 717831, 2333459; 717408, 2333703; 716905, 2334028; return to starting point.

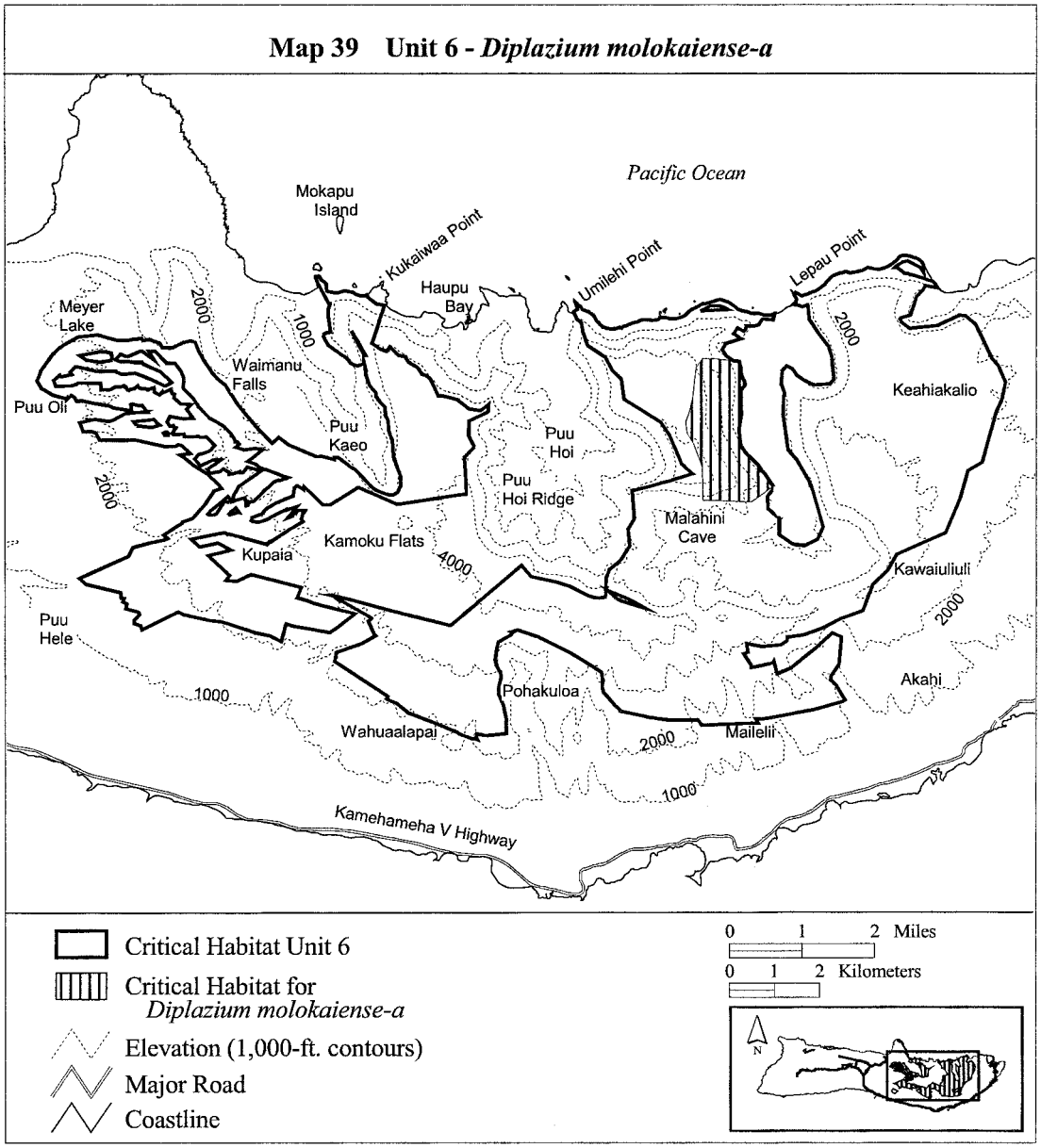
(ii) **Note:** Map 38 follows:



(39) Molokai 6—*Diplazium molokaiense*—a (368 ha; 909 ac)

(i) Unit consists of the following 31 boundary points: Start at 724370, 2340778; 724382, 2340717; 724401, 2340620; 724402, 2340548; 724402, 2340548; 724406, 2340143; 724406, 2340142; 724406, 2340141; 724411, 2339687; 724412, 2339620; 724349, 2339241; 724412, 2338841; 724498, 2338755; 724498, 2338755; 724498, 2338755; 724612, 2338641; 724801, 2338452; 724881, 2338317; 725086, 2337967; 724633, 2337631; 723549, 2337673; 723549, 2337936; 723538, 2338420; 723338, 2338957; 723212, 2339157; 723170, 2339420; 723265, 2339662; 723328, 2339957; 723402, 2340631; 723538, 2340830; 723812, 2340830; return to starting point.

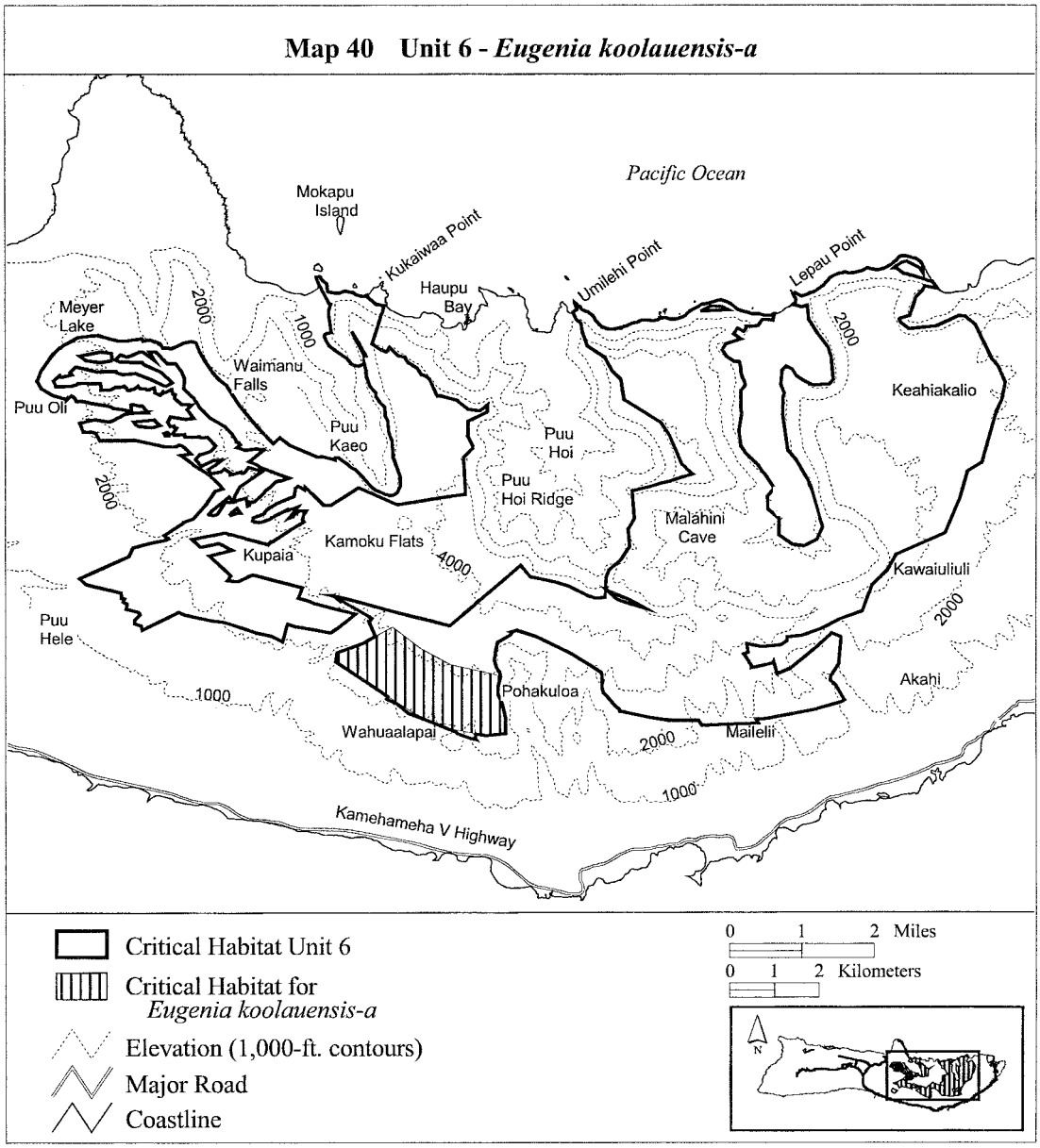
(ii) **Note:** Map 39 follows:



(40) Molokai 6—*Eugenia koolauensis*—a (471 ha; 1,164 ac)

(i) Unit consists of the following 14 boundary points: Start at 716675, 2334851; 717303, 2334375; 717982, 2334001; 719022, 2333773; 719028, 2333297; 719168, 2332885; 719193, 2332460; 718755, 2332409; 717855, 2332593; 717138, 2332929; 716434, 2333380; 715394, 2334071; 715432, 2334280; 715978, 2334477; return to starting point.

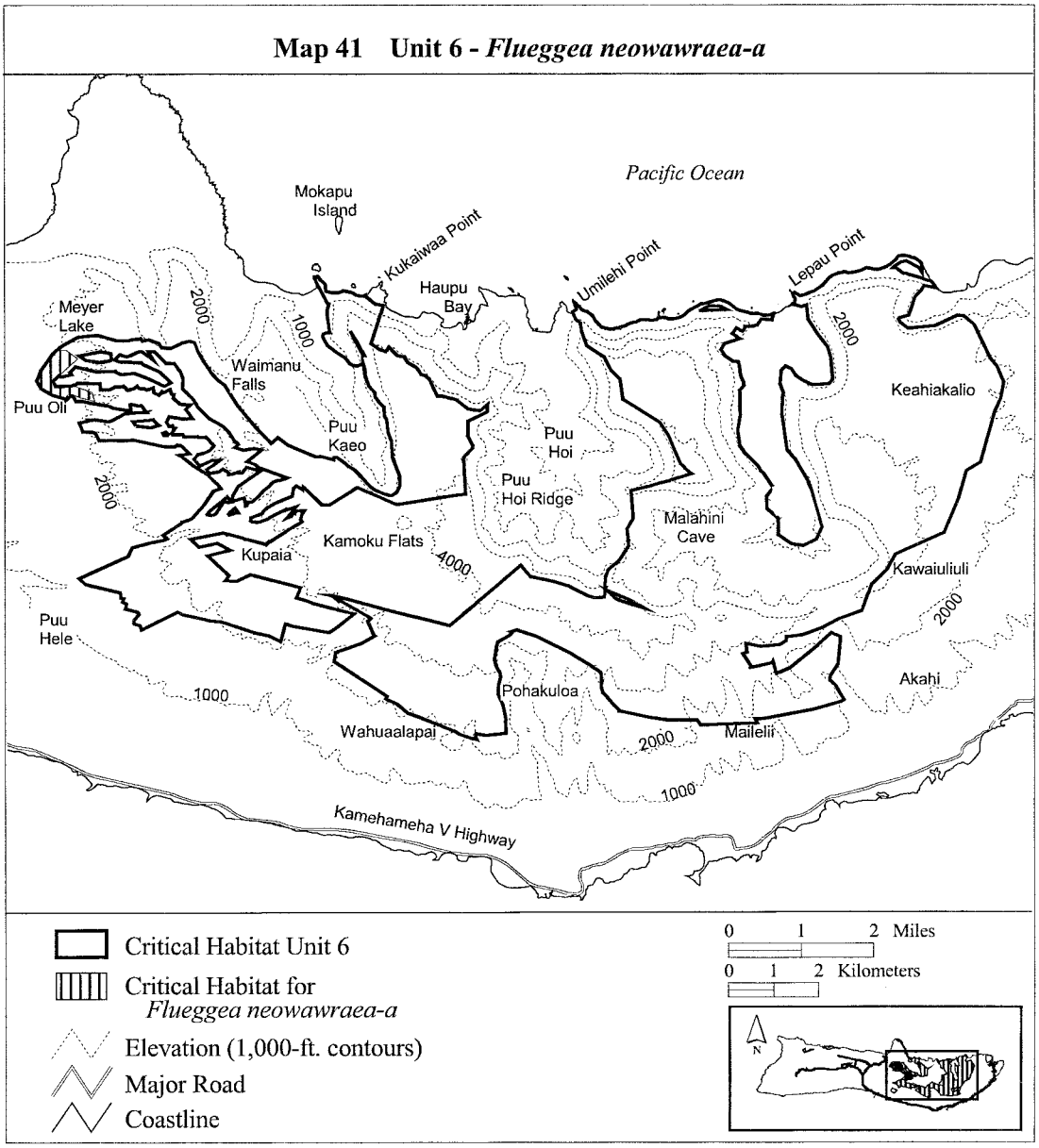
(ii) **Note:** Map 40 follows:



(41) Molokai 6—*Flueggea neowawraea*—a (61 ha; 151 ac)

(i) Unit consists of the following 19 boundary points: Start at 709451, 2339945; 709152, 2340035; 708894, 2340184; 708809, 2340348; 708808, 2340350; 708842, 2340439; 708897, 2340586; 709165, 2340951; 709293, 2341039; 709468, 2341039; 709723, 2340851; 709481, 2340637; 709173, 2340349; 709227, 2340228; 709676, 2340228; 710031, 2340101; 710105, 2339900; 709756, 2339987; 709595, 2340060; return to starting point.

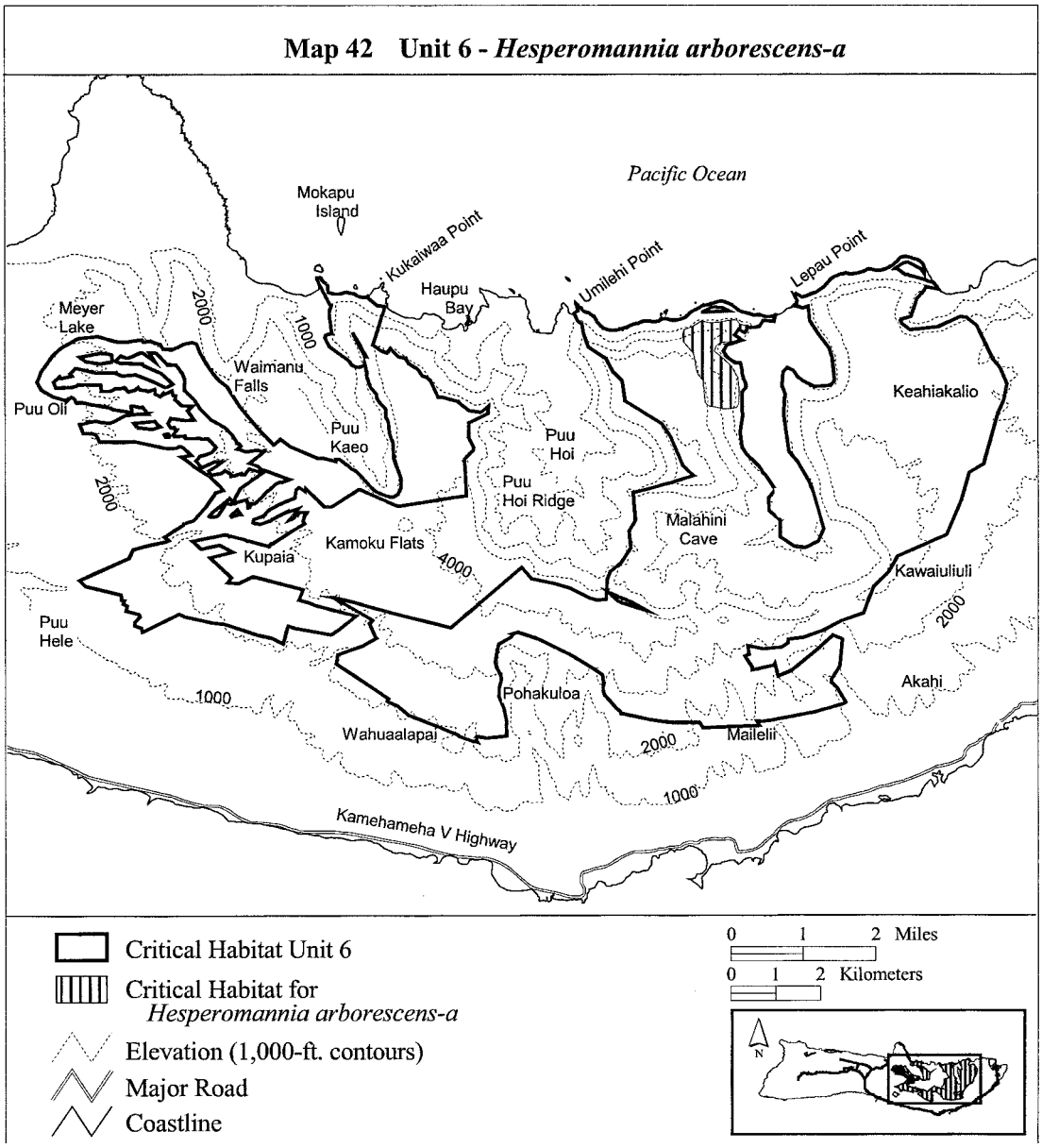
(ii) **Note:** Map 41 follows:



(42) Molokai 6—*Hesperomannia arborescens*—a (160 ha; 397 ac)

(i) Unit consists of the following 49 boundary points: Start at 723690, 2341666; 723886, 2341679; 724133, 2341723; 724285, 2341723; 724349, 2341641; 724450, 2341609; 724545, 2341609; 724517, 2341540; 724481, 2341462; 724473, 2341445; 724325, 2341519; 724244, 2341392; 724356, 2341313; 724355, 2341311; 724222, 2341248; 723968, 2341229; 723867, 2341197; 723816, 2341140; 723785, 2341045; 723981, 2340880; 724152, 2340722; 724304, 2340468; 724330, 2340234; 724336, 2340038; 724330, 2340038; 724330, 2339987; 724323, 2339866; 724273, 2339778; 724152, 2339752; 723975, 2339752; 723804, 2339797; 723683, 2339803; 723633, 2339847; 723582, 2339898; 723556, 2340145; 723562, 2340145; 723537, 2340266; 723537, 2340373; 723442, 2340494; 723385, 2340621; 723354, 2340849; 723322, 2340982; 723189, 2341153; 723094, 2341261; 723088, 2341425; 723126, 2341520; 723271, 2341577; 723392, 2341641; 723506, 2341710; return to starting point.

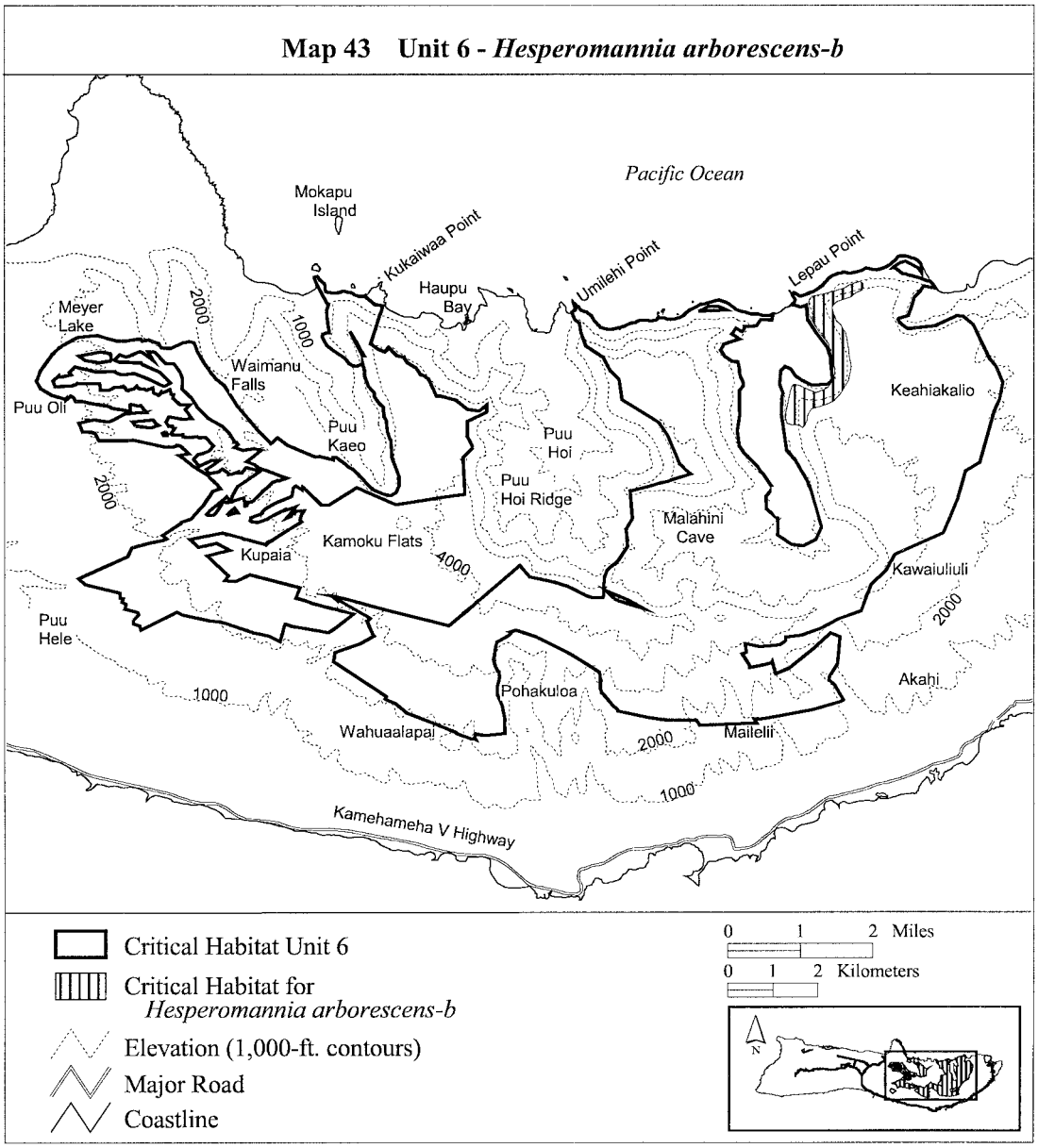
(ii) **Note:** Map 42 follows:



(43) Molokai 6—*Hesperomannia arborescens*—b (175 ha; 432 ac)

(i) Unit consists of the following 58 boundary points: Start at 726819, 2340382; 726807, 2340335; 726636, 2340063; 726484, 2339892; 726300, 2339809; 725990, 2339714; 725920, 2339581; 725901, 2339467; 725850, 2339353; 725806, 2339315; 725724, 2339359; 725572, 2339359; 725464, 2339397; 725407, 2339562; 725470, 2339816; 725527, 2340095; 725578, 2340240; 725629, 2340272; 725755, 2340234; 725933, 2340145; 726110, 2340082; 726275, 2340152; 726370, 2340209; 726503, 2340411; 726510, 2340431; 726497, 2340437; 726516, 2340532; 726516, 2340614; 726427, 2340791; 726433, 2340937; 726370, 2341184; 726224, 2341374; 726066, 2341603; 725933, 2341850; 725945, 2342128; 726002, 2342230; 726275, 2342287; 726541, 2342357; 726725, 2342414; 726839, 2342483; 727073, 2342566; 727149, 2342509; 727149, 2342458; 727118, 2342369; 726984, 2342306; 726870, 2342223; 726566, 2342116; 726459, 2342014; 726459, 2341945; 726484, 2341843; 726547, 2341691; 726642, 2341609; 726750, 2341425; 726782, 2341298; 726807, 2341127; 726839, 2340848; 726889, 2340671; 726851, 2340462; return to starting point.

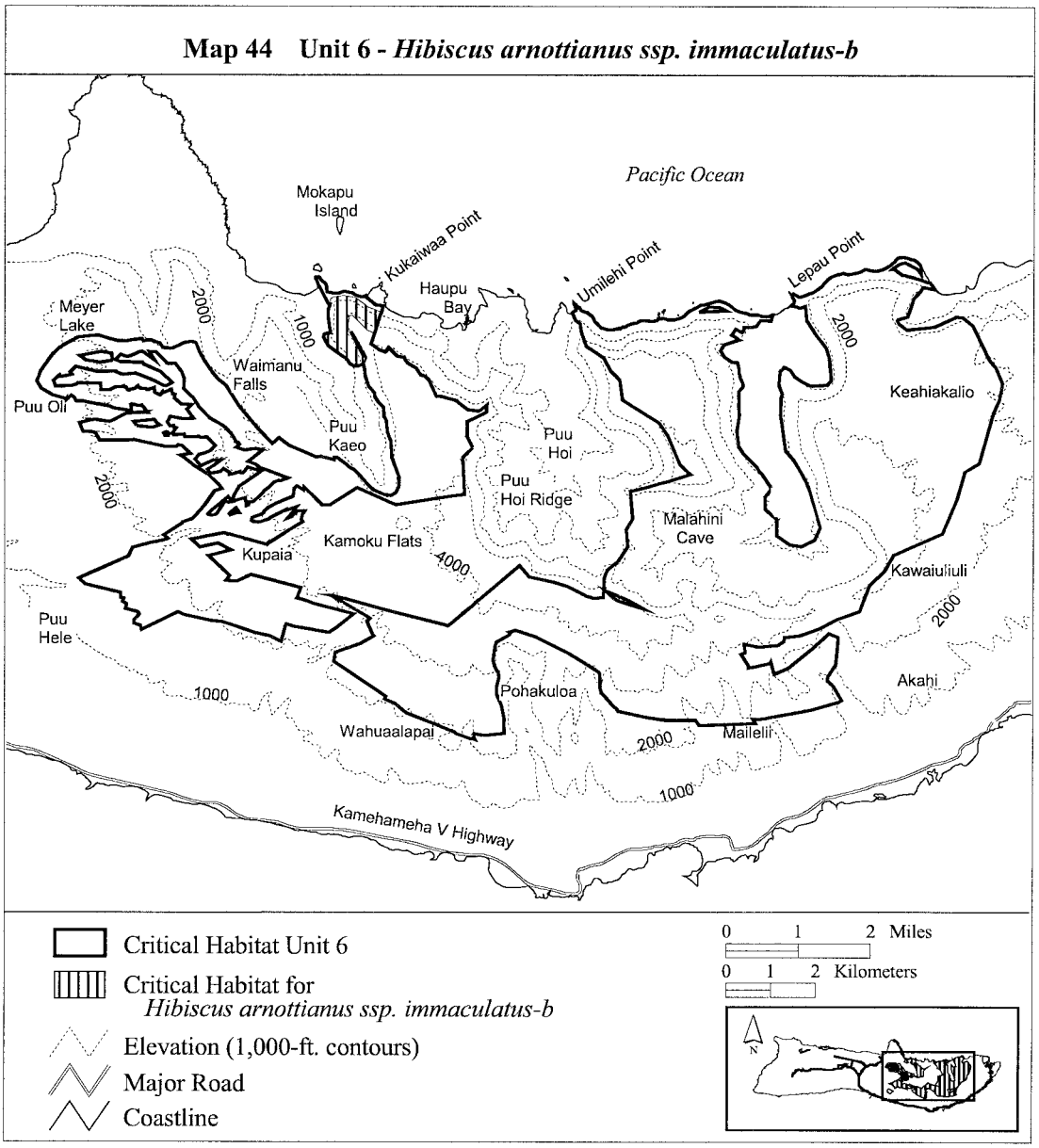
(ii) **Note:** Map 43 follows:



(44) Molokai 6—*Hibiscus arnottianus* ssp. *immaculatus*—b (108 ha; 268 ac)

(i) Unit consists of the following 37 boundary points: Start at 715304, 2341435; 715298, 2341516; 715255, 2341795; 715255, 2341937; 715304, 2342104; 715304, 2342179; 715385, 2342234; 715614, 2342265; 715862, 2342216; 716066, 2342067; 716157, 2342009; 716159, 2342011; 716327, 2341937; 716447, 2341883; 716302, 2341425; 716141, 2341479; 715905, 2341726; 715910, 2341731; 715812, 2341813; 715738, 2341813; 715719, 2341677; 715720, 2341541; 715887, 2341206; 716048, 2340921; 716116, 2340859; 716097, 2340791; 716042, 2340741; 715912, 2340679; 715825, 2340698; 715738, 2340747; 715658, 2340847; 715404, 2341026; 715261, 2341144; 715193, 2341262; 715150, 2341342; 715174, 2341398; 715230, 2341417; return to starting point.

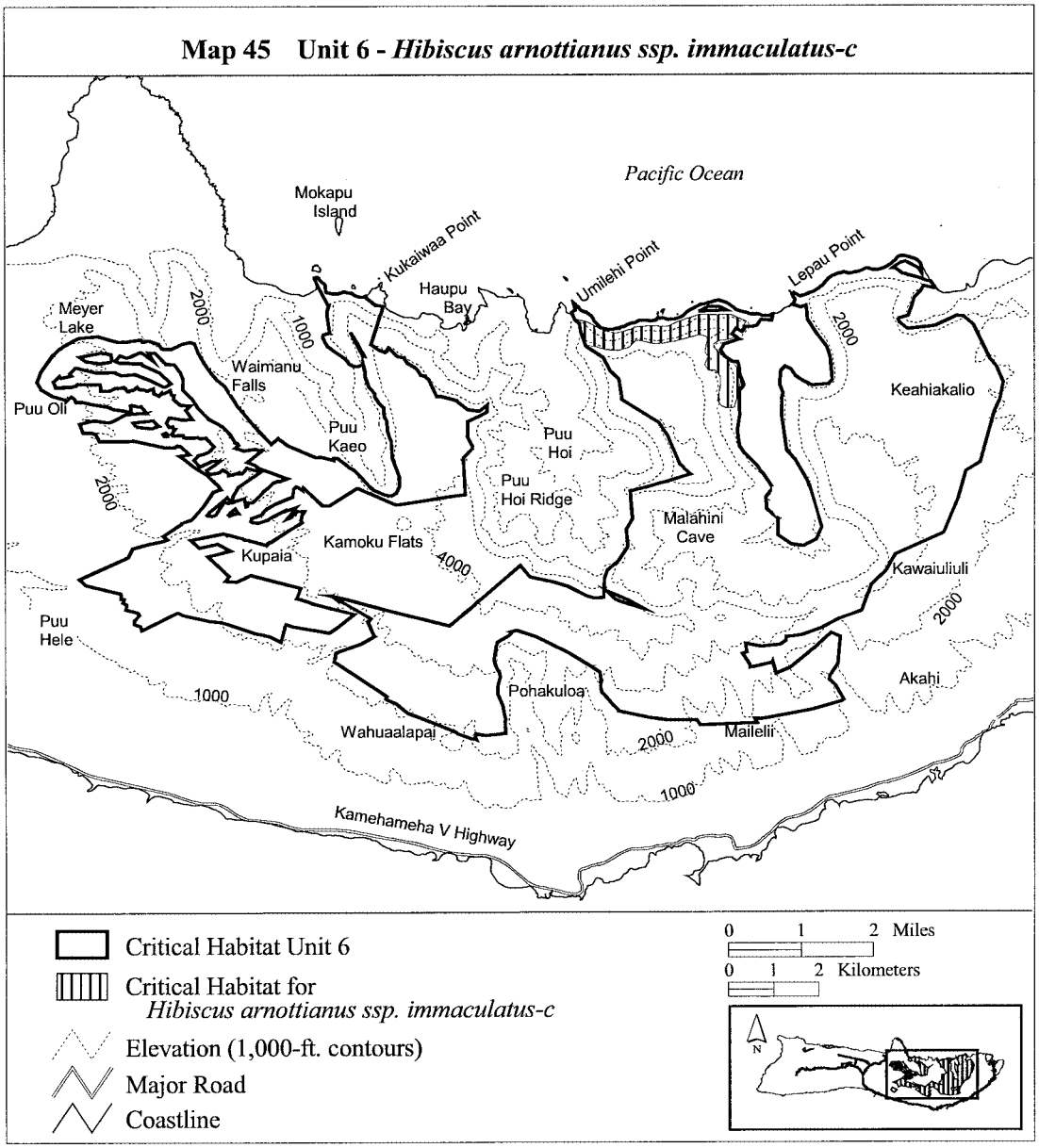
(ii) **Note:** Map 44 follows:



(45) Molokai 6—*Hibiscus arnottianus* ssp. *immaculatus*—c (218 ha; 538 ac)

(i) Unit consists of the following 77 boundary points: Start at 723666, 2341344; 723521, 2341378; 723025, 2341248; 722721, 2341195; 722521, 2341178; 722223, 2341256; 722138, 2341256; 722107, 2341251; 721964, 2341109; 721712, 2341030; 721443, 2341048; 721225, 2341117; 721025, 2341152; 720987, 2341152; 720883, 2341439; 720861, 2341600; 720856, 2341640; 720767, 2341699; 720752, 2341731; 720765, 2341735; 721008, 2341674; 721417, 2341474; 721686, 2341422; 721947, 2341500; 722070, 2341534; 722069, 2341552; 722399, 2341587; 722816, 2341578; 723077, 2341691; 723538, 2341839; 723903, 2341830; 724233, 2341830; 724564, 2341674; 724453, 2341513; 724453, 2341513; 724423, 2341470; 724325, 2341519; 724244, 2341392; 724326, 2341334; 724270, 2341301; 724155, 2341272; 723949, 2341249; 723851, 2341180; 723845, 2341094; 723989, 2340961; 723989, 2340961; 723991, 2340959; 724000, 2340951; 724230, 2340796; 724390, 2340583; 724402, 2340549; 724402, 2340548; 724436, 2340446; 724436, 2340432; 724436, 2340432; 724436, 2340431; 724436, 2340314; 724390, 2340193; 724350, 2339964; 724310, 2339803; 724299, 2339751; 724115, 2339746; 724000, 2339792; 723920, 2339906; 723943, 2340027; 723989, 2340262; 723983, 2340440; 723874, 2340578; 723725, 2340583; 723644, 2340710; 723679, 2340842; 723725, 2340882; 723662, 2340974; 723650, 2341048; 723667, 2341152; 723702, 2341255; 723702, 2341289; return to starting point.

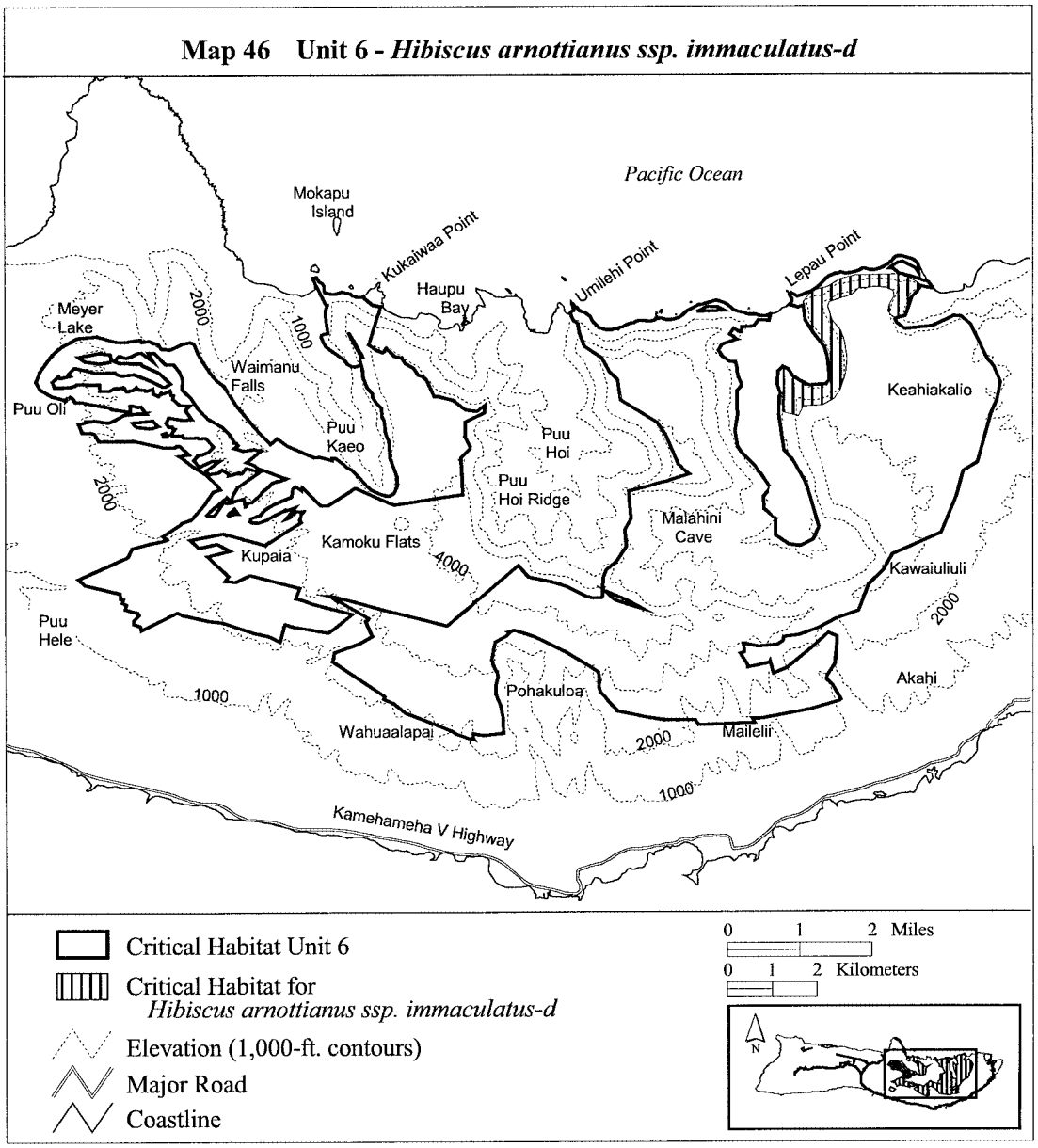
(ii) **Note:** Map 45 follows:



(46) Molokai 6—*Hibiscus arnottianus* ssp. *immaculatus*—d (276 ha; 681 ac)

(i) Unit consists of the following 52 boundary points: Start at 728137, 2341804; 727911, 2341743; 727815, 2341830; 727763, 2341908; 727798, 2342065; 727902, 2342247; 727868, 2342360; 727737, 2342430; 727450, 2342456; 727111, 2342412; 726963, 2342273; 726685, 2342178; 726468, 2342108; 726424, 2342021; 726468, 2341900; 726520, 2341717; 726720, 2341456; 726790, 2341239; 726859, 2340848; 726824, 2340517; 726711, 2340152; 726564, 2339952; 726311, 2339813; 725877, 2339778; 725772, 2339561; 725425, 2339657; 725399, 2339996; 725368, 2340078; 725368, 2340079; 725294, 2340274; 725320, 2340569; 725422, 2340671; 725546, 2340613; 725674, 2340421; 726007, 2340256; 726381, 2340282; 726458, 2340381; 726442, 2340648; 726402, 2341022; 726123, 2341391; 725911, 2341717; 725877, 2342108; 726071, 2342357; 726416, 2342456; 726720, 2342630; 727033, 2342699; 728085, 2342734; 728494, 2342482; 728433, 2342369; 728276, 2342204; 728234, 2342042; 728234, 2342042; return to starting point.

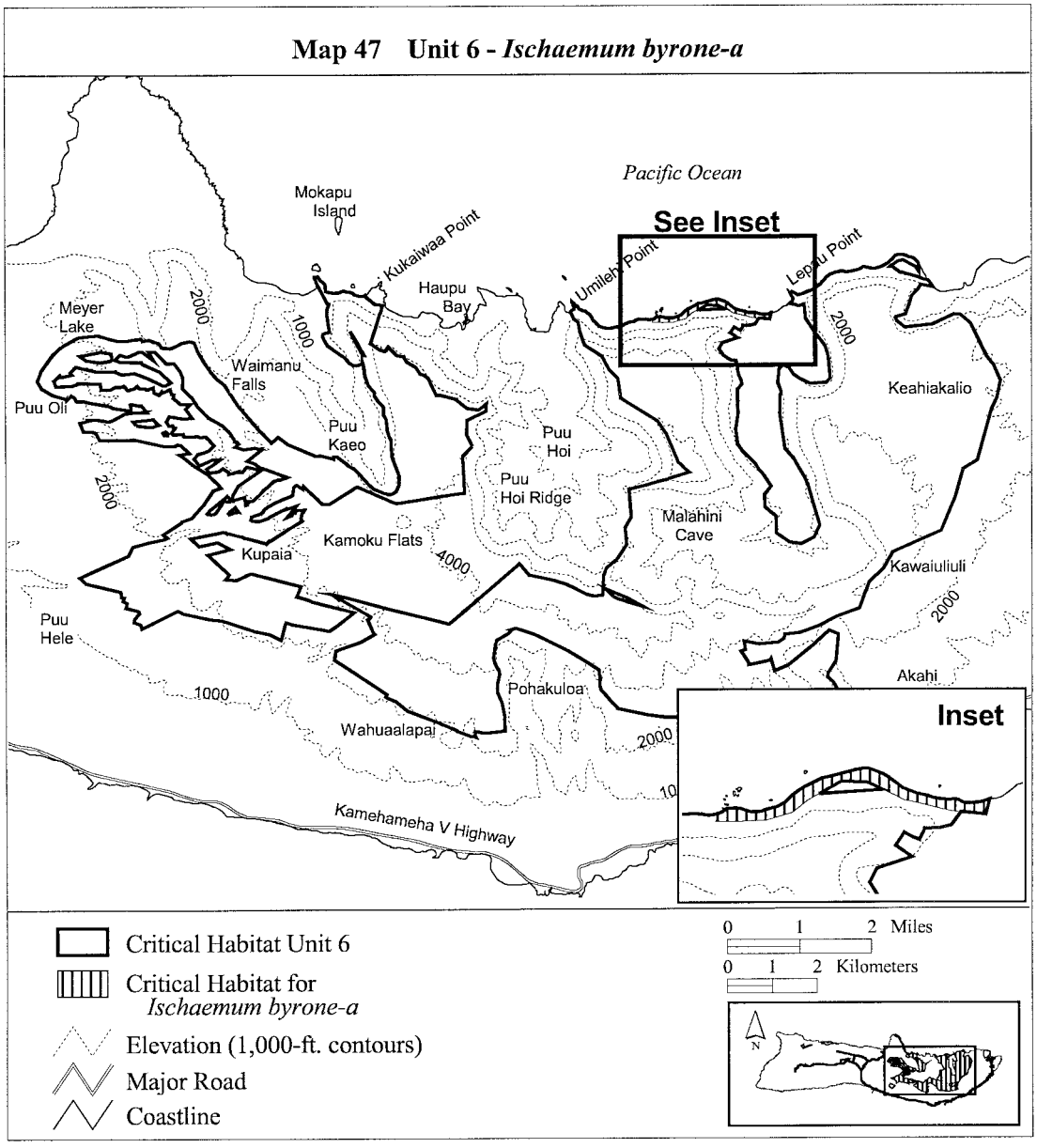
(ii) **Note:** Map 46 follows:



(47) Molokai 6—*Ischaemum byrone*—a (30 ha; 75 ac)

(i) Unit consists of the following 18 boundary points and the intermediate coastline: Start at 722523, 2341702; 725160, 2341840; 725118, 2341694; 724963, 2341709; 724963, 2341709; 724909, 2341714; 724840, 2341714; 724719, 2341743; 724418, 2341814; 724326, 2341831; 724245, 2341874; 723971, 2342008; 723722, 2342018; 723395, 2341836; 723249, 2341714; 722994, 2341641; 722702, 2341629; 722508, 2341629; follow coastline and return to starting point.

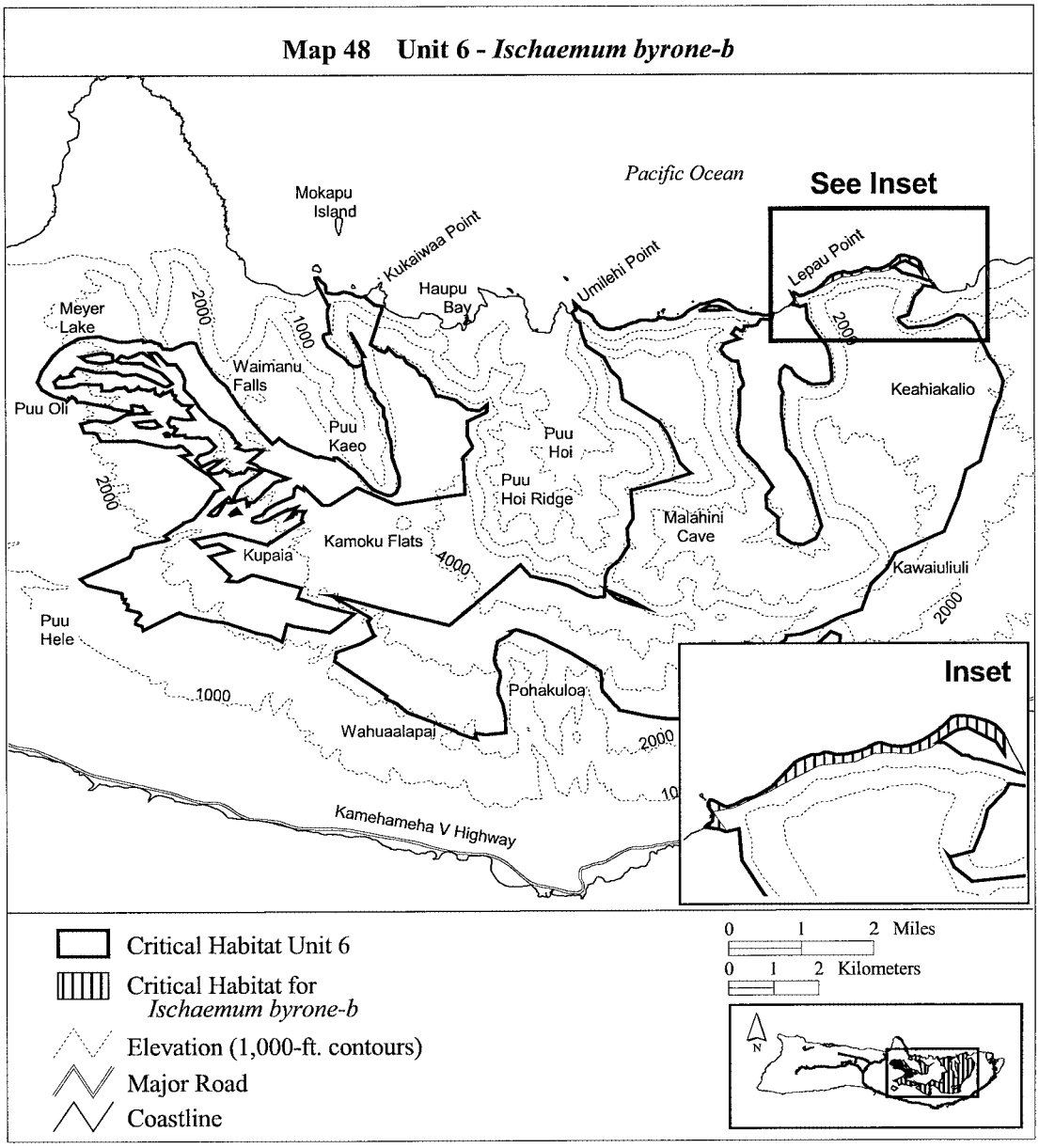
(ii) **Note:** Map 47 follows:



(48) Molokai 6—*Ischaemum byrone*—b (29 ha; 72 ac)

(i) Unit consists of the following 26 boundary points and the intermediate coastline: Start at 728440, 2342742; 728356, 2342866; 728088, 2343003; 727978, 2342980; 727842, 2342898; 727728, 2342811; 727541, 2342752; 727327, 2342761; 727195, 2342757; 727194, 2342760; 727001, 2342673; 726661, 2342637; 726418, 2342516; 726151, 2342370; 725981, 2342297; 725835, 2342224; 725629, 2342188; 725763, 2342006; 725562, 2342041; 725558, 2342045; 725582, 2342067; 725624, 2342097; 725631, 2342109; 725630, 2342134; 725635, 2342160; 725632, 2342174; follow coastline and return to starting point.

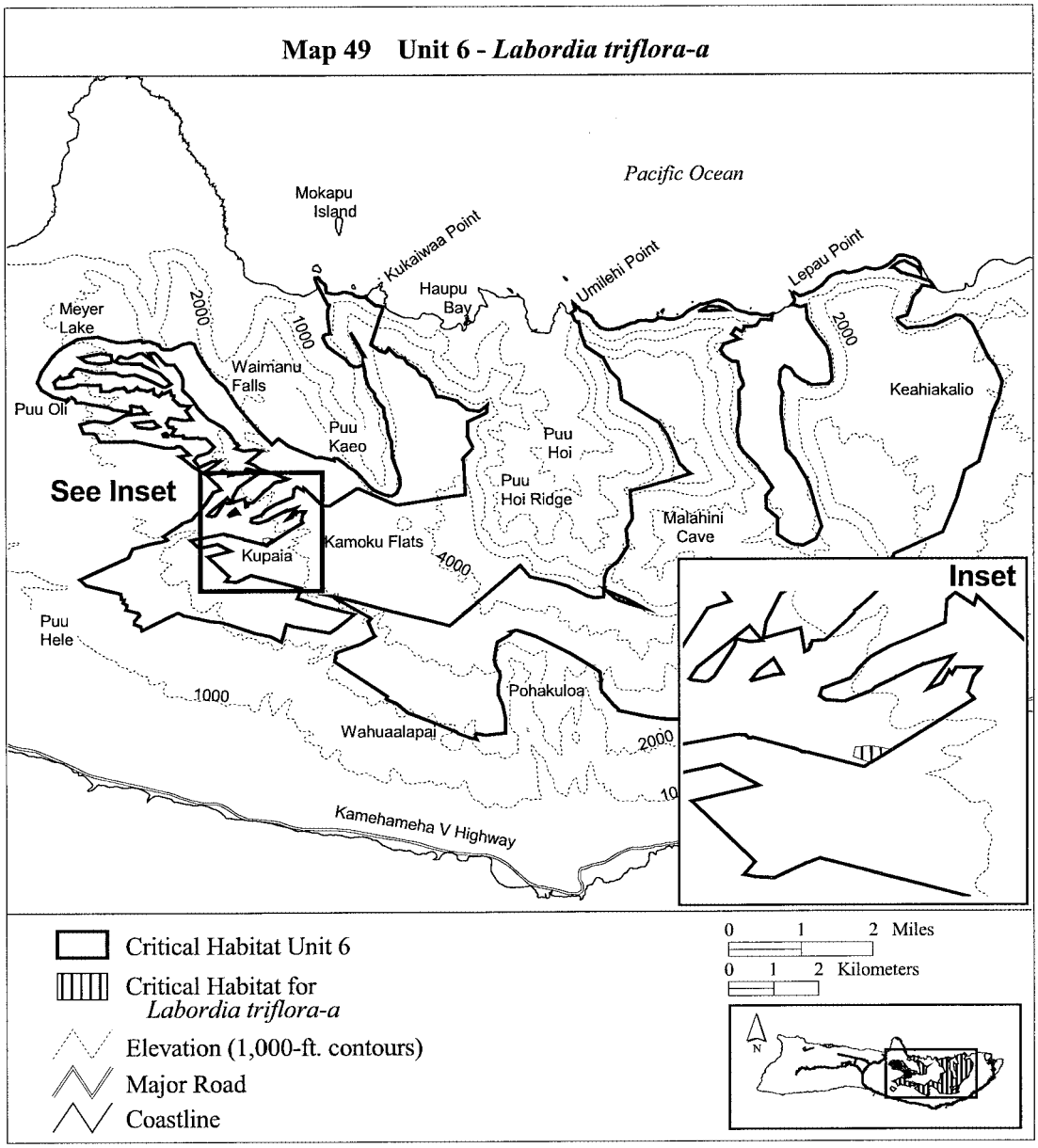
(ii) **Note:** Map 48 follows:



(49) Molokai 6—*Labordia triflora*—a (2 ha; 5 ac)

(i) Unit consists of the following 5 boundary points: Start at 714077, 2336828; 713934, 2336726; 713805, 2336774; 713819, 2336848; 713941, 2336855; return to starting point.

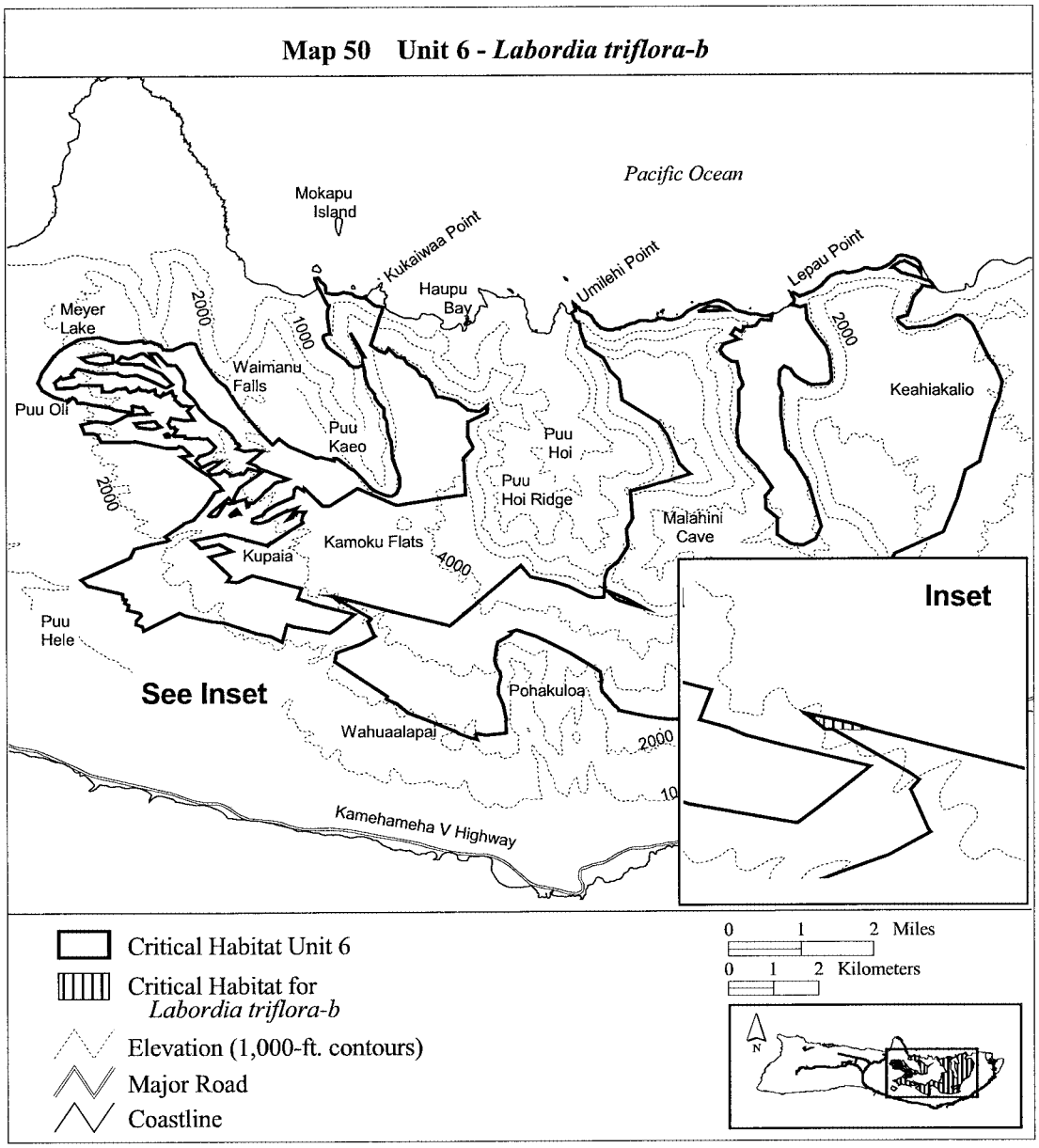
(ii) **Note:** Map 49 follows:



(50) Molokai 6—*Labordia triflora*—b (2 ha; 6 ac)

(i) Unit consists of the following 4 boundary points: Start at 715351, 2335553; 715717, 2335465; 715866, 2335418; 715507, 2335425; return to starting point.

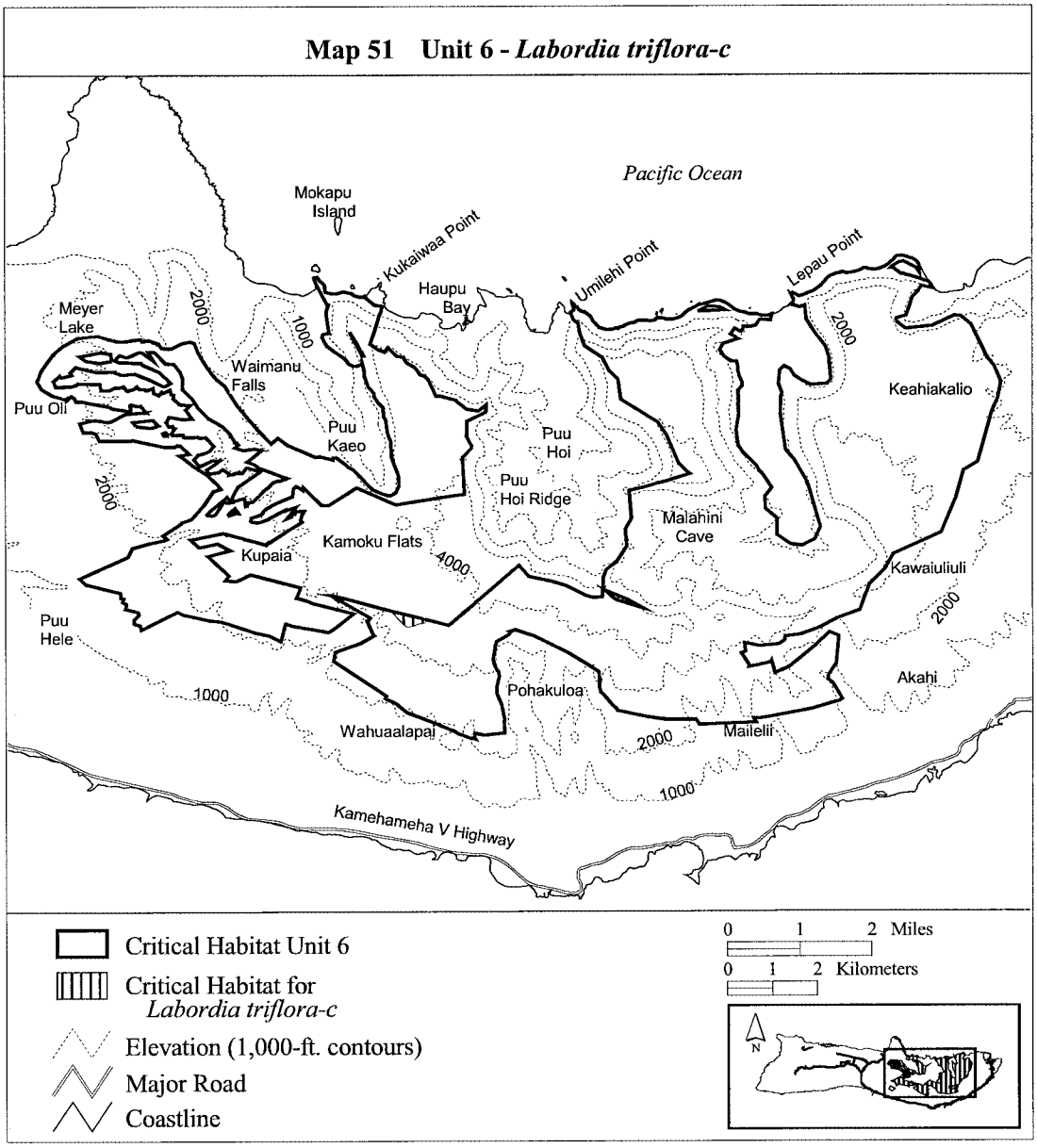
(ii) **Note:** Map 50 follows:



(51) Molokai 6—*Labordia triflora*—c (13 ha; 32 ac)

(i) Unit consists of the following 10 boundary points: Start at 717469, 2335003; 717464, 2334998; 717421, 2334927; 717290, 2334910; 717137, 2334850; 717038, 2334834; 716956, 2334889; 716743, 2335118; 716660, 2335211; 716661, 2335212; return to starting point.

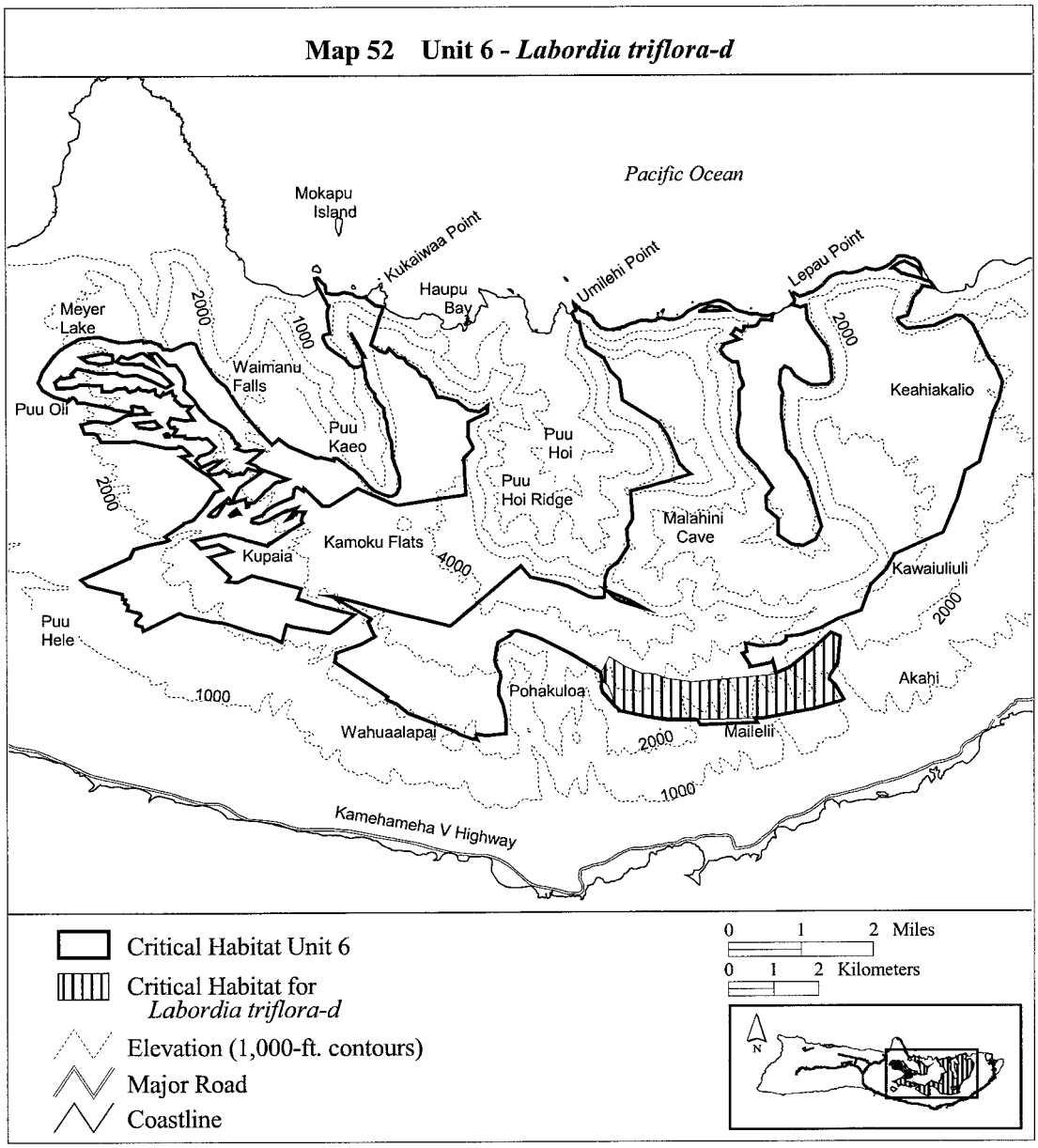
(ii) **Note:** Map 51 follows:



(52) Molokai 6—*Labordia triflora*—d (523 ha; 1,292 ac)

(i) Unit consists of the following 34 boundary points: Start at 725106, 2333758; 725517, 2333924; 726111, 2334421; 726421, 2334714; 726628, 2334621; 726580, 2334022; 726403, 2333749; 726403, 2333749; 726386, 2333663; 726517, 2333545; 726703, 2333212; 726702, 2333211; 726649, 2333179; 726032, 2332999; 725026, 2332806; 725026, 2332805; 724835, 2332780; 723332, 2332760; 722771, 2332760; 721750, 2332951; 721570, 2333120; 721570, 2333277; 721452, 2333546; 721323, 2333635; 721309, 2333822; 721490, 2334177; 721866, 2333950; 722233, 2333793; 722416, 2333793; 722547, 2333767; 722765, 2333679; 723324, 2333609; 724137, 2333670; 724687, 2333723; return to starting point.

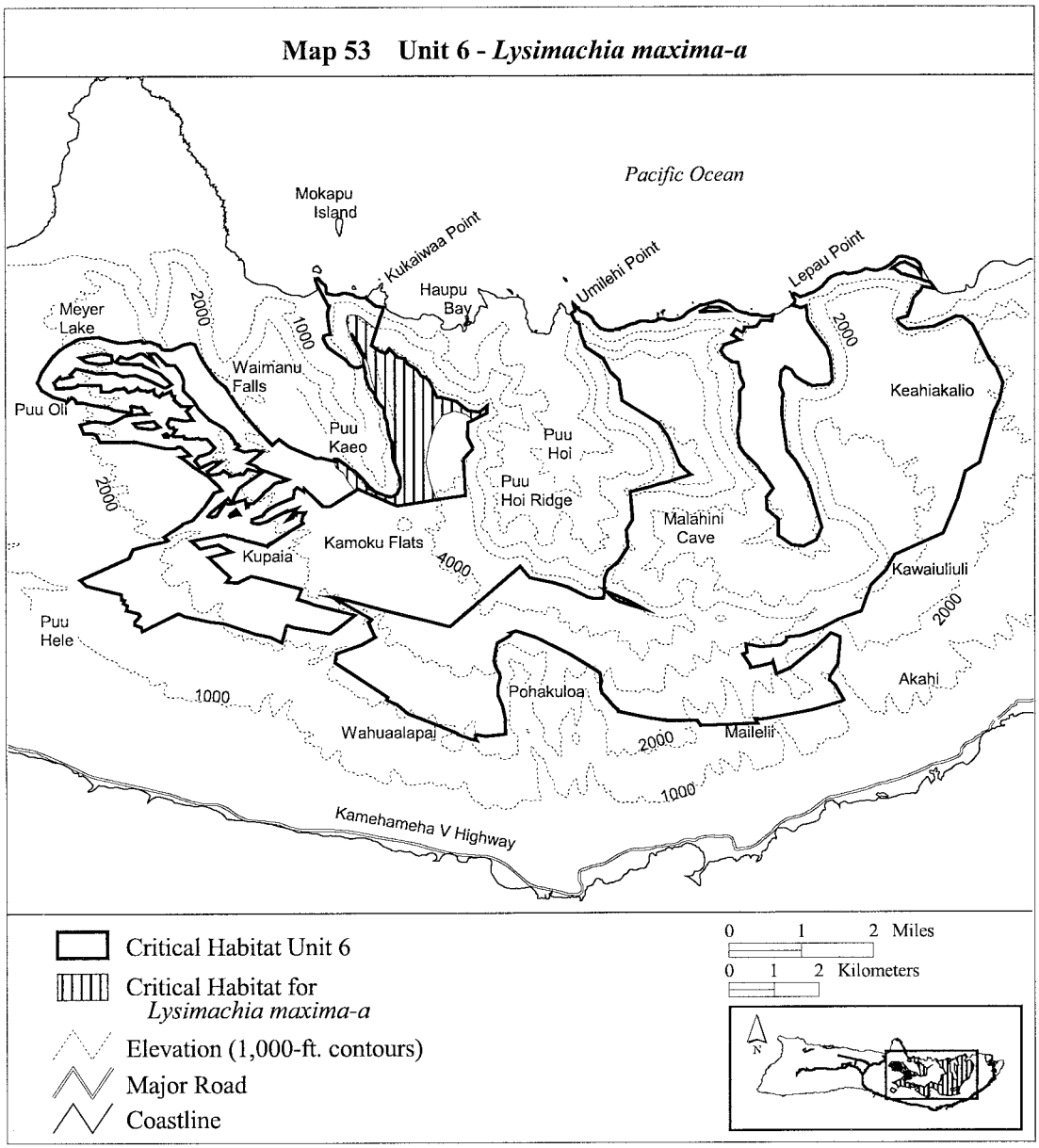
(ii) **Note:** Map 52 follows:



(53) Molokai 6—*Lysimachia maxima*—a (408 ha; 1,009 ac)

(i) Unit consists of the following 72 boundary points: Start at 715599, 2338316; 715589, 2338334; 715539, 2338372; 715436, 2338451; 715426, 2338481; 715392, 2338575; 715392, 2338634; 715480, 2338634; 715670, 2338502; 715860, 2338283; 715998, 2338166; 716086, 2338042; 716166, 2337947; 716400, 2337830; 716641, 2337772; 716787, 2337845; 716853, 2338020; 716845, 2338232; 716751, 2338473; 716692, 2338641; 716663, 2339028; 716597, 2339466; 716509, 2339773; 716378, 2339948; 716217, 2340408; 716166, 2340744; 716045, 2340987; 716035, 2340985; 715903, 2341234; 715713, 2341533; 715670, 2341730; 715691, 2341847; 715845, 2341869; 715918, 2341847; 716027, 2341789; 716247, 2341606; 716337, 2341533; 716226, 2341182; 716397, 2341056; 716537, 2341006; 716619, 2341102; 716803, 2340912; 716949, 2340883; 717034, 2340760; 717233, 2340650; 717327, 2340487; 717417, 2340471; 717512, 2340386; 717678, 2340008; 717794, 2340014; 718125, 2339916; 718212, 2339767; 718369, 2339712; 718630, 2339684; 718798, 2339820; 718794, 2339660; 718638, 2339632; 718464, 2339513; 718342, 2339634; 718072, 2339707; 717817, 2339620; 717634, 2339379; 717503, 2338992; 717430, 2338575; 717517, 2338123; 717671, 2337717; 716789, 2337580; 715922, 2337961; 715922, 2337961; 715899, 2337947; 715859, 2337922; 715692, 2338137; return to starting point.

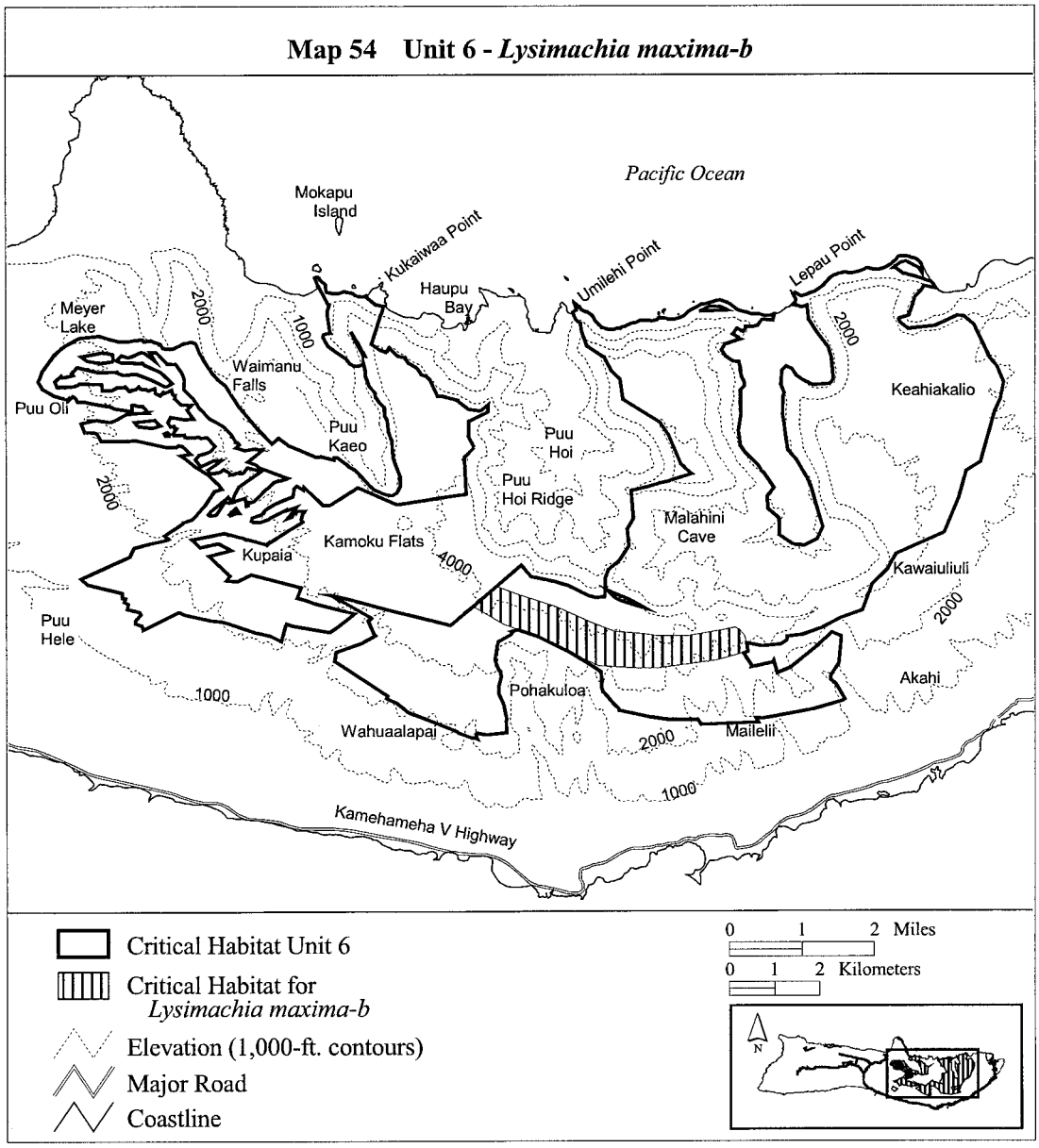
(ii) **Note:** Map 53 follows:



(54) Molokai 6—*Lysimachia maxima*—b (441 ha; 1,090 ac)

(i) Unit consists of the following 21 boundary points: Start at 718975, 2335752; 719482, 2335559; 720322, 2335289; 721118, 2334924; 721592, 2334734; 722228, 2334683; 722563, 2334639; 723243, 2334639; 724024, 2334778; 724280, 2334822; 724374, 2334778; 724499, 2334624; 724564, 2334274; 723885, 2334084; 722542, 2333909; 722191, 2333916; 721256, 2333960; 720782, 2334179; 719825, 2334654; 719139, 2334902; 718454, 2335304; return to starting point.

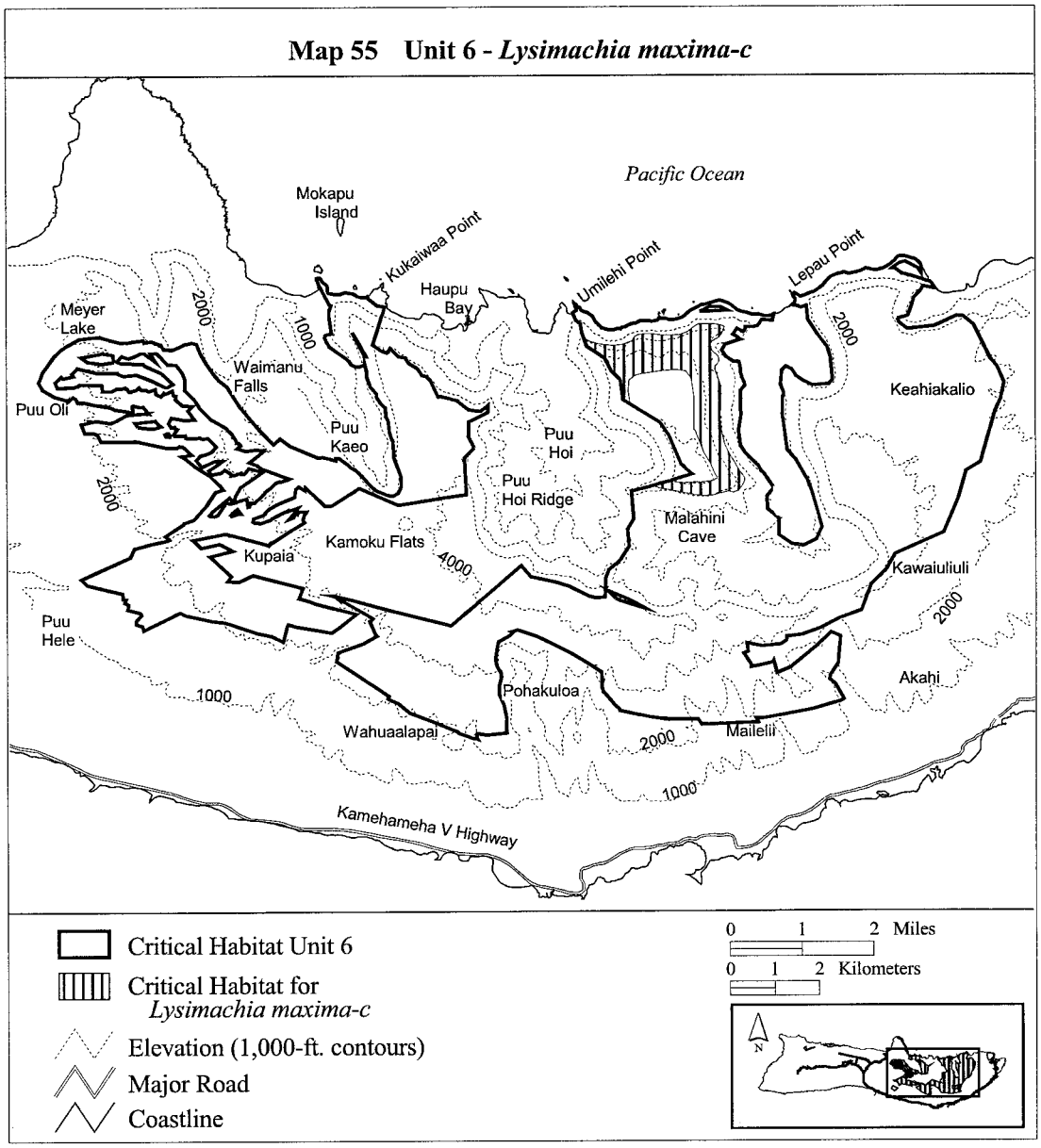
(ii) **Note:** Map 54 follows:



(55) Molokai 6—*Lysimachia maxima*—c (414 ha; 1,023 ac)

(i) Unit consists of the following 99 boundary points: Start at 723398, 2339253; 723381, 2339249; 723379, 2339344; 723376, 2339354; 723378, 2339355; 723371, 2339592; 723381, 2339985; 723316, 2340399; 723195, 2340566; 722958, 2340611; 722589, 2340566; 722226, 2340525; 722075, 2340480; 721933, 2340369; 721913, 2340111; 721962, 2339832; 721796, 2339934; 721815, 2340038; 721731, 2340378; 721548, 2340570; 721486, 2340778; 721475, 2340813; 720997, 2341127; 720995, 2341131; 720932, 2341305; 720944, 2341307; 721070, 2341237; 721237, 2341186; 721590, 2341156; 721802, 2341181; 721989, 2341242; 722059, 2341343; 722140, 2341398; 722256, 2341403; 722453, 2341403; 722695, 2341378; 722882, 2341378; 723043, 2341388; 723225, 2341449; 723341, 2341534; 723462, 2341625; 723659, 2341630; 723820, 2341620; 723951, 2341605; 724047, 2341565; 724017, 2341474; 723977, 2341378; 723931, 2341327; 723780, 2341242; 723735, 2341181; 723770, 2341025; 723916, 2340899; 723931, 2340793; 723871, 2340707; 723830, 2340687; 723851, 2340621; 723836, 2340621; 723911, 2340404; 723977, 2340232; 723957, 2339844; 723945, 2339508; 723957, 2339309; 724047, 2338941; 724123, 2338779; 724184, 2338658; 724295, 2338487; 724375, 2338345; 724374, 2338322; 724461, 2338239; 724492, 2338174; 724476, 2338083; 724426, 2337992; 724370, 2337896; 724234, 2337856; 724128, 2337881; 723825, 2337805; 723593, 2337775; 723381, 2337800; 723281, 2337831; 723104, 2337856; 722927, 2337891; 722776, 2337926; 722584, 2337952; 722549, 2337972; 722498, 2337972; 722463, 2338015; 722941, 2338139; 722953, 2338093; 723134, 2338068; 723281, 2338073; 723533, 2338078; 723780, 2338113; 723881, 2338169; 723836, 2338265; 723735, 2338497; 723598, 2338744; 723497, 2338966; 723437, 2339127; 723402, 2339238; return to starting point.

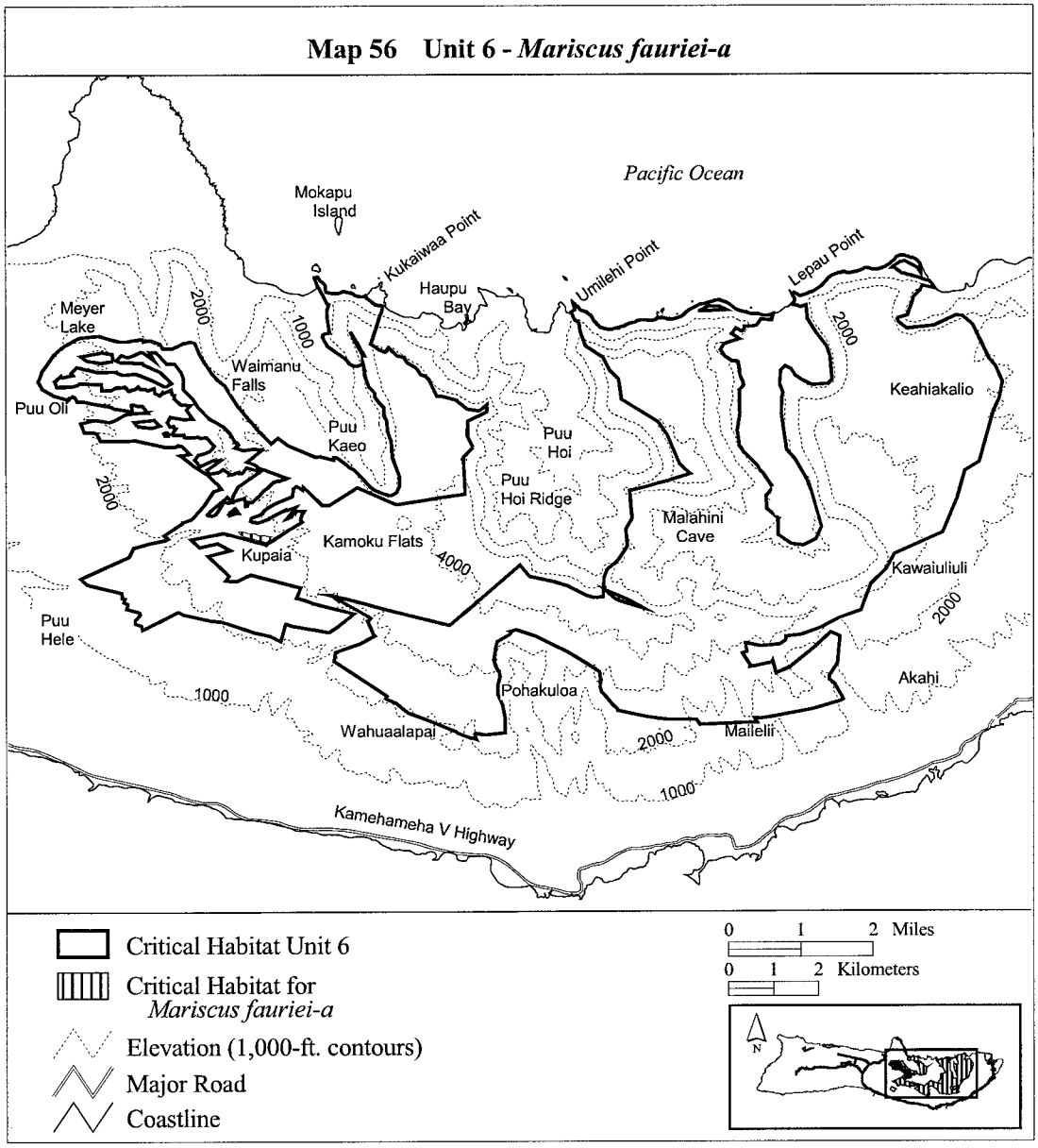
(ii) **Note:** Map 55 follows:



(56) Molokai 6—*Mariscus fauriei*—a (9 ha; 22 ac)

(i) Unit consists of the following 13 boundary points: Start at 713863, 2336745; 713857, 2336753; 713410, 2336878; 713325, 2336923; 713279, 2336986; 713376, 2336985; 713511, 2336946; 713642, 2336946; 713732, 2336895; 713879, 2336895; 714141, 2336856; 713932, 2336726; 713866, 2336753; return to starting point.

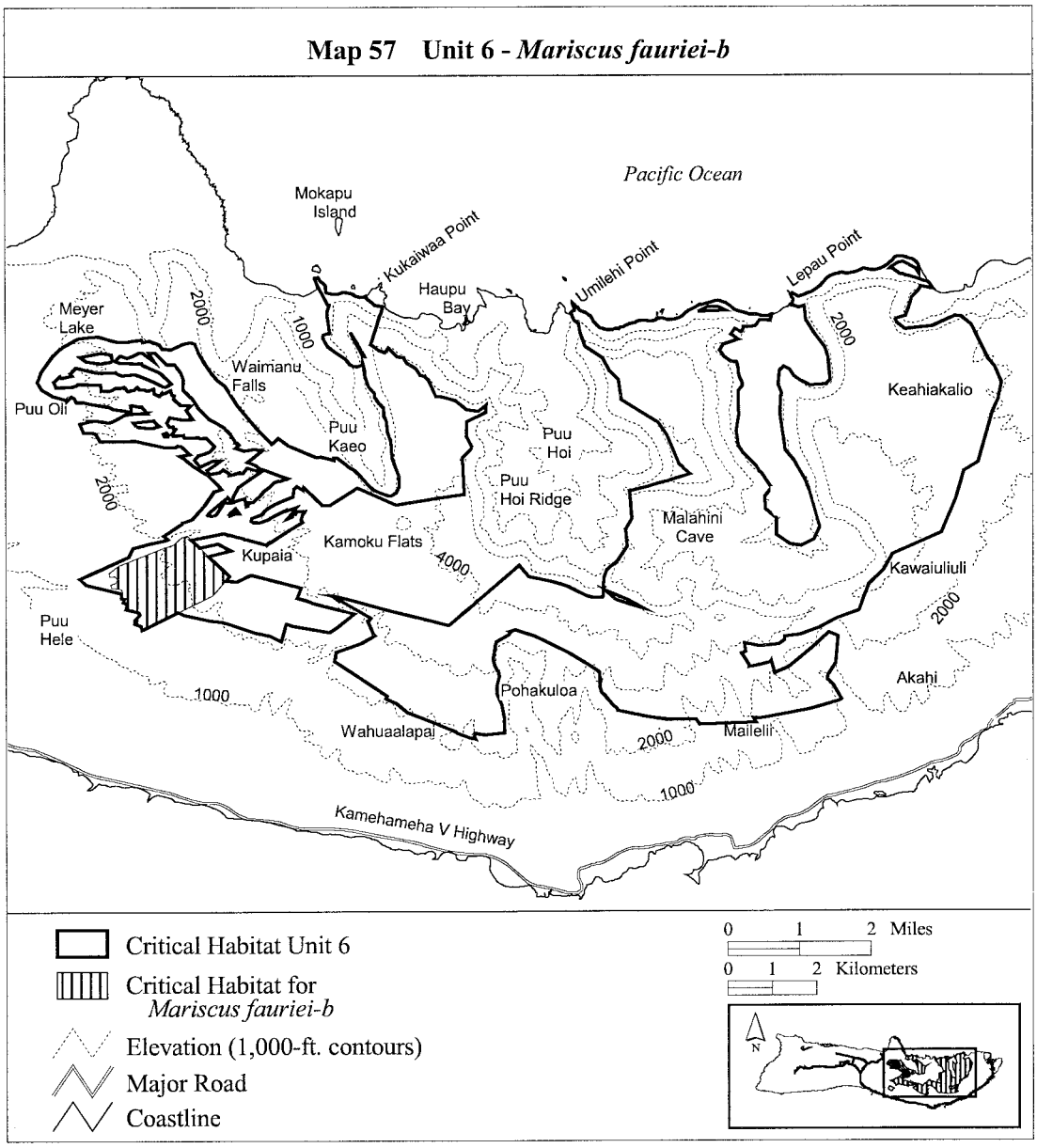
(ii) **Note:** Map 56 follows:



(57) Molokai 6—*Mariscus fauriei*—b (307 ha; 758 ac)

(i) Unit consists of the following 29 boundary points: Start at 711134, 2334784; 711103, 2334882; 710967, 2334926; 710964, 2335005; 711076, 2335127; 711056, 2335185; 710777, 2335257; 710794, 2335355; 710715, 2335416; 710729, 2335488; 710676, 2335499; 710663, 2335614; 710663, 2335614; 710691, 2335624; 710671, 2335709; 710460, 2335743; 710429, 2335804; 710542, 2335849; 710583, 2335930; 710515, 2335992; 710409, 2335978; 710392, 2336053; 710593, 2336220; 711546, 2336604; 711828, 2336689; 712019, 2336866; 712138, 2336893; 713077, 2335992; 712699, 2335566; return to starting point.

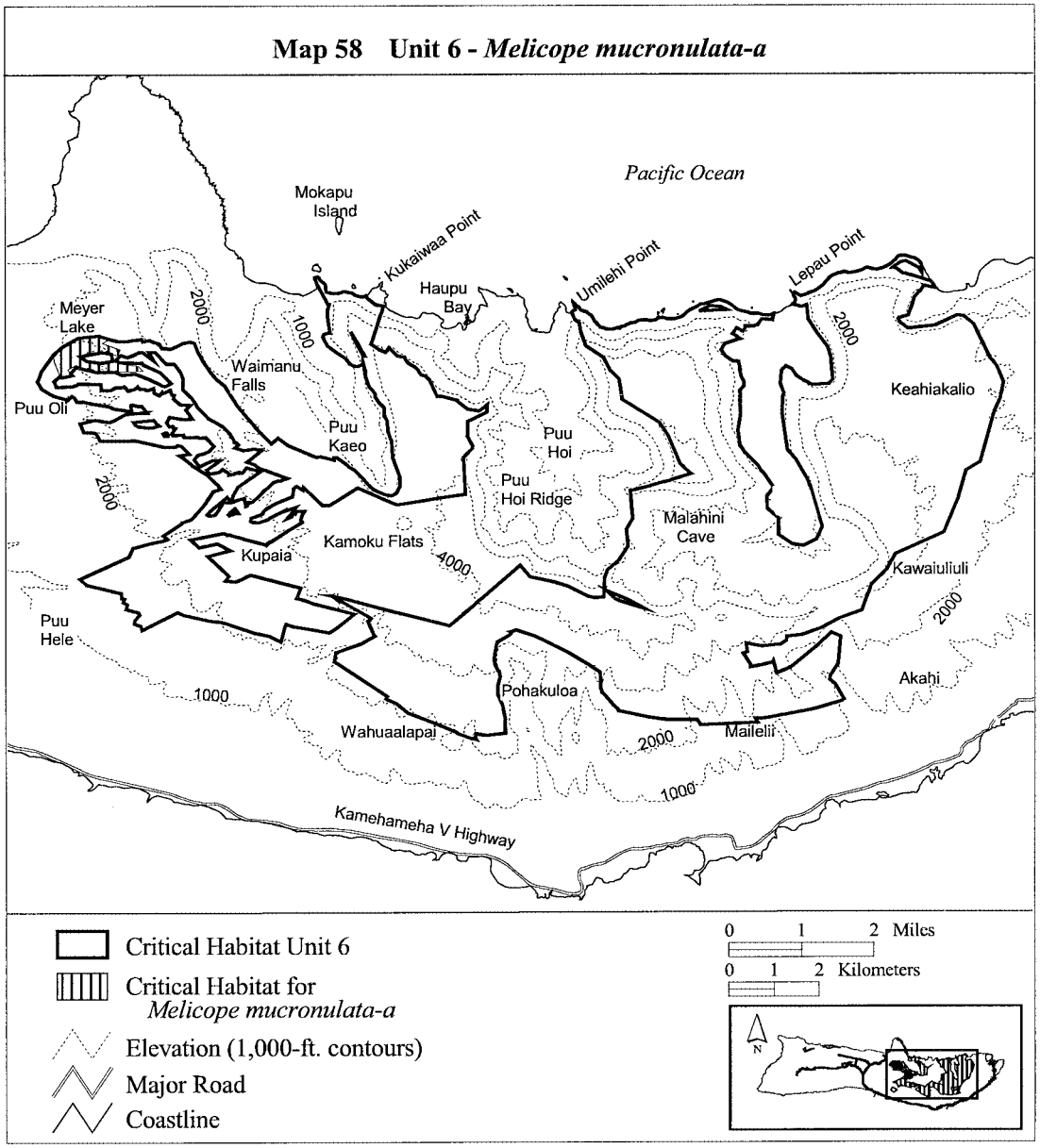
(ii) **Note:** Map 57 follows:



(58) Molokai 6—*Melicope mucronulata*—a (84 ha; 206 ac)

(i) Unit consists of the following 31 boundary points: Start at 709335, 2340440; 709281, 2340521; 709168, 2340808; 709174, 2340968; 709174, 2340969; 709403, 2341155; 709702, 2341325; 709740, 2341335; 710171, 2341369; 710202, 2341362; 710386, 2341296; 710256, 2341200; 710646, 2341064; 710595, 2340934; 710143, 2341019; 709911, 2340985; 709730, 2340923; 709899, 2340810; 710284, 2340748; 710527, 2340788; 710730, 2340737; 711052, 2340691; 711154, 2340578; 710838, 2340573; 710555, 2340573; 710278, 2340573; 709933, 2340607; 709673, 2340720; 709476, 2340618; 709582, 2340499; 709578, 2340495; return to starting point.

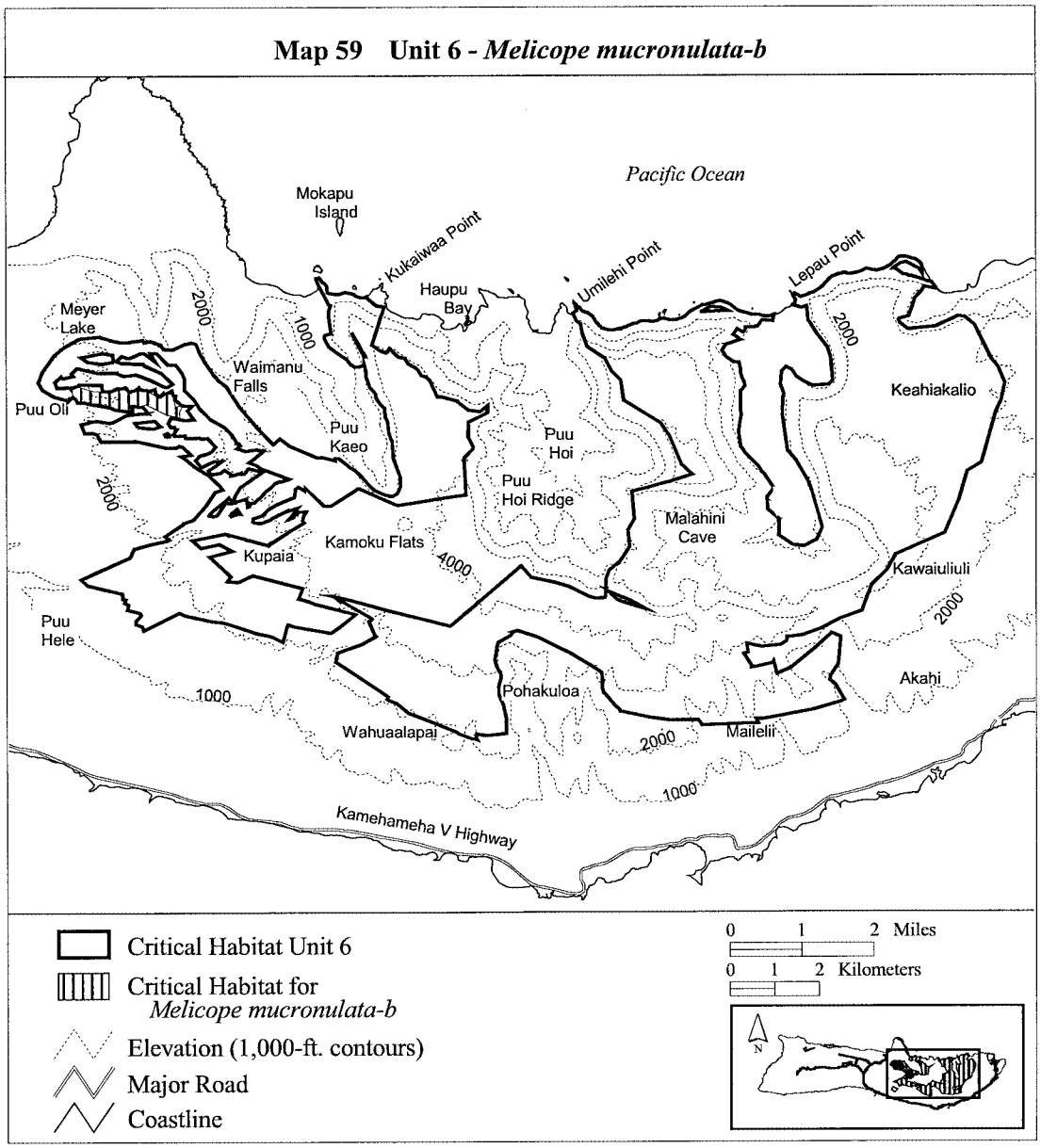
(ii) **Note:** Map 58 follows:



(59) Molokai 6—*Melicope mucronulata*—b (84 ha; 208 ac)

(i) Unit consists of the following 25 boundary points: Start at 709700, 2339897; 709487, 2340217; 709638, 2340270; 710047, 2340146; 710491, 2340155; 710740, 2340244; 710794, 2340128; 710998, 2340190; 711221, 2340173; 711496, 2340004; 711594, 2340093; 711781, 2340101; 711852, 2339799; 711914, 2339826; 712021, 2339817; 711941, 2339692; 711959, 2339568; 711665, 2339621; 711194, 2339861; 711069, 2339799; 710865, 2339861; 710847, 2339790; 710856, 2339719; 710456, 2339763; 710171, 2339879; return to starting point.

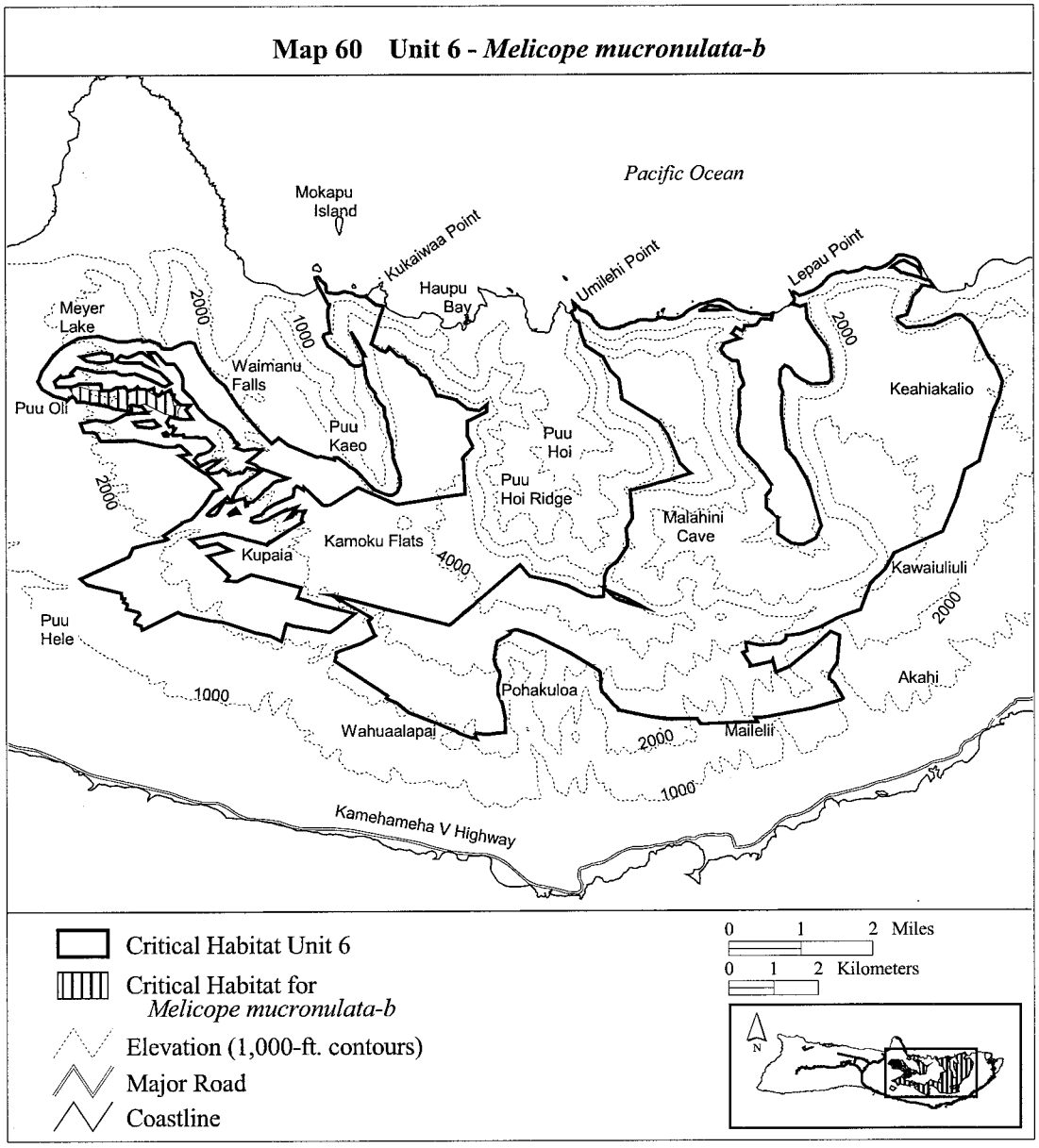
(ii) **Note:** Map 59 follows:



(60) Molokai 6—*Melicope mucronulata*—c (72 ha; 177 ac)

(i) Unit consists of the following 23 boundary points: Start at 711686, 2338887; 711563, 2338926; 711395, 2338998; 711198, 2339010; 710768, 2339040; 710356, 2339058; 710070, 2339422; 710055, 2339441; 710131, 2339465; 710391, 2339414; 710640, 2339527; 711007, 2339640; 711375, 2339651; 711539, 2339504; 710945, 2339442; 711030, 2339324; 711471, 2339278; 711346, 2339160; 711573, 2339069; 711940, 2339103; 712268, 2339092; 712279, 2338951; 711866, 2338911; return to starting point.

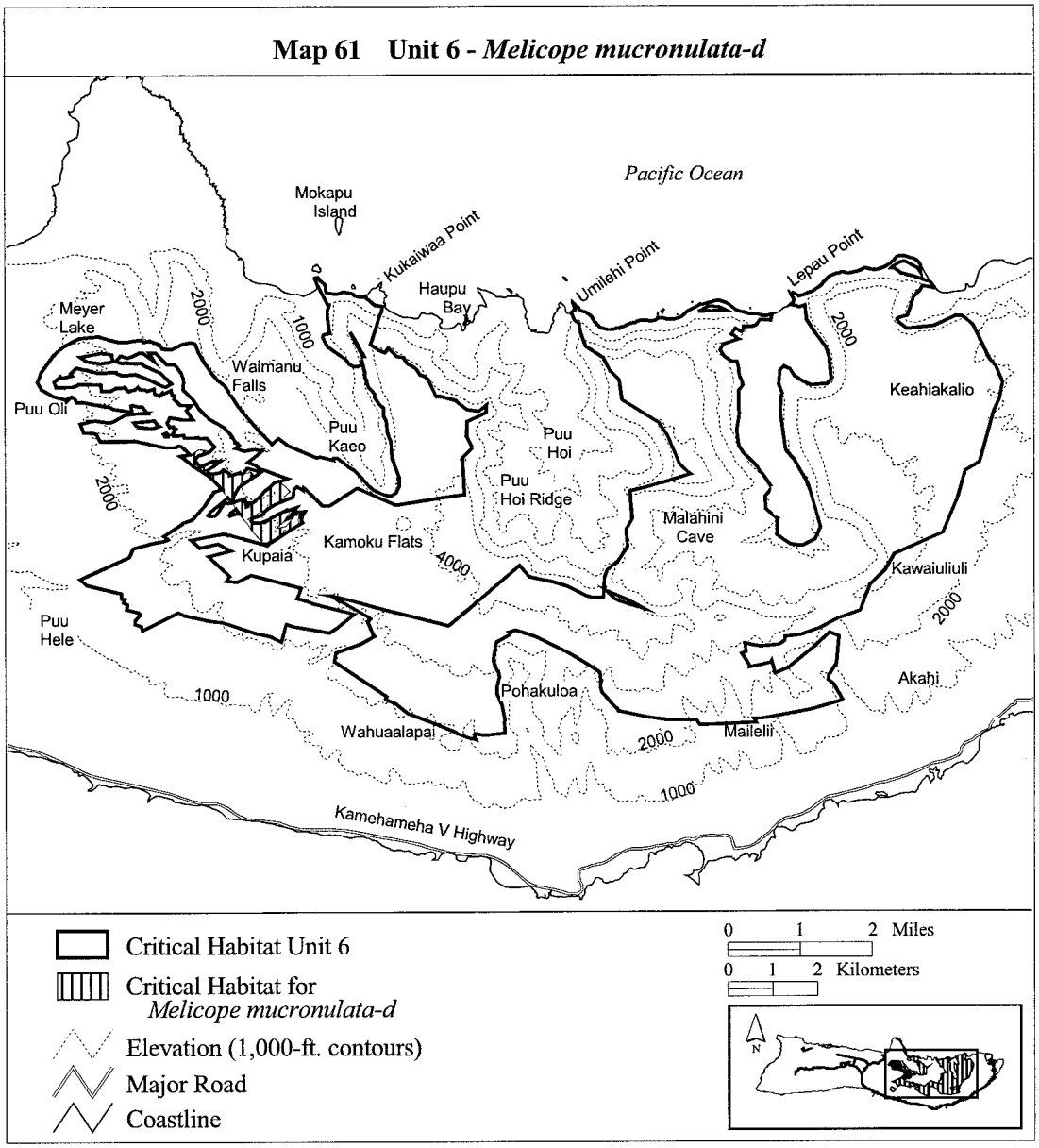
(ii) **Note:** Map 60 follows:



(61) Molokai 6—*Melicope mucronulata*—d (127 ha; 314 ac)

(i) Unit consists of the following 54 boundary points: Start at 713151, 2337624; 713032, 2337762; 712811, 2338054; 712578, 2338275; 712261, 2338472; 712052, 2338634; 711975, 2338689; 712251, 2338741; 712403, 2338838; 712635, 2338804; 712403, 2338713; 712296, 2338594; 712426, 2338453; 712686, 2338572; 712872, 2338572; 712714, 2338464; 712573, 2338368; 712646, 2338278; 712861, 2338318; 712929, 2338380; 713073, 2338297; 713070, 2338261; 713573, 2338329; 713602, 2338227; 713325, 2338097; 713161, 2337786; 713138, 2337662; 713415, 2337741; 713443, 2337560; 713669, 2337656; 713828, 2337877; 714065, 2338091; 714159, 2338128; 714322, 2338006; 714422, 2337906; 714116, 2337622; 713720, 2337413; 713483, 2337277; 713596, 2337204; 713856, 2337176; 714127, 2337374; 714421, 2337458; 714263, 2337210; 714110, 2337074; 714336, 2337119; 714517, 2337362; 714738, 2337419; 714585, 2337260; 714634, 2337162; 713969, 2336749; 713796, 2336764; 713546, 2337045; 713480, 2337164; 713315, 2337345; return to starting point.

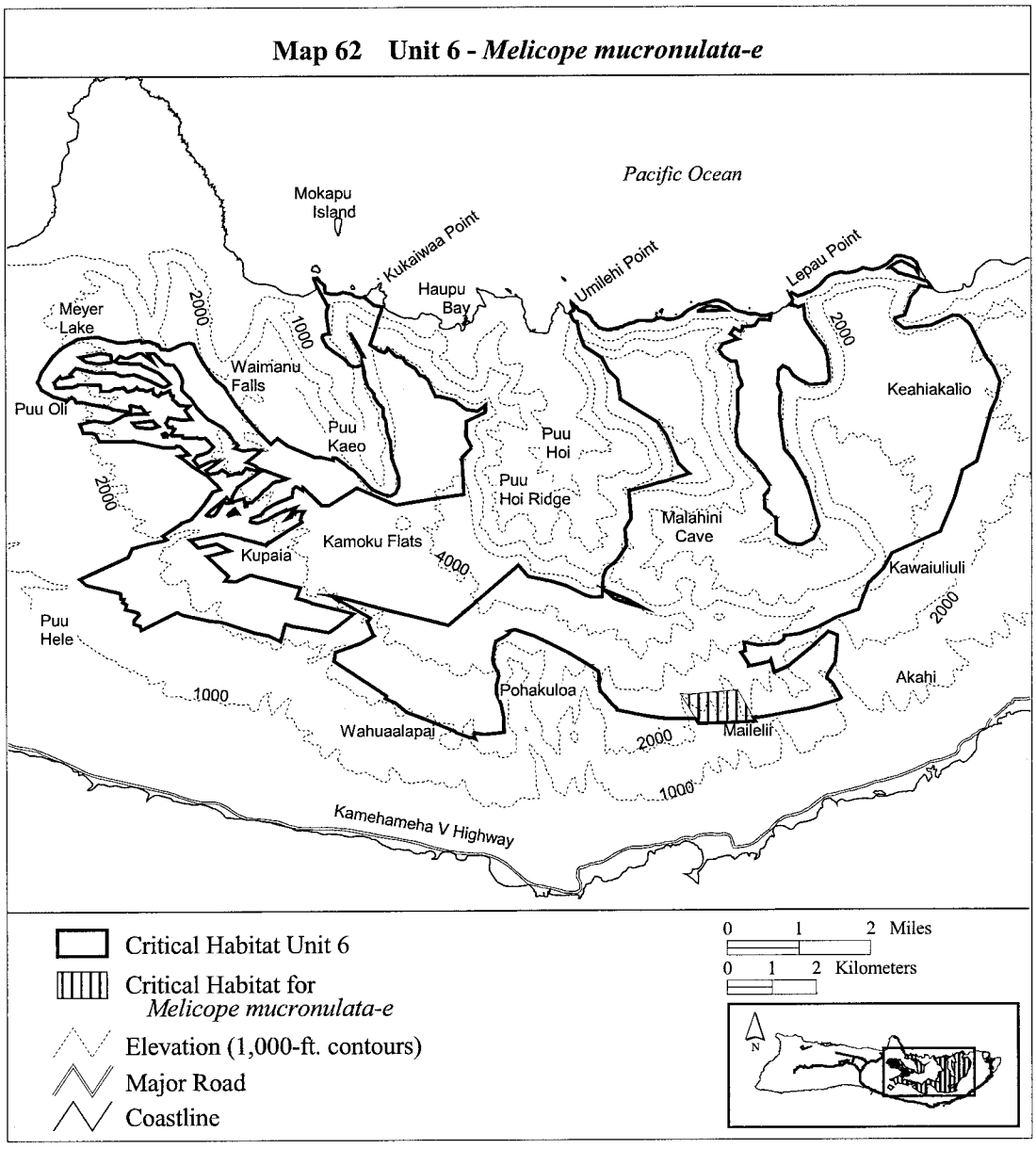
(ii) **Note:** Map 61 follows:



(62) Molokai 6—*Melicope mucronulata*—e (89 ha; 221 ac)

(i) Unit consists of the following 8 boundary points: Start at 723107, 2333319; 723177, 2333312; 723171, 2333312; 723379, 2333304; 723379, 2333312; 724393, 2333404; 724790, 2332688; 723525, 2332647; return to starting point.

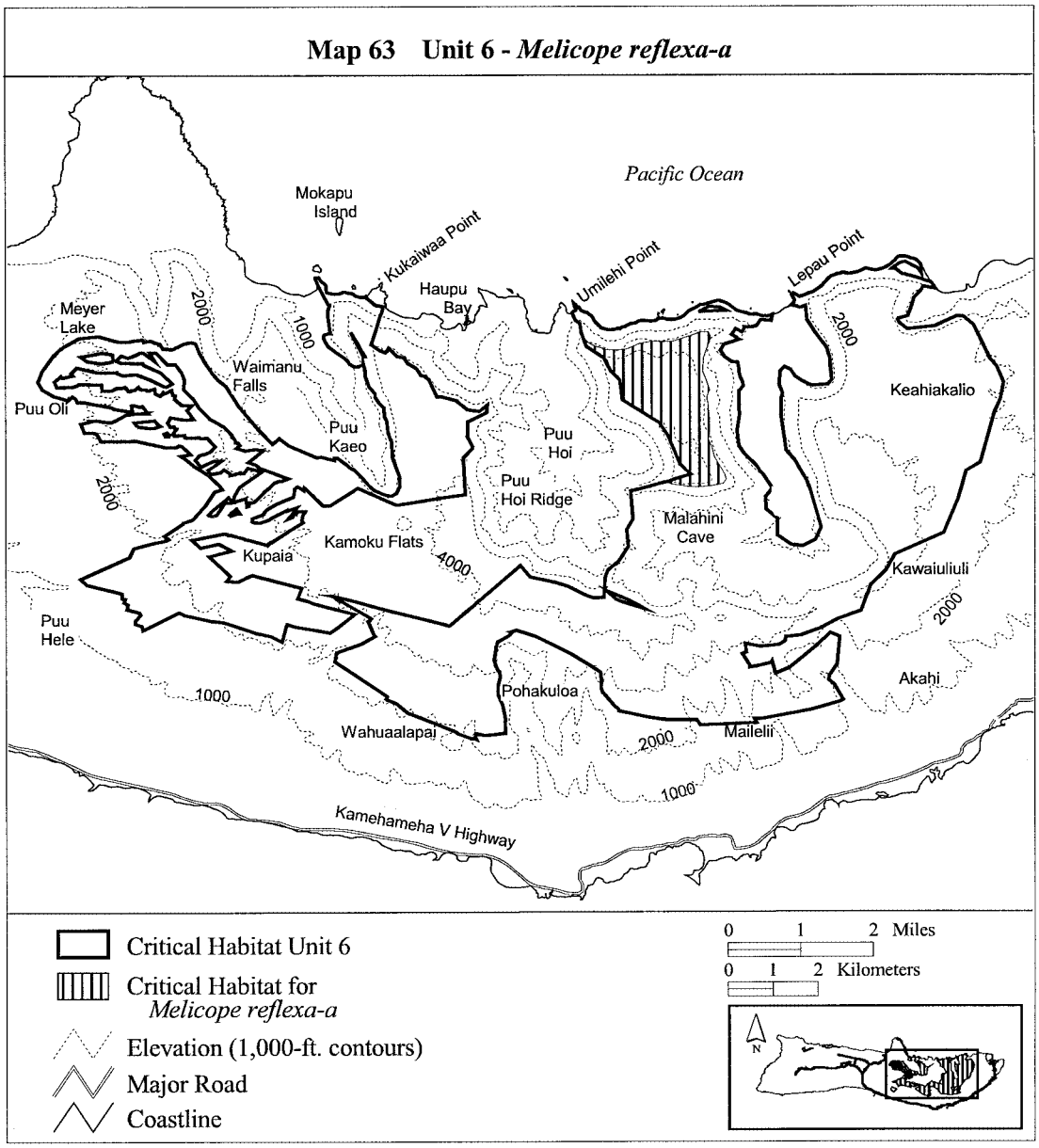
(ii) **Note:** Map 62 follows:



(63) Molokai 6—*Melicope reflexa*—a (484 ha; 1,195 ac)

(i) Unit consists of the following 58 boundary points: Start at 721122, 2341169; 721462, 2341052; 721683, 2341052; 721919, 2341079; 722176, 2341197; 722460, 2341246; 722744, 2341232; 722897, 2341232; 723209, 2341336; 723396, 2341398; 723534, 2341440; 723715, 2341447; 723770, 2341370; 723756, 2341273; 723701, 2341135; 723618, 2340892; 723611, 2340733; 723590, 2340573; 723652, 2340414; 723742, 2340150; 723687, 2339998; 723722, 2339797; 723742, 2339471; 723742, 2339193; 723715, 2339048; 723798, 2338881; 723840, 2338729; 723860, 2338639; 724082, 2338251; 724117, 2338153; 724048, 2338056; 723777, 2338008; 723465, 2337973; 723264, 2337987; 722945, 2338043; 722814, 2338070; 722795, 2338101; 723022, 2338160; 723352, 2338246; 723352, 2338246; 723352, 2338246; 723351, 2338247; 723331, 2338266; 723146, 2338429; 723088, 2338481; 722865, 2339034; 722803, 2339144; 722612, 2339432; 721796, 2339934; 721815, 2340038; 721731, 2340378; 721548, 2340570; 721486, 2340778; 721475, 2340813; 720997, 2341127; 720995, 2341131; 720966, 2341212; 721011, 2341232; return to starting point.

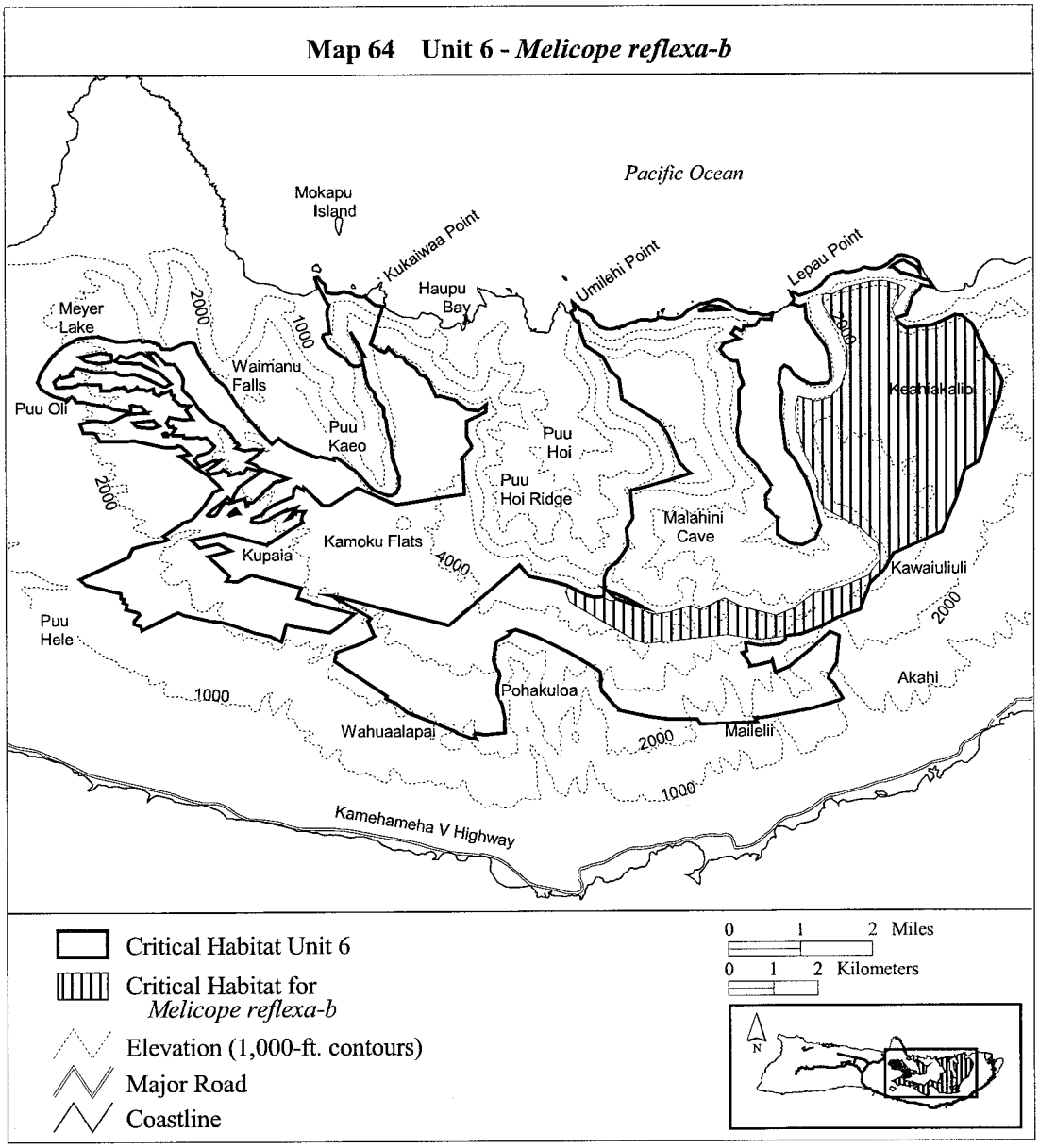
(ii) **Note:** Map 63 follows:



(64) Molokai 6—*Melicope reflexa*—b (2,226 ha; 5,500 ac)

(i) Unit consists of the following 83 boundary points: Start at 721387, 2335501; 721509, 2335424; 721760, 2335424; 722136, 2335290; 722228, 2335203; 722488, 2335115; 722822, 2335156; 723316, 2335315; 723516, 2335215; 724077, 2335474; 724470, 2335273; 725231, 2335081; 725608, 2335240; 726076, 2335574; 726712, 2335733; 727272, 2335967; 727540, 2336327; 727498, 2336679; 727088, 2337047; 726319, 2337457; 726168, 2337699; 726168, 2338051; 725875, 2338678; 725792, 2338979; 725743, 2339143; 725691, 2339180; 725658, 2339740; 725733, 2339983; 726118, 2339866; 726444, 2339958; 726695, 2340242; 726837, 2340661; 726820, 2341037; 726695, 2341430; 726519, 2341664; 726398, 2341832; 726285, 2342032; 726260, 2342150; 726293, 2342258; 726511, 2342267; 726804, 2342426; 727322, 2342543; 727581, 2342559; 727724, 2342551; 728050, 2342451; 728134, 2342400; 727832, 2341957; 727849, 2341865; 727907, 2341740; 727950, 2341648; 728125, 2341505; 728744, 2341572; 729221, 2341806; 729369, 2341792; 729593, 2341616; 729957, 2340844; 730108, 2340669; 730258, 2340309; 730192, 2339932; 730058, 2339648; 729740, 2338526; 729427, 2338327; 729264, 2337734; 728927, 2336948; 727849, 2336461; 727650, 2336110; 727313, 2335793; 727105, 2335206; 726607, 2335031; 726193, 2334817; 726193, 2334817; 725775, 2334663; 724830, 2334537; 724144, 2334654; 722304, 2334454; 722003, 2334571; 720806, 2335290; 720631, 2335399; 720539, 2335625; 720606, 2335742; 720920, 2335559; 721173, 2335498; 721387, 2335499; return to starting point.

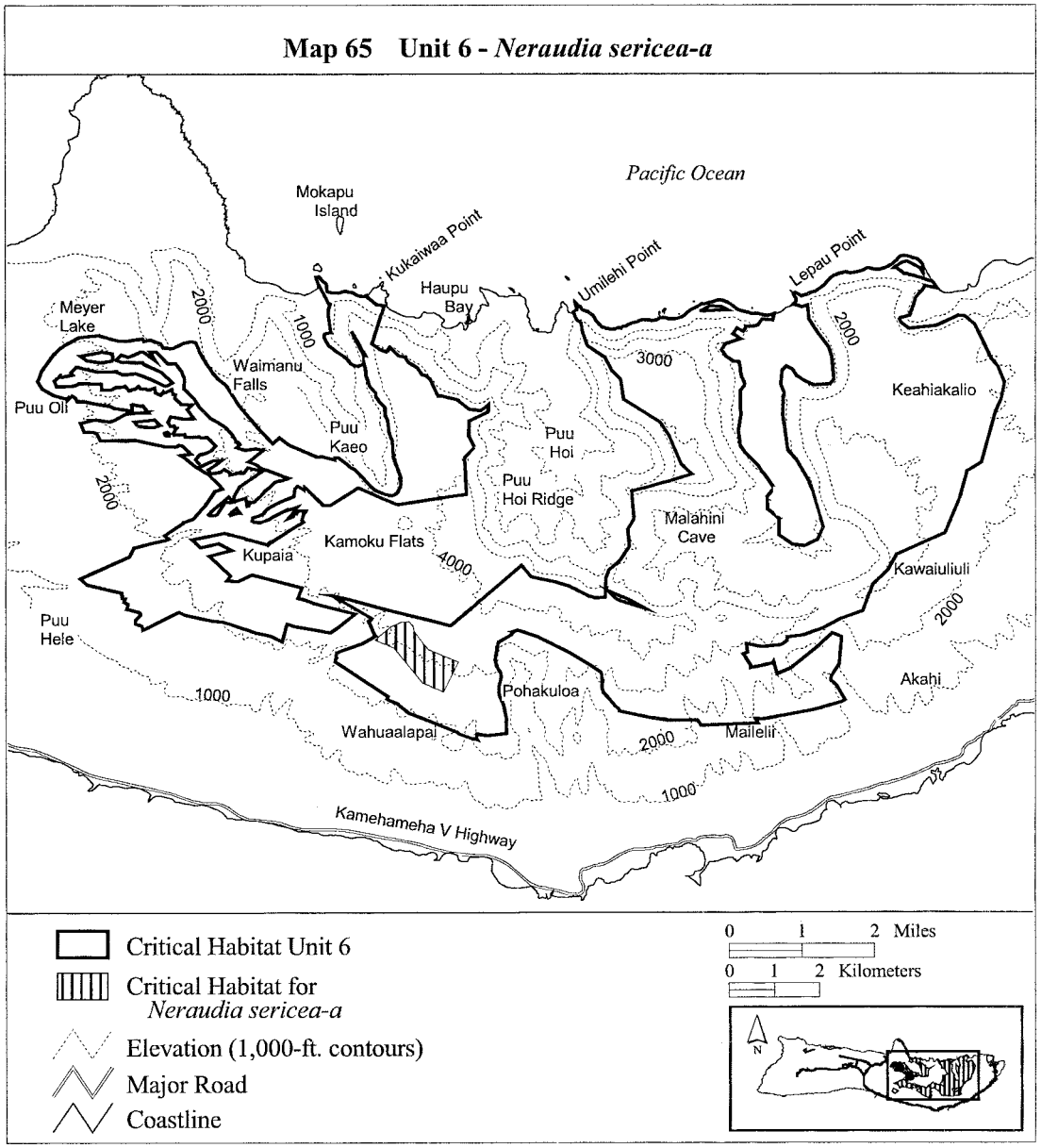
(ii) **Note:** Map 64 follows:



(65) Molokai 6—*Neraudia sericea*—a (116 ha; 286 ac)

(i) Unit consists of the following 19 boundary points: Start at 717801, 2333397; 717692, 2333442; 717579, 2333480; 717491, 2333530; 717347, 2333600; 716701, 2334383; 716295, 2334550; 716286, 2334559; 716380, 2334641; 716631, 2334855; 716863, 2334955; 717039, 2334968; 717121, 2334880; 717146, 2334754; 717341, 2334497; 717466, 2334340; 718000, 2334120; 718125, 2334064; 718129, 2334063; return to starting point.

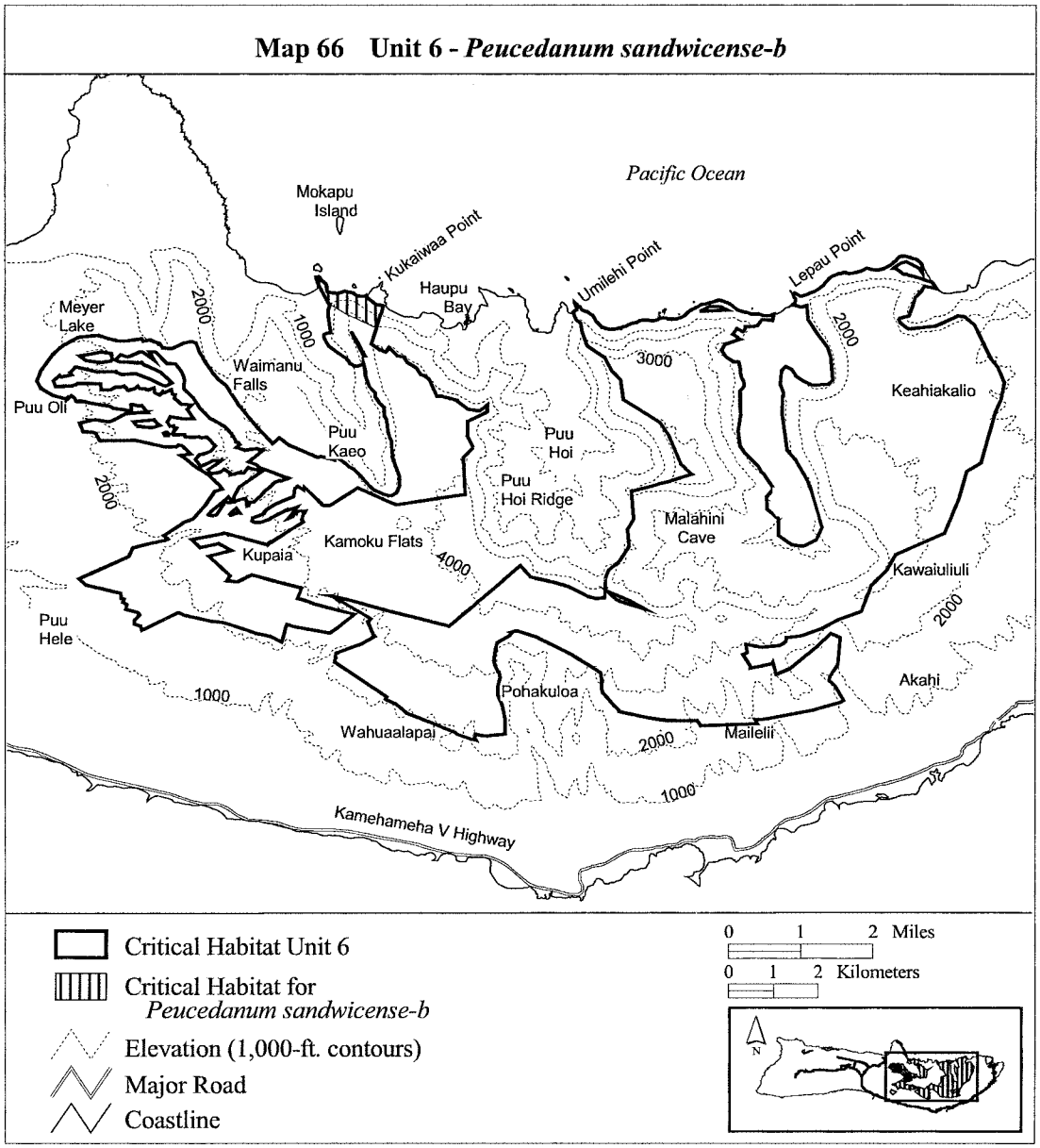
(ii) **Note:** Map 65 follows:



(66) Molokai 6—*Peucedanum sandwicense*—b (61 ha; 151 ac)

(i) Unit consists of the following 10 boundary points and the intermediate coastline: Start at 716106, 2342255; 716166, 2342156; 716323, 2342056; 716493, 2342030; 716336, 2341530; 716324, 2341534; 715896, 2341742; 715687, 2341830; 715259, 2342083; 715057, 2342471; follow coastline and return to starting point.

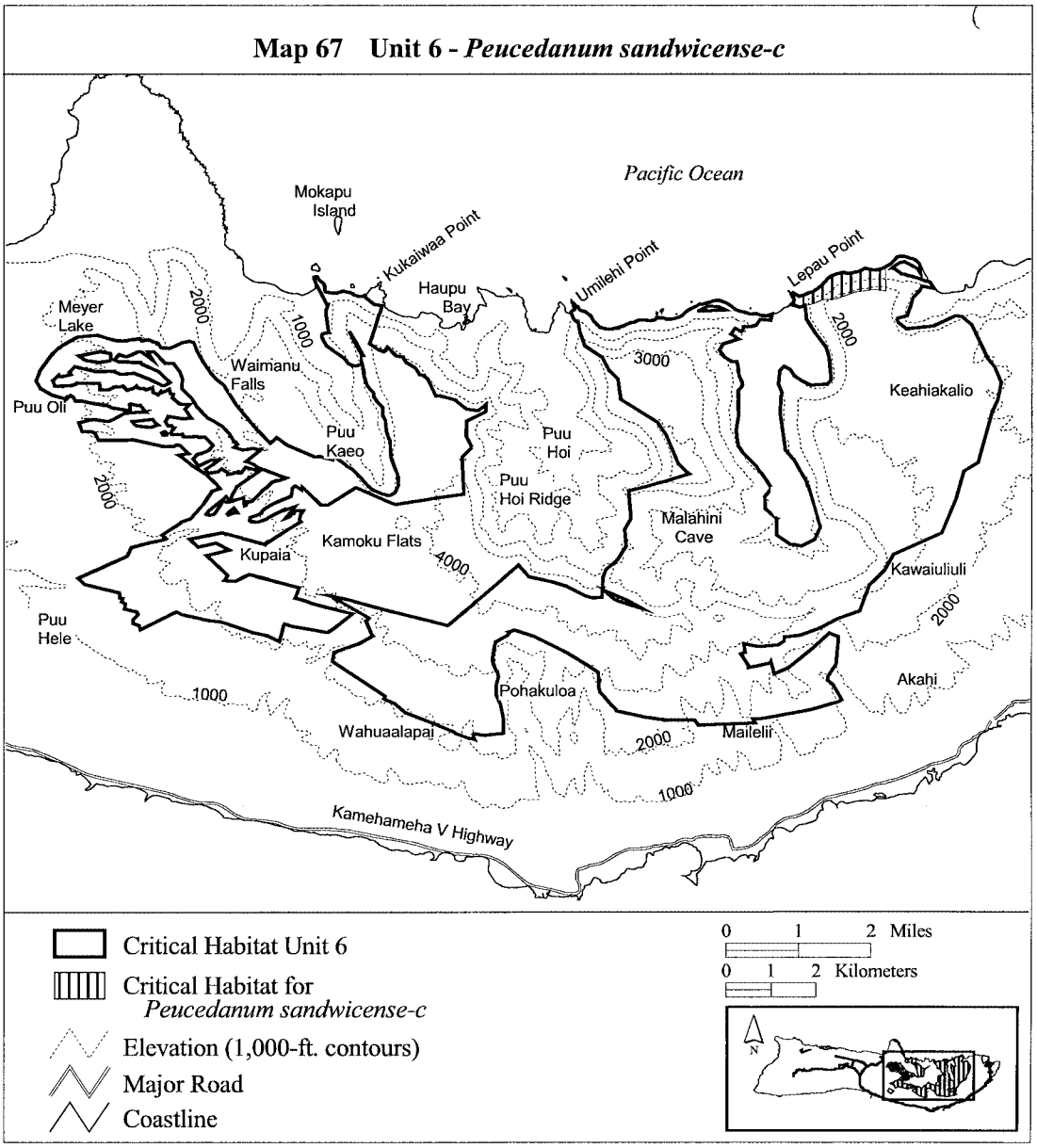
(ii) **Note:** Map 66 follows:



(67) Molokai 6—*Peucedanum sandwicense*—c (84 ha; 208 ac)

(i) Unit consists of the following 17 boundary points and the intermediate coastline: Start at 727593, 2342860; 727604, 2342849; 727663, 2342832; 727670, 2342363; 727415, 2342390; 726998, 2342335; 726592, 2342181; 726251, 2342159; 726075, 2342071; 725757, 2341995; 725581, 2342066; 725582, 2342067; 725624, 2342097; 725631, 2342109; 725630, 2342134; 725635, 2342160; 725632, 2342174; follow coastline and return to starting point.

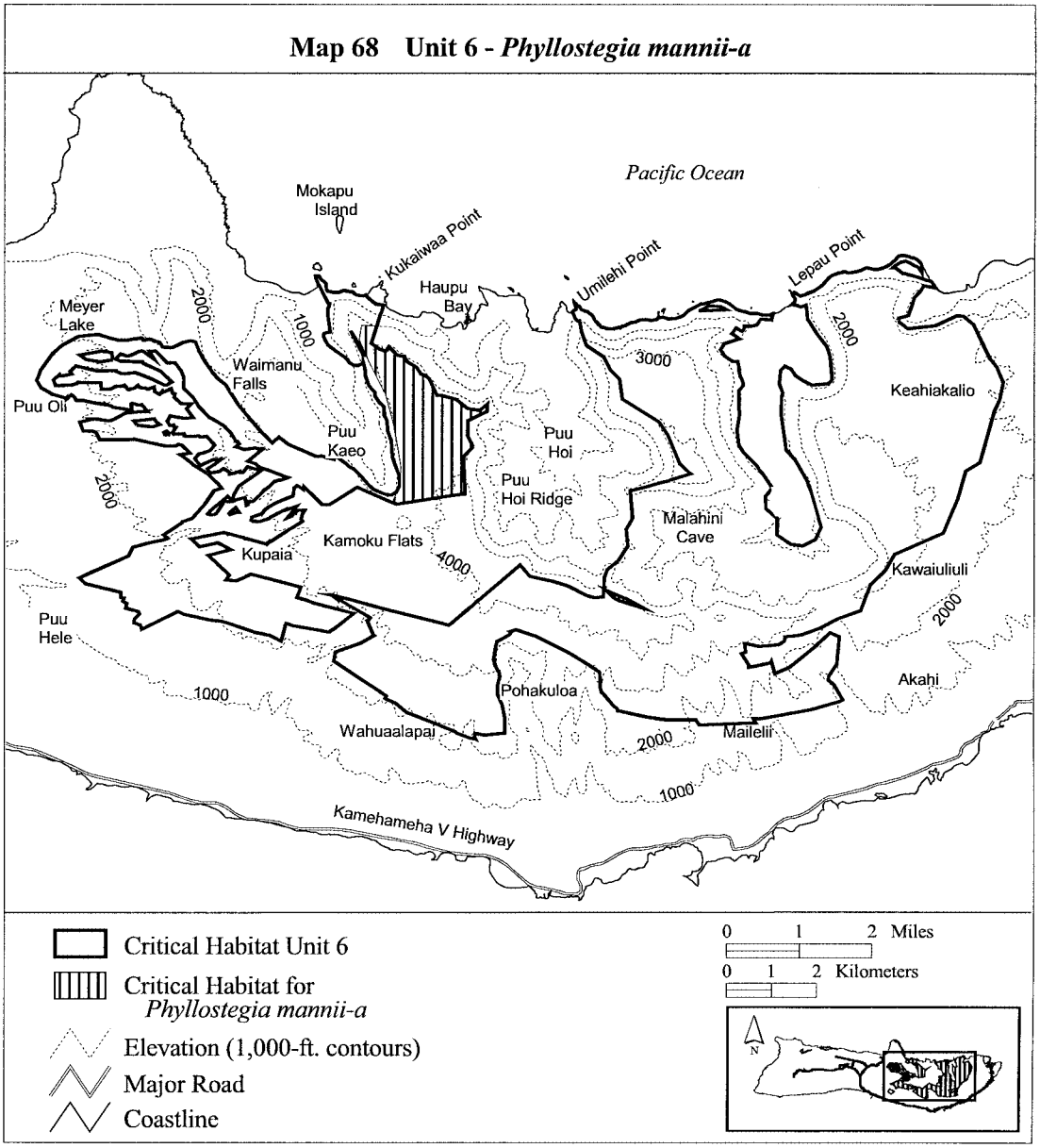
(ii) **Note:** Map 67 follows:



(68) Molokai 6—*Phyllostegia mannii*—a (480 ha; 1,185 ac)

(i) Unit consists of the following 37 boundary points: Start at 716869, 2338015; 716890, 2338405; 716806, 2338901; 716711, 2339439; 716542, 2340030; 716162, 2340801; 715962, 2341265; 716004, 2341581; 716344, 2341557; 716226, 2341182; 716397, 2341056; 716537, 2341006; 716619, 2341102; 716803, 2340912; 716949, 2340883; 717034, 2340760; 717233, 2340650; 717327, 2340487; 717417, 2340471; 717512, 2340386; 717678, 2340008; 717794, 2340014; 718125, 2339916; 718212, 2339767; 718369, 2339712; 718630, 2339684; 718798, 2339820; 718794, 2339660; 718638, 2339632; 718369, 2339448; 718361, 2339127; 718483, 2338864; 718272, 2338643; 718273, 2338203; 718311, 2337817; 716789, 2337580; 716695, 2337621; return to starting point.

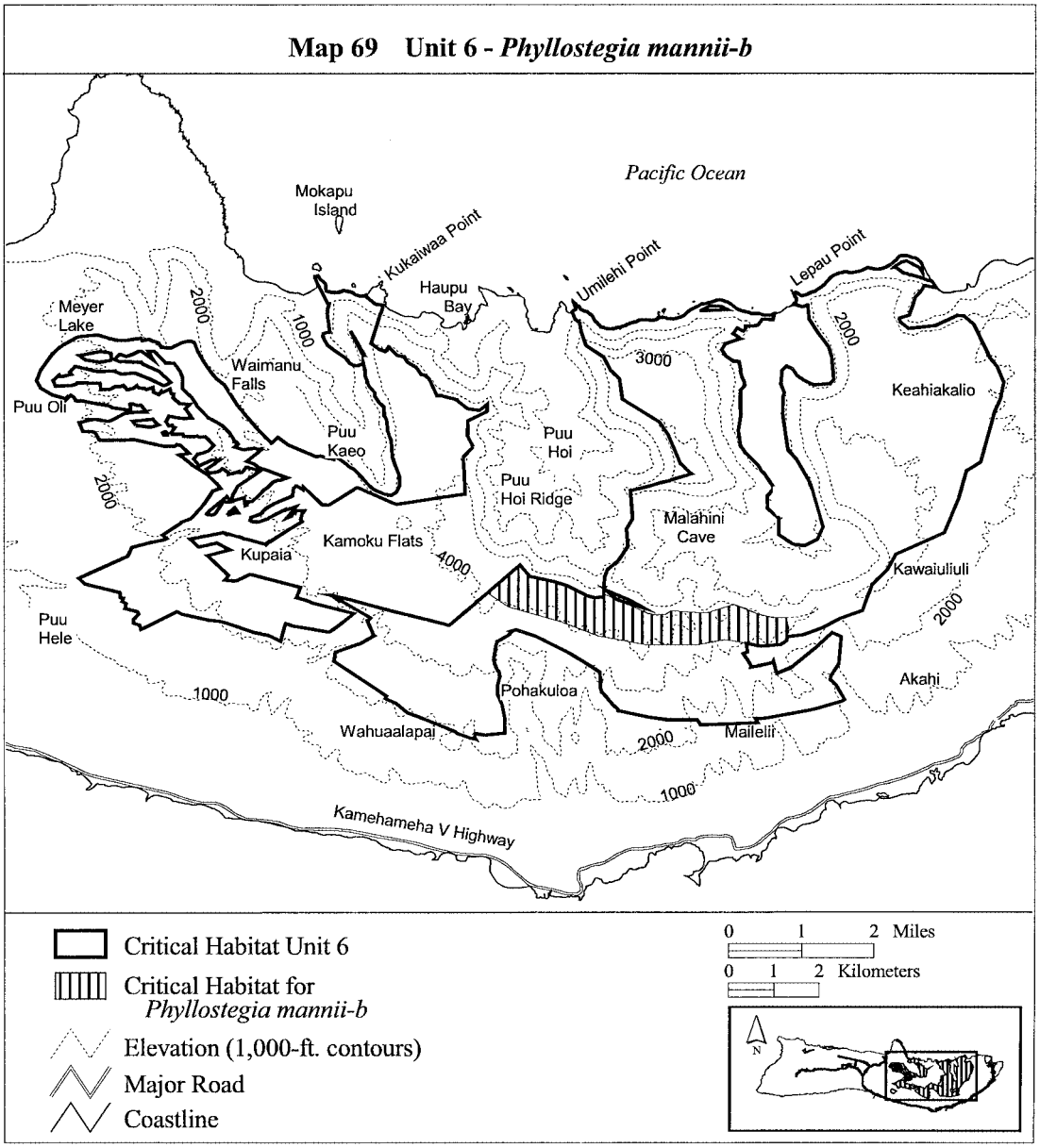
(ii) **Note:** Map 68 follows:



(69) Molokai 6—*Phyllostegia mannii*—b (496 ha; 1,226 ac)

(i) Unit consists of the following 32 boundary points: Start at 721391, 2335576; 721786, 2335398; 722335, 2335155; 722504, 2335113; 722757, 2335124; 722884, 2335208; 723517, 2335155; 723664, 2335155; 724266, 2335345; 724783, 2335134; 725131, 2335039; 725416, 2335039; 725479, 2334765; 725416, 2334532; 725289, 2334448; 724857, 2334406; 724076, 2334554; 723422, 2334427; 722314, 2334448; 721269, 2334638; 720436, 2334955; 719286, 2335282; 718807, 2335607; 719529, 2336227; 719749, 2335976; 720278, 2335860; 720611, 2335749; 720920, 2335559; 721062, 2335514; 721066, 2335513; 721173, 2335498; 721388, 2335510; return to starting point.

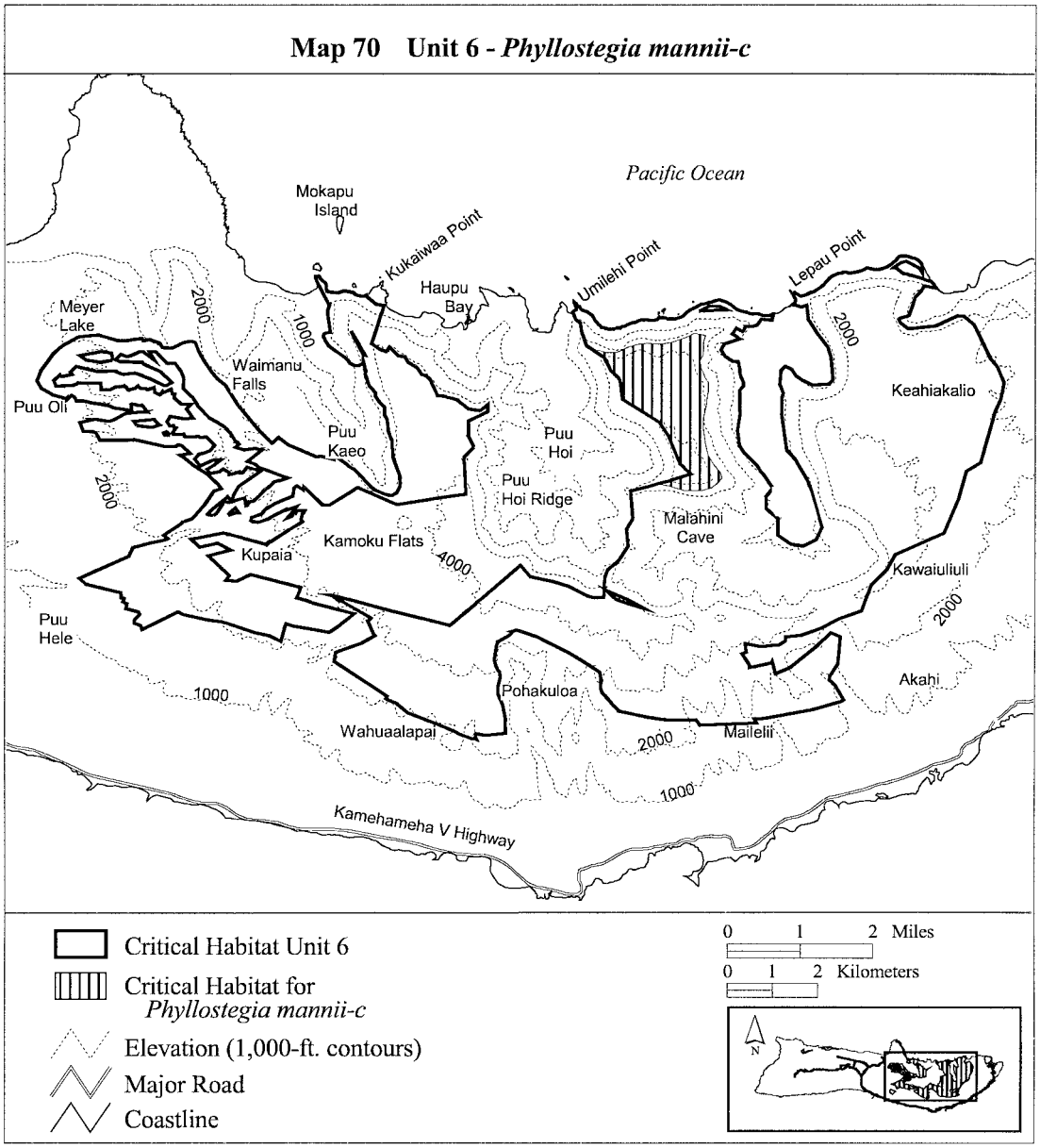
(ii) **Note:** Map 69 follows:



(70) Molokai 6—*Phyllostegia mannii*—c (452 ha; 1,117 ac)

(i) Unit consists of the following 61 boundary points: Start at 723531, 2340665; 723531, 2340665; 723599, 2340516; 723630, 2340429; 723723, 2340305; 723717, 2340125; 723698, 2340045; 723673, 2339815; 723605, 2339530; 723605, 2339263; 723649, 2338953; 723705, 2338693; 723835, 2338476; 723990, 2338277; 724008, 2338172; 723922, 2338066; 723773, 2337955; 723562, 2337905; 723351, 2337887; 723196, 2337887; 722805, 2337998; 722619, 2338035; 722603, 2338052; 723022, 2338160; 723352, 2338246; 723352, 2338246; 723352, 2338246; 723351, 2338247; 723331, 2338266; 723146, 2338429; 723088, 2338481; 722865, 2339034; 722803, 2339144; 722612, 2339432; 721796, 2339934; 721815, 2340038; 721731, 2340378; 721548, 2340570; 721486, 2340778; 721475, 2340813; 721196, 2340996; 721237, 2341043; 721361, 2340999; 721454, 2340975; 721689, 2340987; 721931, 2341099; 722148, 2341161; 722303, 2341185; 722464, 2341179; 722669, 2341167; 722886, 2341204; 723115, 2341278; 723289, 2341347; 723388, 2341409; 723611, 2341371; 723642, 2341353; 723605, 2341223; 723599, 2341068; 723587, 2340925; 723518, 2340782; 723543, 2340665; return to starting point.

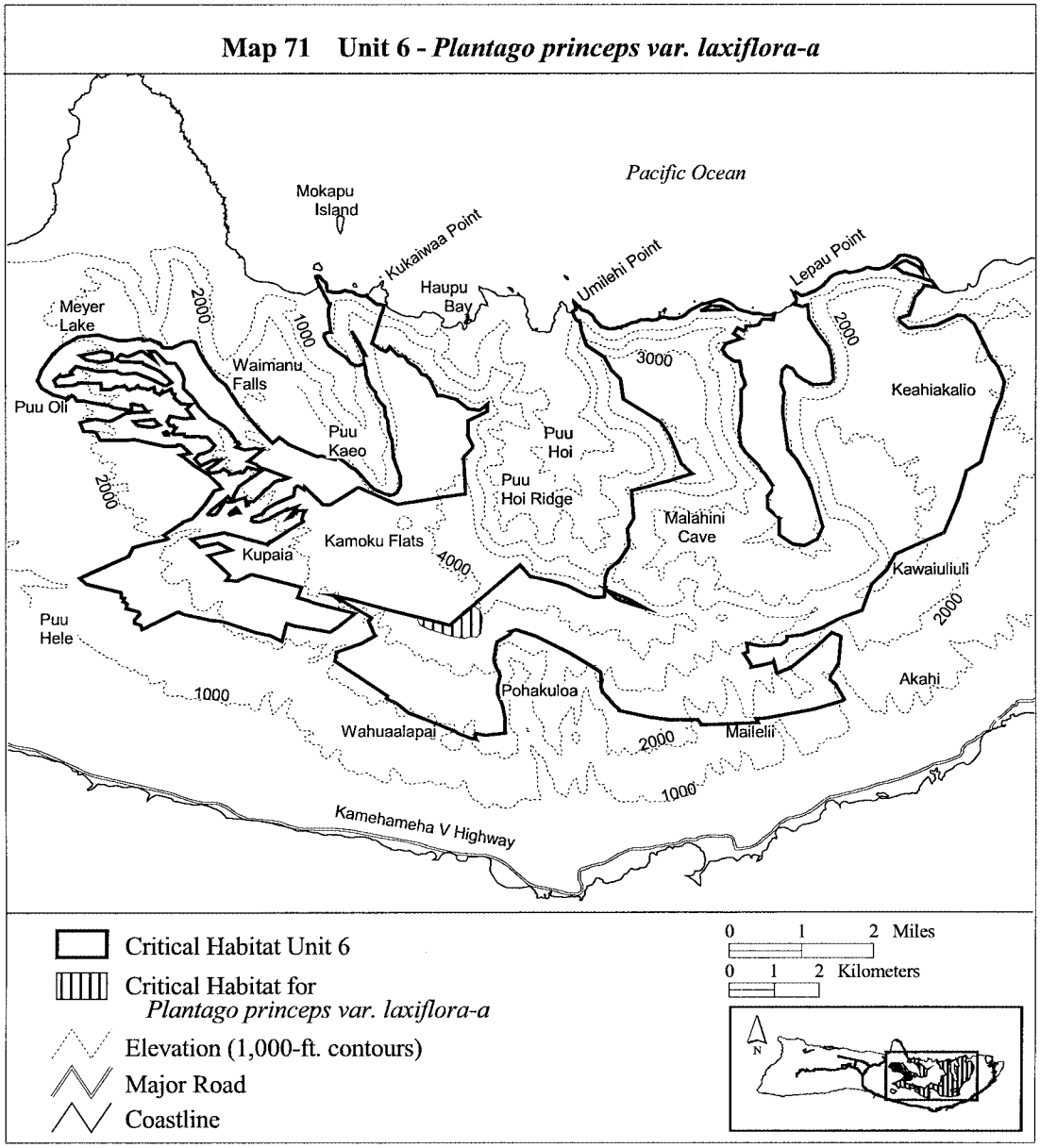
(ii) **Note:** Map 70 follows:



(71) Molokai 6—*Plantago princeps*—a (52 ha; 129 ac)

(i) Unit consists of the following 18 boundary points: Start at 717295, 2334884; 717244, 2334999; 717248, 2335060; 717948, 2334879; 717956, 2334877; 718173, 2335063; 718196, 2335083; 718480, 2335327; 718487, 2335324; 718623, 2335225; 718692, 2335058; 718669, 2334831; 718654, 2334694; 718555, 2334611; 718441, 2334618; 718274, 2334580; 717971, 2334633; 717492, 2334793; return to starting point.

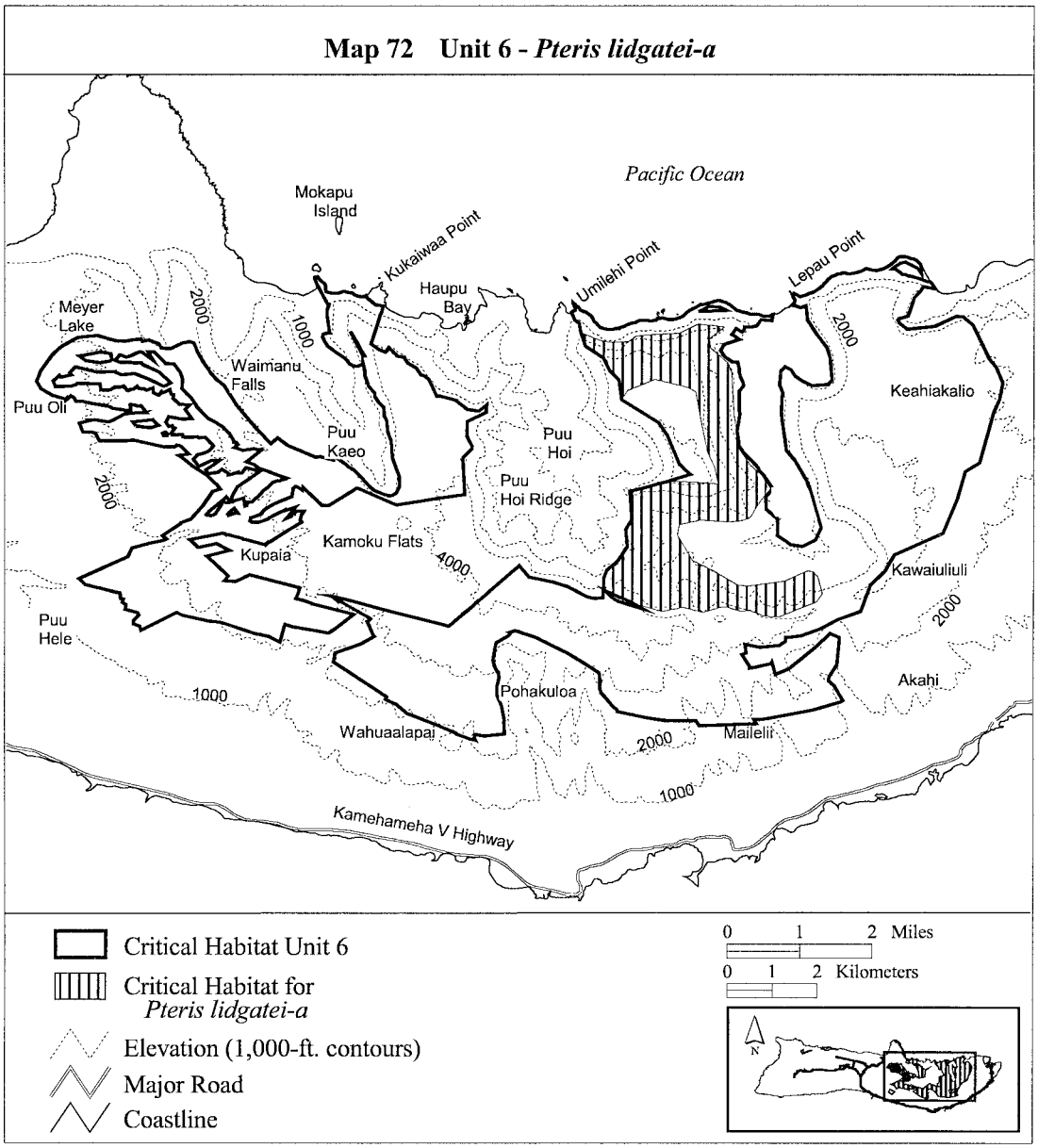
(ii) **Note:** Map 71 follows:



(72) Molokai 6—*Pteris lidgatei*—a (1,227 ha; 3,031 ac)

(i) Unit consists of the following 80 boundary points: Start at 723445, 2340106; 723260, 2340220; 722544, 2340390; 721922, 2340143; 721803, 2339930; 721731, 2340378; 721548, 2340570; 721486, 2340778; 721475, 2340813; 720997, 2341127; 720995, 2341131; 720883, 2341439; 721294, 2341263; 721528, 2341222; 721947, 2341235; 722100, 2341344; 722233, 2341375; 722232, 2341368; 722323, 2341386; 723080, 2341420; 723496, 2341619; 724036, 2341574; 724064, 2341546; 723750, 2341295; 723771, 2341089; 724145, 2340764; 724235, 2340541; 724295, 2339594; 724406, 2338835; 724644, 2338479; 724933, 2338228; 725017, 2338008; 724961, 2337795; 724790, 2337537; 724672, 2337327; 724612, 2337279; 724393, 2337216; 724159, 2337205; 723555, 2337244; 723081, 2337145; 723038, 2336915; 723379, 2336344; 723830, 2336114; 724367, 2335790; 724657, 2335771; 724657, 2335773; 725406, 2335875; 725917, 2336114; 726037, 2336097; 726147, 2335977; 726250, 2335603; 726122, 2335424; 725892, 2335339; 725287, 2335083; 724946, 2335109; 724631, 2335236; 724452, 2335211; 724146, 2335296; 723984, 2335296; 723600, 2335177; 723175, 2335296; 722689, 2335211; 722152, 2335364; 721398, 2335722; 721410, 2335958; 721470, 2336127; 721713, 2336326; 721929, 2336656; 721893, 2337028; 722035, 2337272; 721980, 2337890; 722904, 2338129; 722913, 2338109; 722924, 2338113; 723426, 2338095; 723943, 2338048; 723898, 2338235; 723856, 2338440; 723711, 2338763; 723549, 2339479; return to starting point.

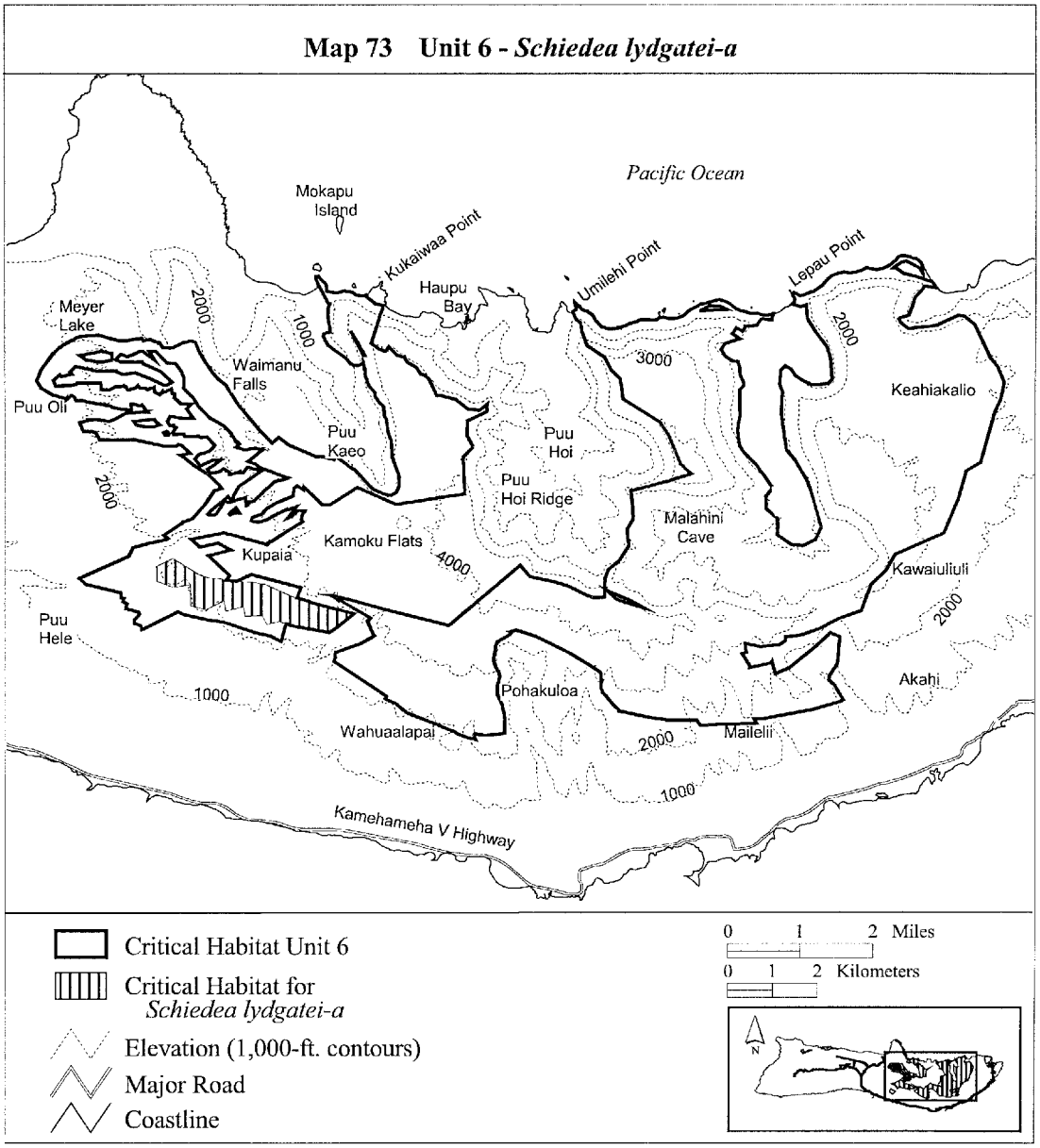
(ii) **Note:** Map 72 follows:



(73) Molokai 6—*Schiedea lydgatei*—a (261 ha; 645 ac)

(i) Unit consists of the following 30 boundary points: Start at 714170, 2334964; 713902, 2334907; 713797, 2335102; 713416, 2335086; 713375, 2335296; 712986, 2335199; 712946, 2335434; 712548, 2335232; 712208, 2335321; 712191, 2335791; 711827, 2335726; 711462, 2335864; 711444, 2336201; 711819, 2336380; 712392, 2336016; 712634, 2335930; 712816, 2335930; 713078, 2335882; 713513, 2335857; 713845, 2335807; 714450, 2335533; 714788, 2335442; 714911, 2335383; 715195, 2335308; 715838, 2335147; 715840, 2335147; 715467, 2334842; 715299, 2334721; 715010, 2334771; 714498, 2334867; return to starting point.

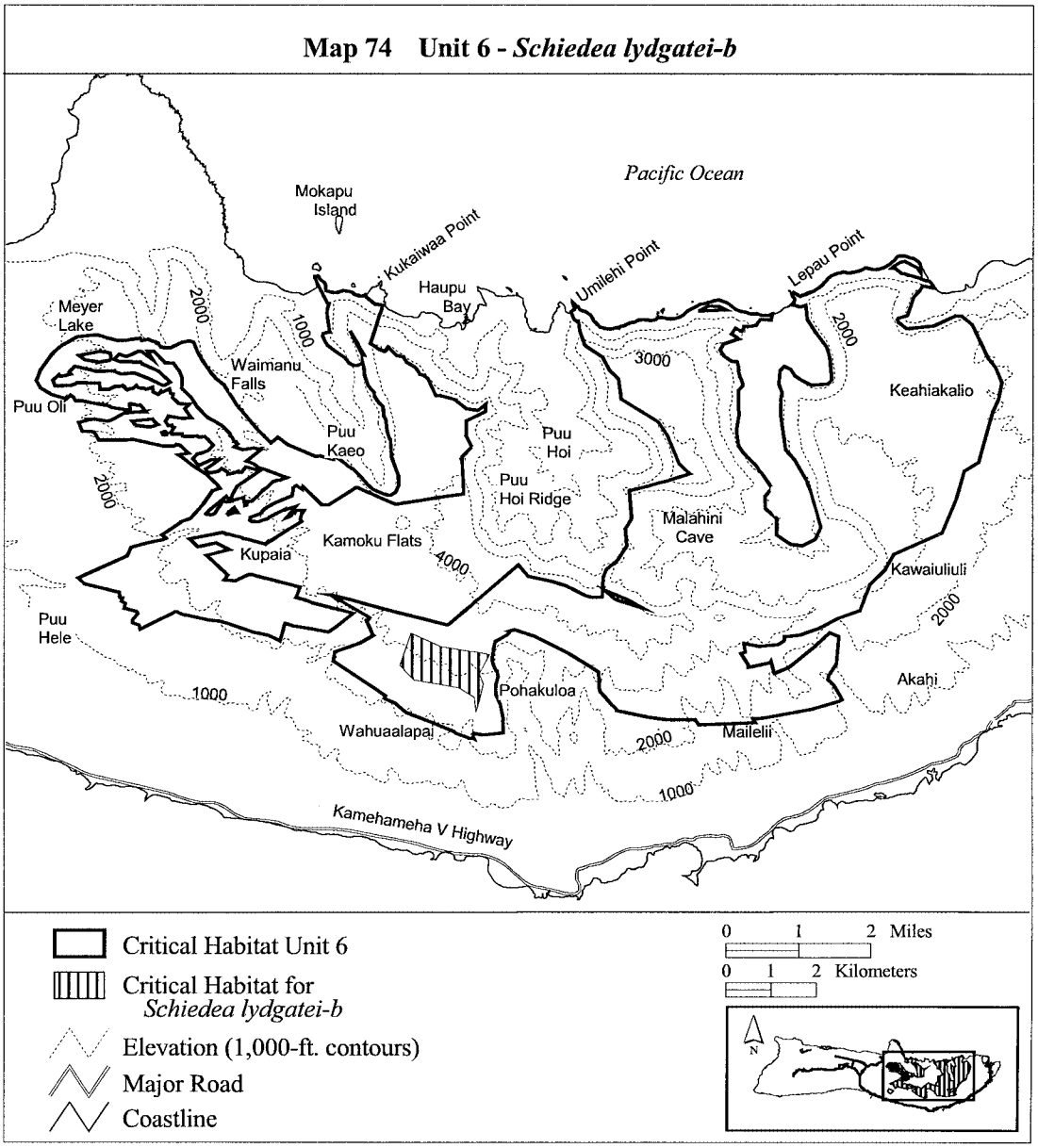
(ii) **Note:** Map 73 follows:



(74) Molokai 6—*Schiedea lydgatei*—b (163 ha; 403 ac)

(i) Unit consists of the following 16 boundary points: Start at 717142, 2334694; 717649, 2334467; 717799, 2334397; 718083, 2334354; 718335, 2334311; 718582, 2334274; 718897, 2334216; 718662, 2333788; 718751, 2333561; 718662, 2333172; 718585, 2332948; 718548, 2333269; 718208, 2333472; 717608, 2333577; 717202, 2333650; 716886, 2333975; return to starting point.

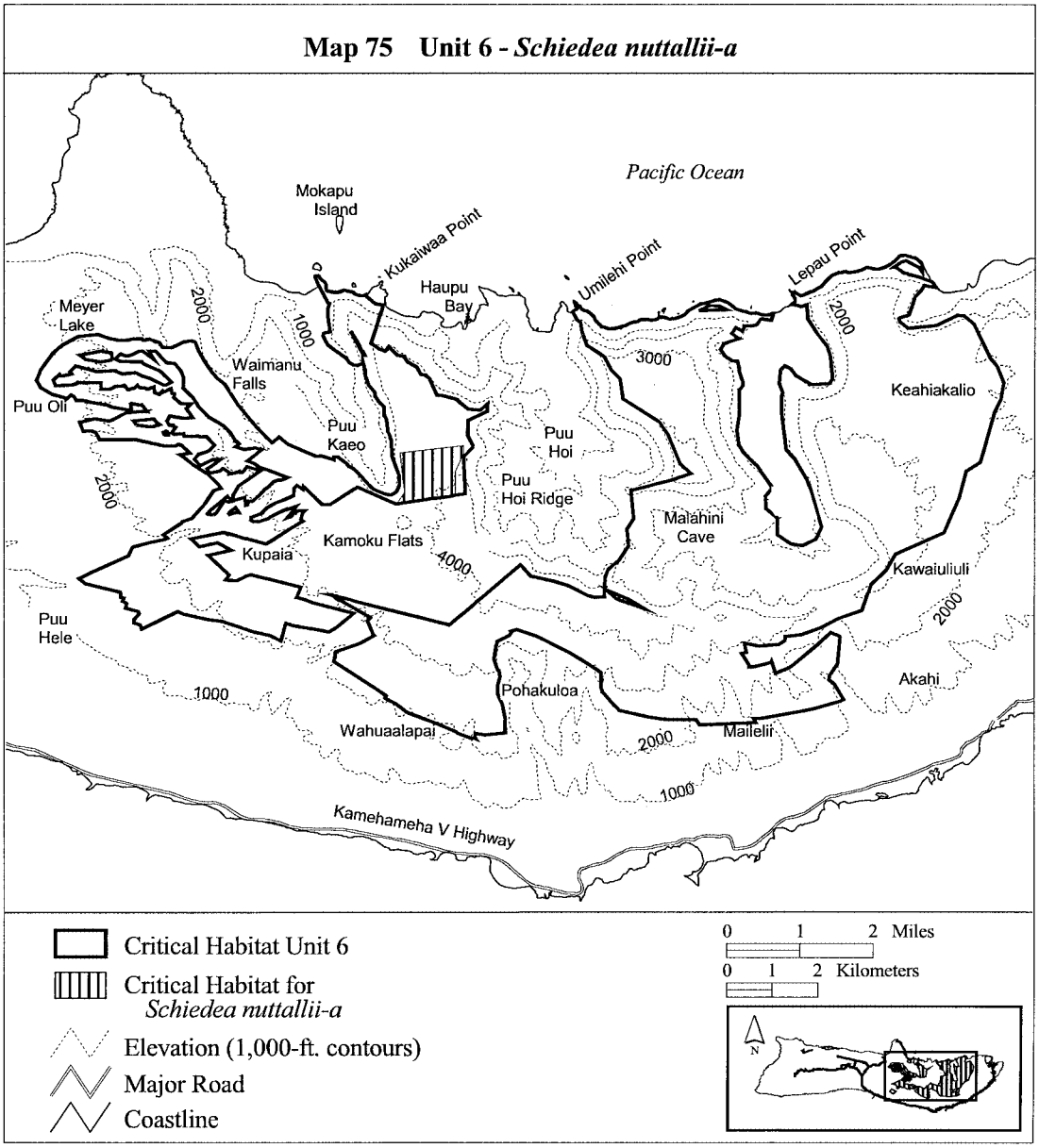
(ii) **Note:** Map 74 follows:



(75) Molokai 6—*Schiedea nuttallii*—a (138 ha; 341 ac)

(i) Unit consists of the following 11 boundary points: Start at 716789, 2337580; 716978, 2337857; 716937, 2338109; 716872, 2338694; 716865, 2338724; 718265, 2338899; 718271, 2338719; 718092, 2338312; 718084, 2337808; 718087, 2337782; 716789, 2337580; return to starting point.

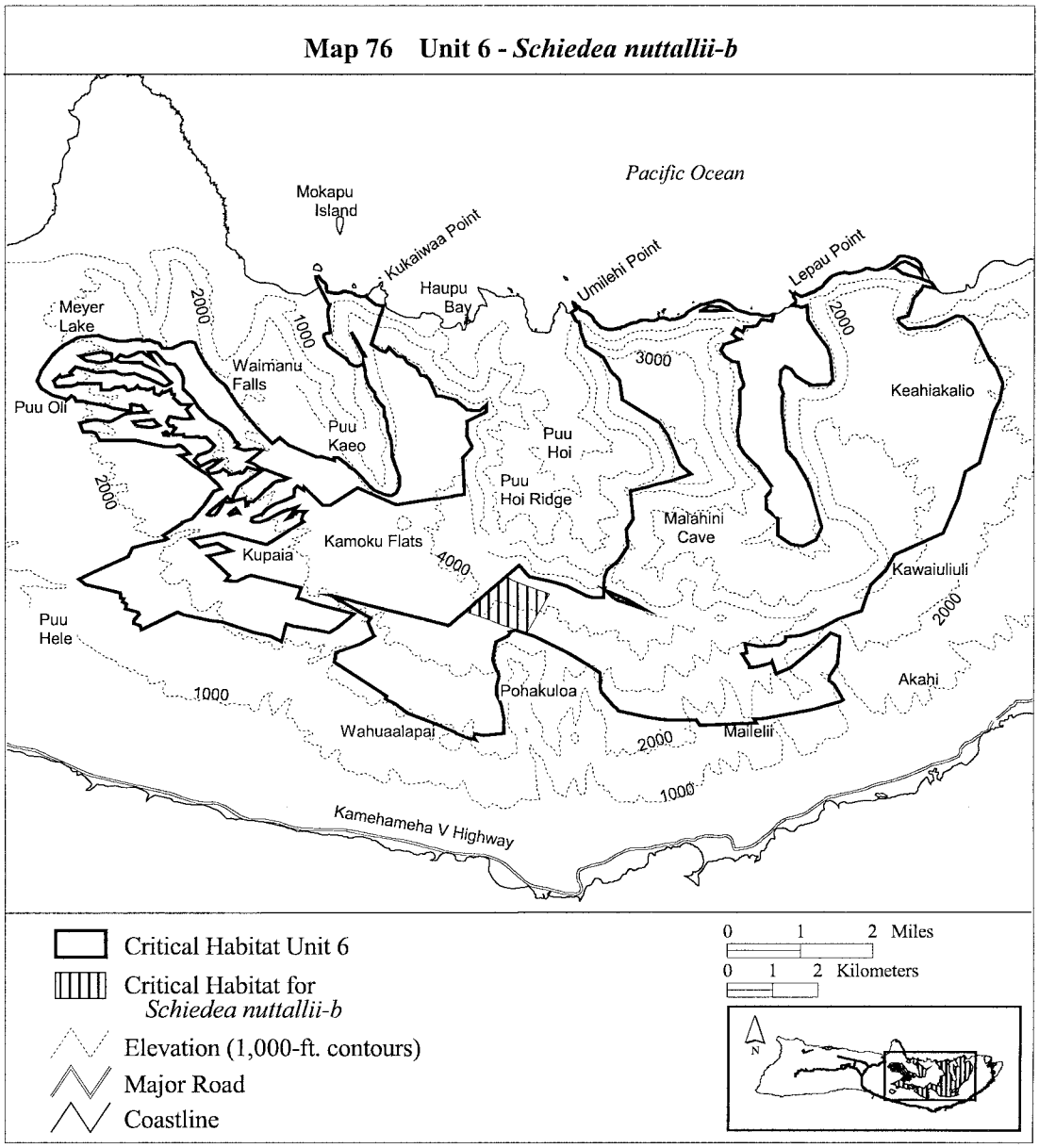
(ii) **Note:** Map 75 follows:



(76) Molokai 6—*Schiedea nuttallii*—b (127 ha; 313 ac)

(i) Unit consists of the following 9 boundary points: Start at 719243, 2335981; 719377, 2335889; 719629, 2335799; 720198, 2335594; 719706, 2334719; 719336, 2334824; 719149, 2334897; 718824, 2335019; 718326, 2335195; return to starting point.

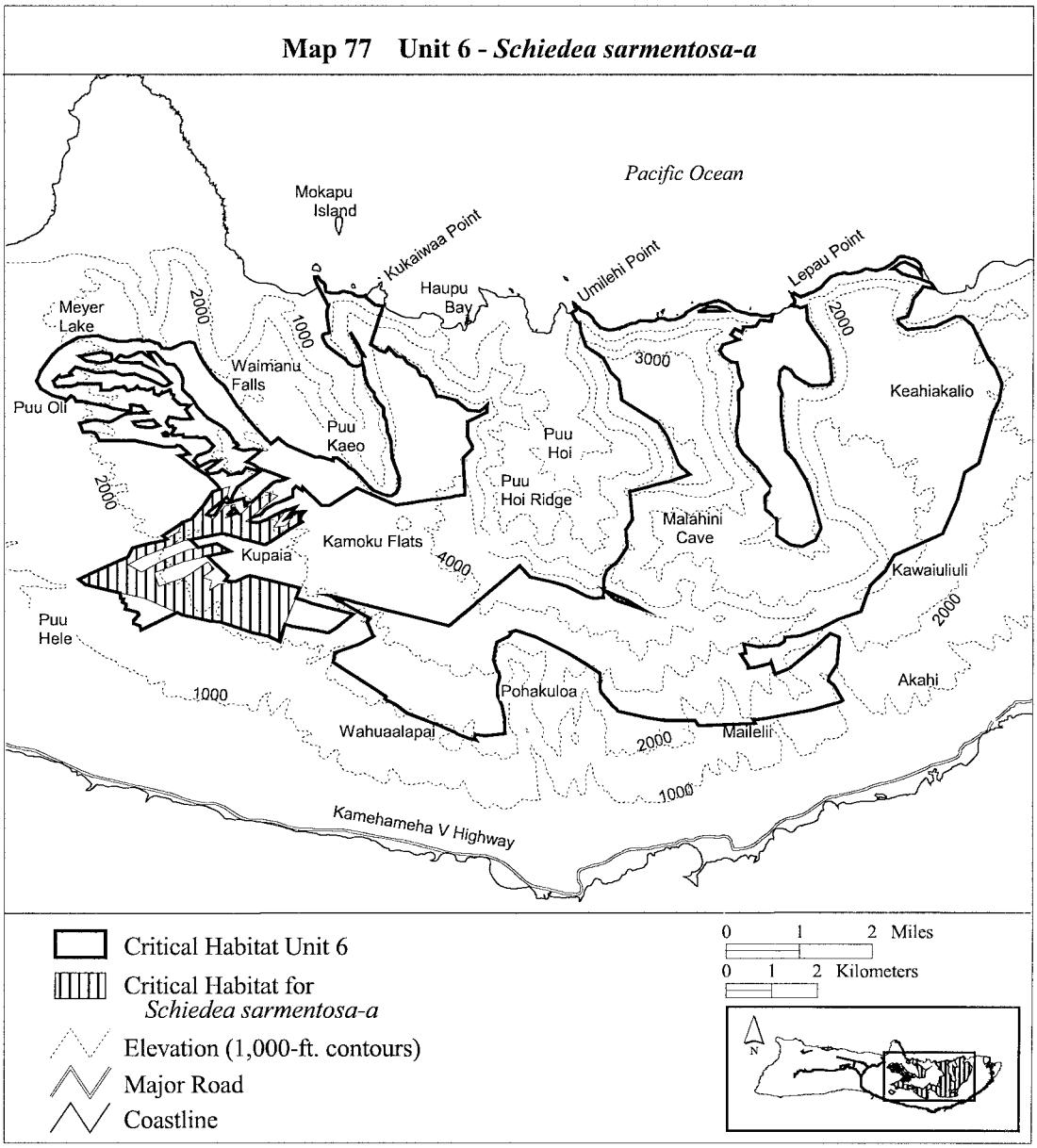
(ii) **Note:** Map 76 follows:



(77) Molokai 6—*Schiedea sarmentosa*—a (608 ha; 1,502 ac)

(i) Unit consists of the following 69 boundary points: Start at 713966, 2334650; 713788, 2334691; 713615, 2334727; 713388, 2334805; 712981, 2334936; 712897, 2334972; 712639, 2334989; 712070, 2335120; 711195, 2335499; 710655, 2335616; 709885, 2335800; 709748, 2335926; 710043, 2336068; 710830, 2336433; 710920, 2336613; 711297, 2336725; 711647, 2336798; 711968, 2336987; 712027, 2337192; 712260, 2337279; 712508, 2337556; 712727, 2337892; 713103, 2338002; 713052, 2337770; 712568, 2337381; 712726, 2337266; 713010, 2337570; 713220, 2337591; 713010, 2337297; 713378, 2337402; 713872, 2337886; 714166, 2337802; 713462, 2337213; 713693, 2337171; 714302, 2337413; 714071, 2337087; 714344, 2337118; 714523, 2337371; 714712, 2337413; 714649, 2337223; 714705, 2337206; 713885, 2336698; 713409, 2336824; 713242, 2336872; 712968, 2336950; 712064, 2336782; 711160, 2336425; 710834, 2336246; 711129, 2336088; 711654, 2336362; 712169, 2336582; 712821, 2336719; 713104, 2336561; 712053, 2336309; 711423, 2336067; 711517, 2335773; 712106, 2335973; 712610, 2336309; 712758, 2336162; 712505, 2335973; 712705, 2335889; 712652, 2335679; 712863, 2335815; 713115, 2335826; 713441, 2335973; 713554, 2336015; 714666, 2335727; 714306, 2334848; 714212, 2334524; return to starting point.

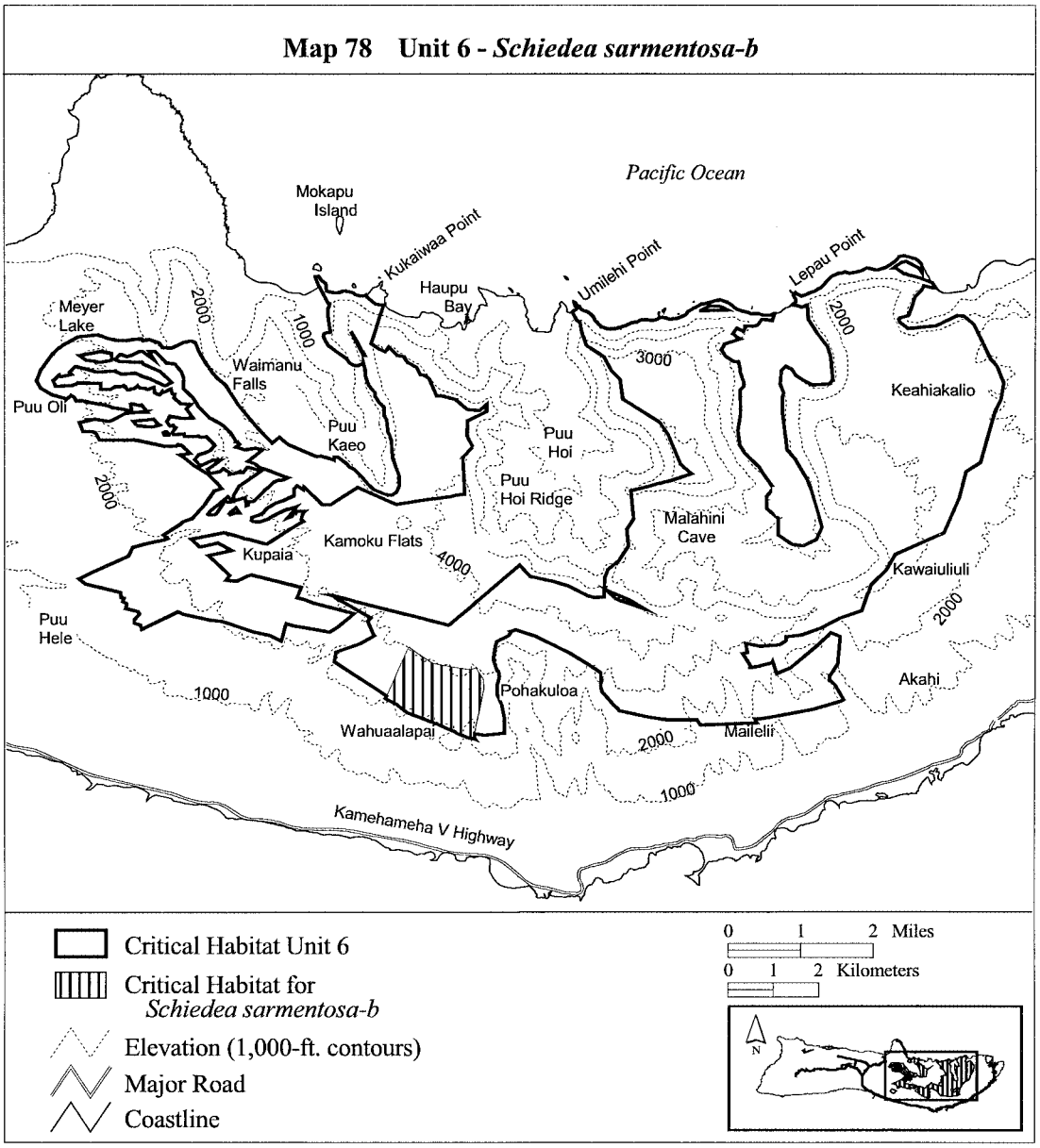
(ii) **Note:** Map 77 follows:



(78) Molokai 6—*Schiedea sarmentosa*—b (266 ha; 657 ac)

(i) Unit consists of the following 28 boundary points: Start at 717066, 2334401; 717233, 2334267; 717586, 2334045; 717849, 2333974; 718082, 2333944; 718381, 2333890; 718442, 2333895; 718444, 2333903; 718564, 2333925; 718720, 2333686; 718734, 2333470; 718650, 2333017; 718566, 2332647; 718524, 2332368; 718544, 2332329; 718510, 2332337; 718423, 2332353; 718140, 2332456; 718106, 2332490; 717980, 2332538; 717741, 2332640; 717257, 2332837; 717029, 2332921; 716778, 2333118; 716581, 2333214; 716538, 2333243; 716559, 2333270; 716896, 2334032; return to starting point.

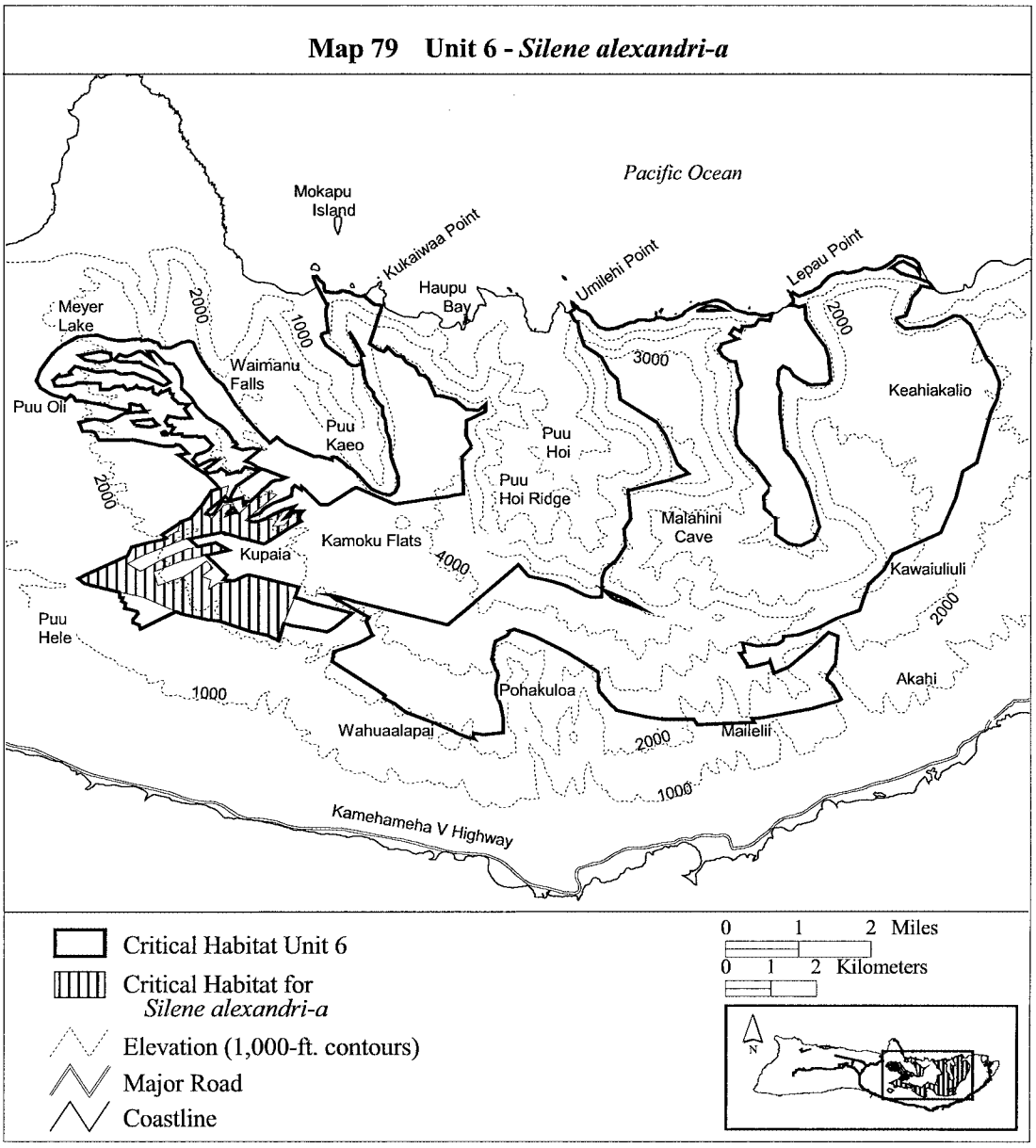
(ii) **Note:** Map 78 follows:



(79) Molokai 6—*Silene alexandri*—a (608 ha; 1,502 ac)

(i) Unit consists of the following 69 boundary points: Start at 713966, 2334650; 713788, 2334691; 713615, 2334727; 713388, 2334805; 712981, 2334936; 712897, 2334972; 712639, 2334989; 712070, 2335120; 711195, 2335499; 710655, 2335616; 709885, 2335800; 709748, 2335926; 710043, 2336068; 710830, 2336433; 710920, 2336613; 711297, 2336725; 711647, 2336798; 711968, 2336987; 712027, 2337192; 712260, 2337279; 712508, 2337556; 712727, 2337892; 713103, 2338002; 713052, 2337770; 712568, 2337381; 712726, 2337266; 713010, 2337570; 713220, 2337591; 713010, 2337297; 713378, 2337402; 713872, 2337886; 714166, 2337802; 713462, 2337213; 713693, 2337171; 714302, 2337413; 714071, 2337087; 714344, 2337118; 714523, 2337371; 714712, 2337413; 714649, 2337223; 714705, 2337206; 713885, 2336698; 713409, 2336824; 713242, 2336872; 712968, 2336950; 712064, 2336782; 711160, 2336425; 710834, 2336246; 711129, 2336088; 711654, 2336362; 712169, 2336582; 712821, 2336719; 713104, 2336561; 712053, 2336309; 711423, 2336067; 711517, 2335773; 712106, 2335973; 712610, 2336309; 712758, 2336162; 712505, 2335973; 712705, 2335889; 712652, 2335679; 712863, 2335815; 713115, 2335826; 713441, 2335973; 713554, 2336015; 714666, 2335727; 714306, 2334848; 714212, 2334524; return to starting point.

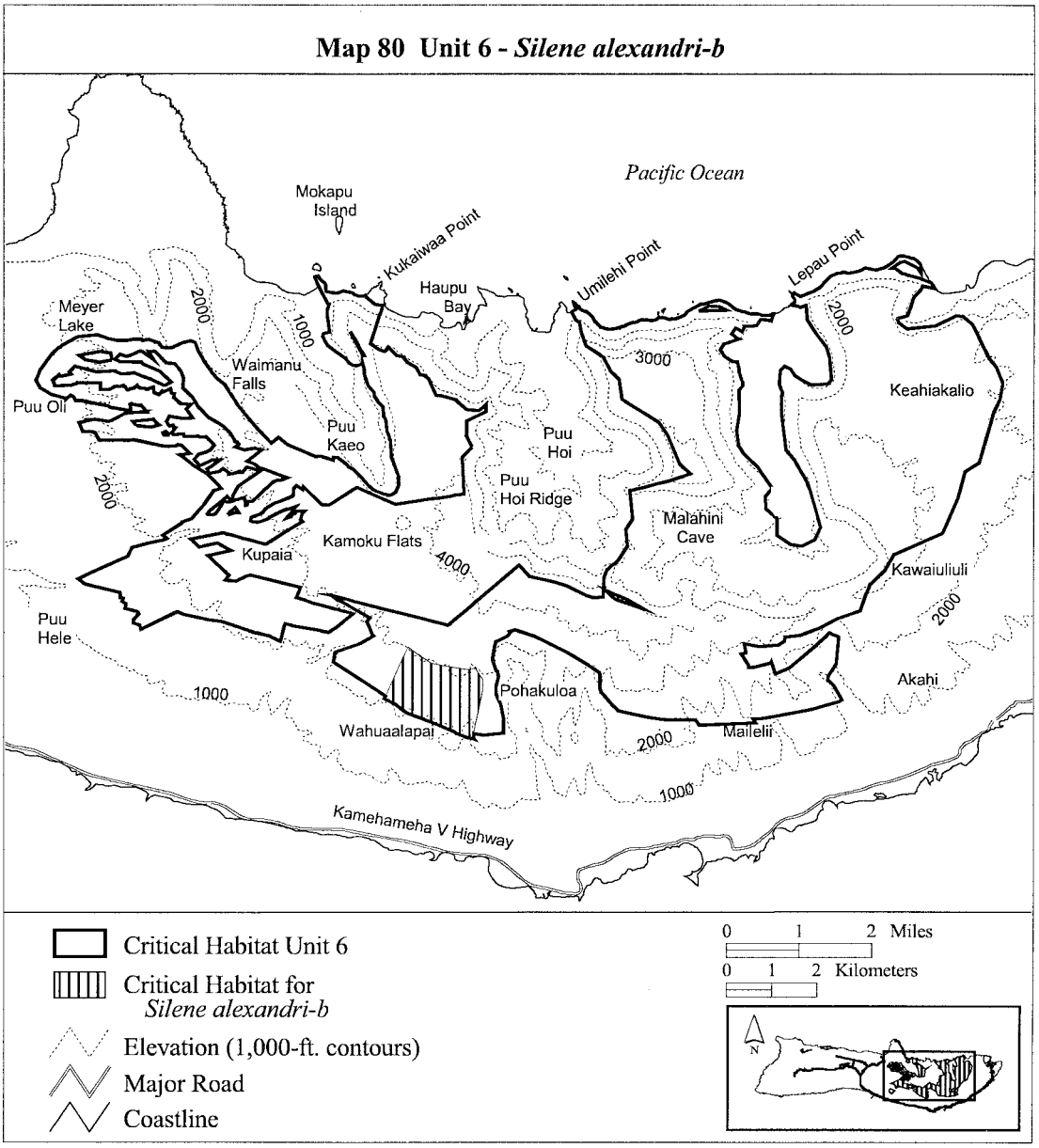
(ii) **Note:** Map 79 follows:



(80) Molokai 6—*Silene alexandri*—b (266 ha; 657 ac)

(i) Unit consists of the following 28 boundary points: Start at 717066, 2334401; 717233, 2334267; 717586, 2334045; 717849, 2333974; 718082, 2333944; 718381, 2333890; 718442, 2333895; 718444, 2333903; 718564, 2333925; 718720, 2333686; 718734, 2333470; 718650, 2333017; 718566, 2332647; 718524, 2332368; 718544, 2332329; 718510, 2332337; 718423, 2332353; 718140, 2332456; 718106, 2332490; 717980, 2332538; 717741, 2332640; 717257, 2332837; 717029, 2332921; 716778, 2333118; 716581, 2333214; 716538, 2333243; 716559, 2333270; 716896, 2334032; return to starting point.

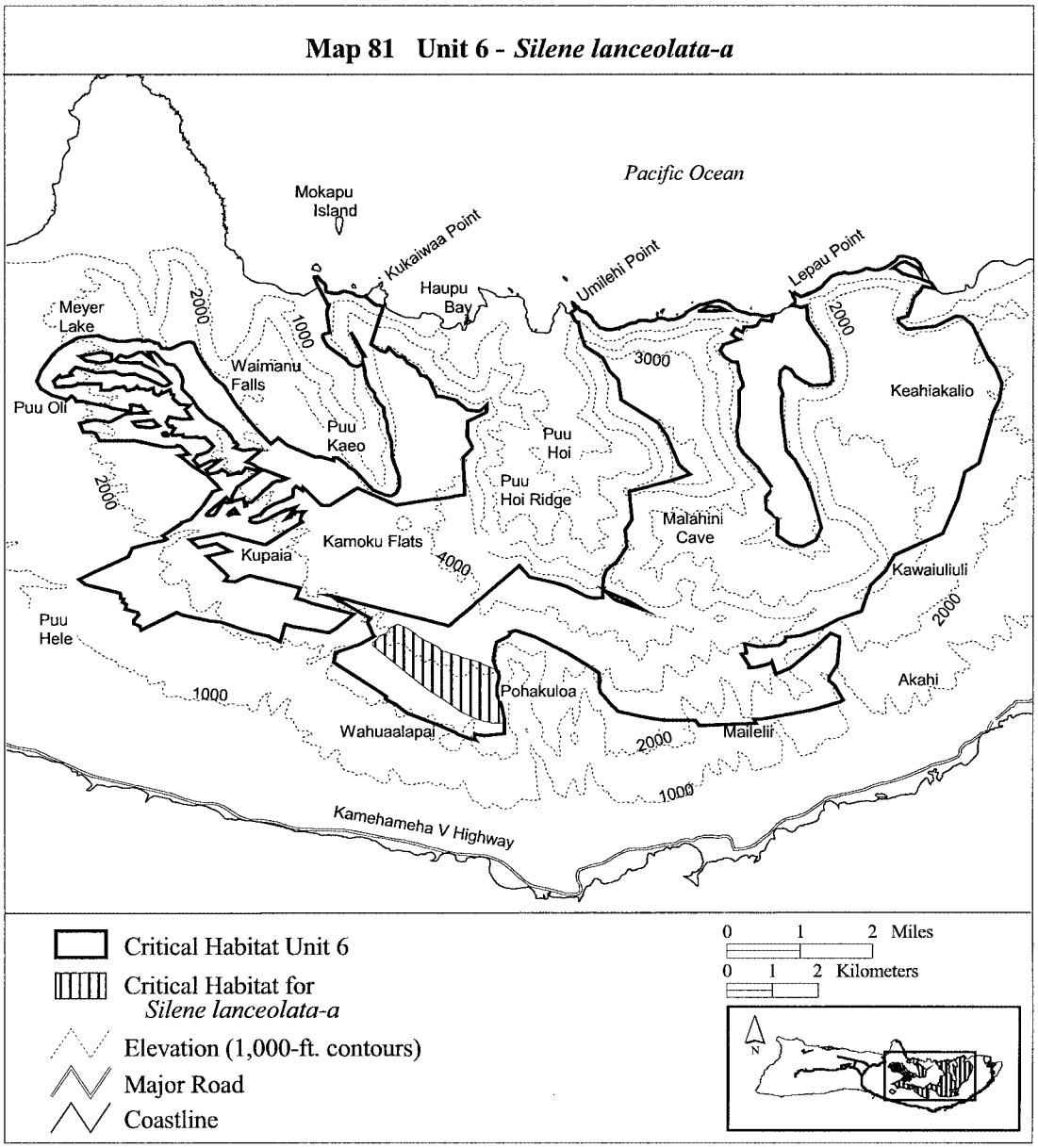
(ii) **Note:** Map 80 follows:



(81) Molokai 6—*Silene lanceolata*—a (289 ha; 714 ac)

(i) Unit consists of the following 33 boundary points: Start at 716266, 2334444; 716261, 2334516; 716359, 2334579; 716396, 2334646; 716504, 2334687; 716572, 2334713; 716655, 2334838; 716826, 2334915; 717038, 2334833; 717215, 2334703; 717292, 2334620; 717712, 2334413; 717800, 2334325; 718184, 2334200; 718262, 2334164; 718645, 2334060; 718728, 2334014; 718951, 2333920; 719060, 2333843; 719075, 2333754; 719029, 2333532; 719034, 2333329; 719138, 2333091; 719195, 2332759; 719174, 2332707; 719127, 2332687; 718946, 2332692; 718728, 2332749; 718578, 2332780; 718225, 2332946; 717852, 2333210; 717505, 2333428; 717256, 2333630; return to starting point.

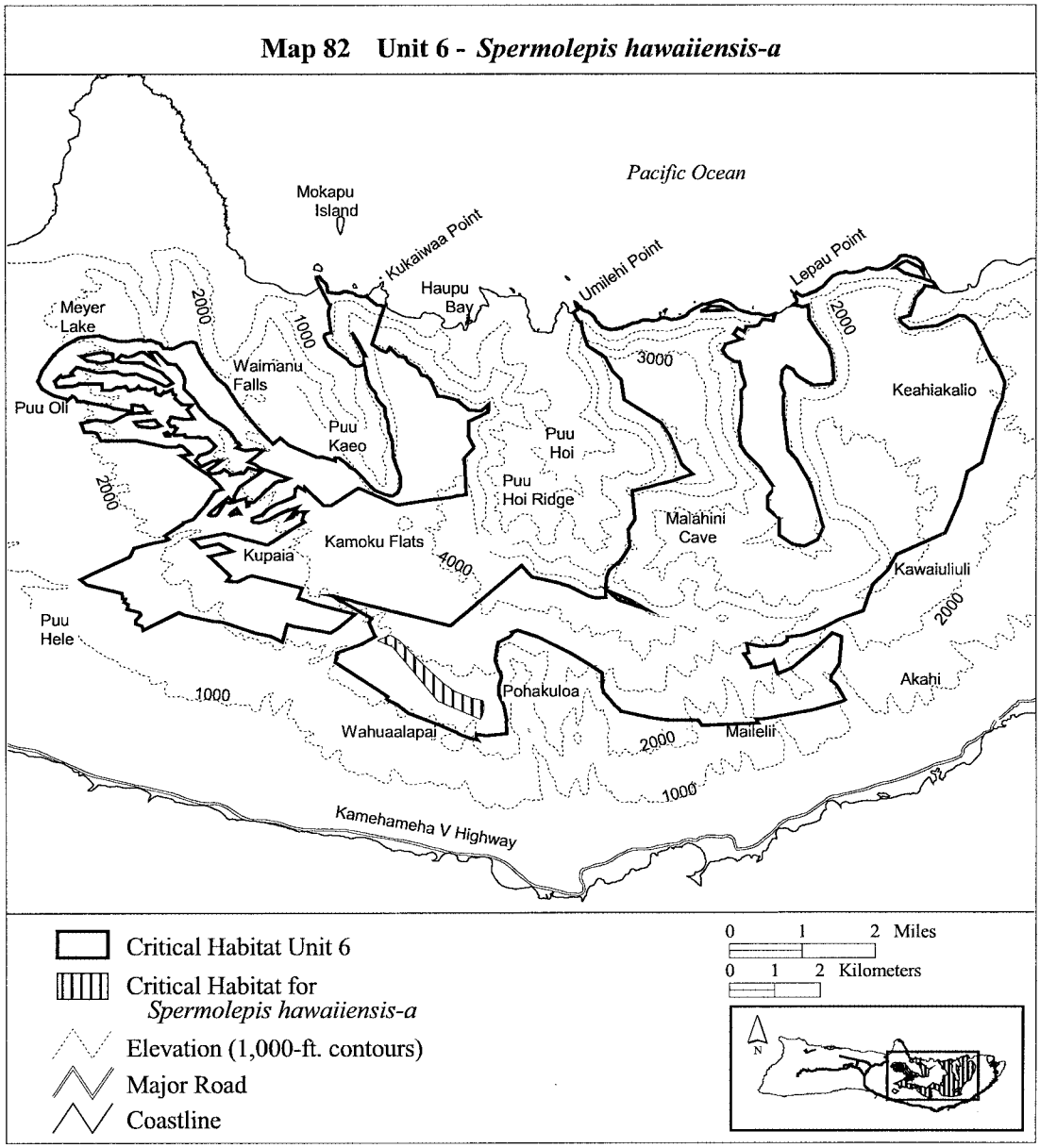
(ii) **Note:** Map 81 follows:



(82) Molokai 6—*Spermolepis hawaiiensis*—a (85 ha; 211 ac)

(i) Unit consists of the following 15 boundary points: Start at 716625, 2334674; 716813, 2334572; 717300, 2334062; 717795, 2333591; 718070, 2333402; 718415, 2333269; 718674, 2333206; 718698, 2333025; 718659, 2332868; 718629, 2332777; 717686, 2333184; 716684, 2334404; 716364, 2334553; 716353, 2334564; 716460, 2334611; return to starting point.

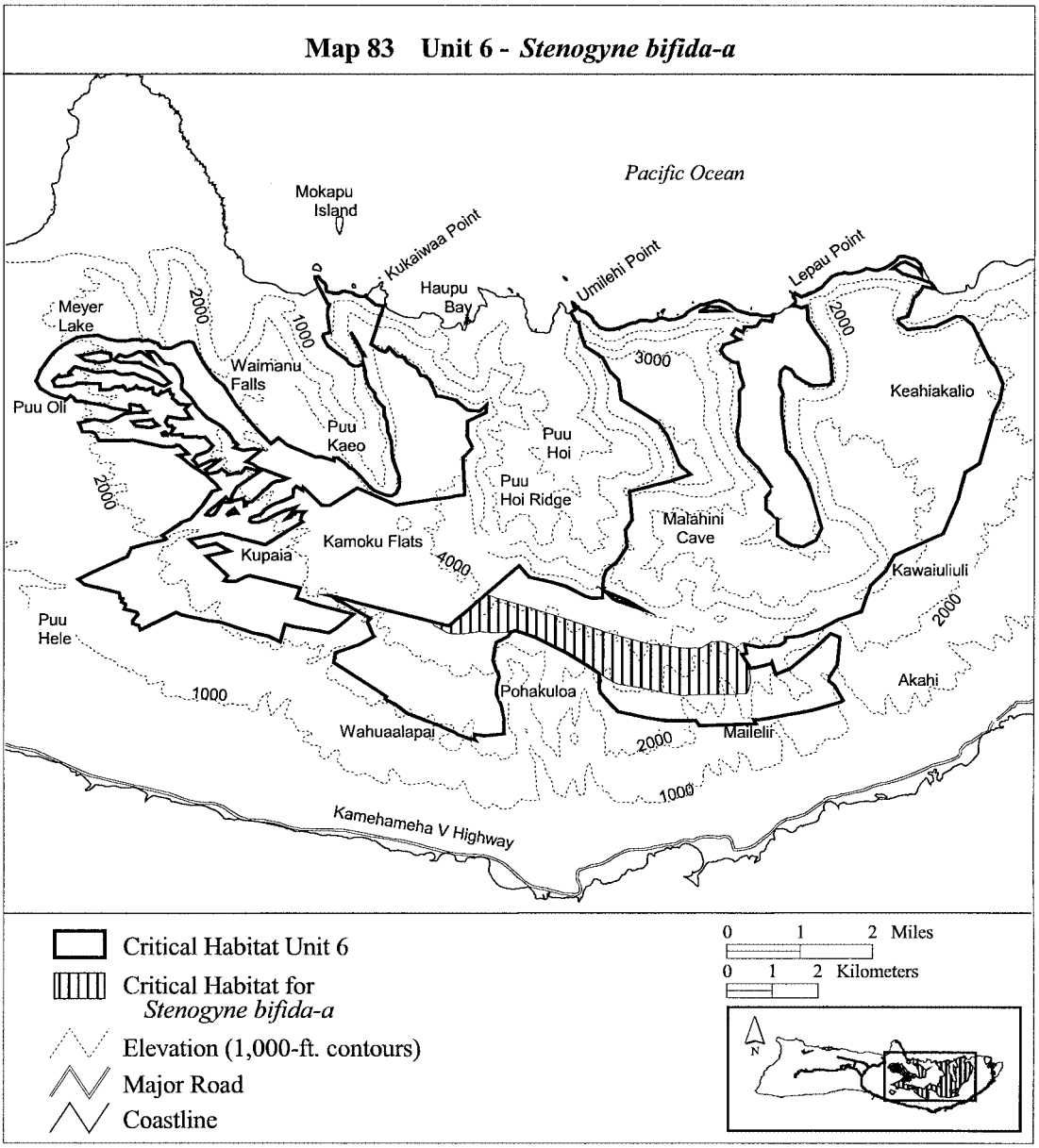
(ii) **Note:** Map 82 follows:



(83) Molokai 6—*Stenogyne bifida*—a (585 ha; 1,445 ac)

(i) Unit consists of the following 40 boundary points: Start at 718790, 2335593; 719006, 2335519; 719486, 2335379; 720326, 2335124; 721475, 2334733; 722382, 2334483; 723214, 2334383; 723564, 2334400; 723789, 2334525; 724030, 2334533; 724230, 2334467; 724405, 2334350; 724629, 2333975; 724663, 2333617; 724604, 2333418; 724563, 2333368; 724330, 2333360; 724155, 2333343; 723597, 2333343; 723140, 2333310; 723015, 2333335; 722732, 2333393; 722241, 2333493; 721708, 2333584; 721417, 2333743; 721075, 2333976; 720376, 2334408; 719918, 2334617; 719436, 2334775; 719286, 2334733; 718936, 2334720; 718641, 2334751; 718269, 2334697; 718006, 2334697; 717897, 2334736; 717605, 2334906; 717621, 2334964; 717948, 2334879; 717956, 2334877; 718196, 2335083; return to starting point.

(ii) **Note:** Map 83 follows:

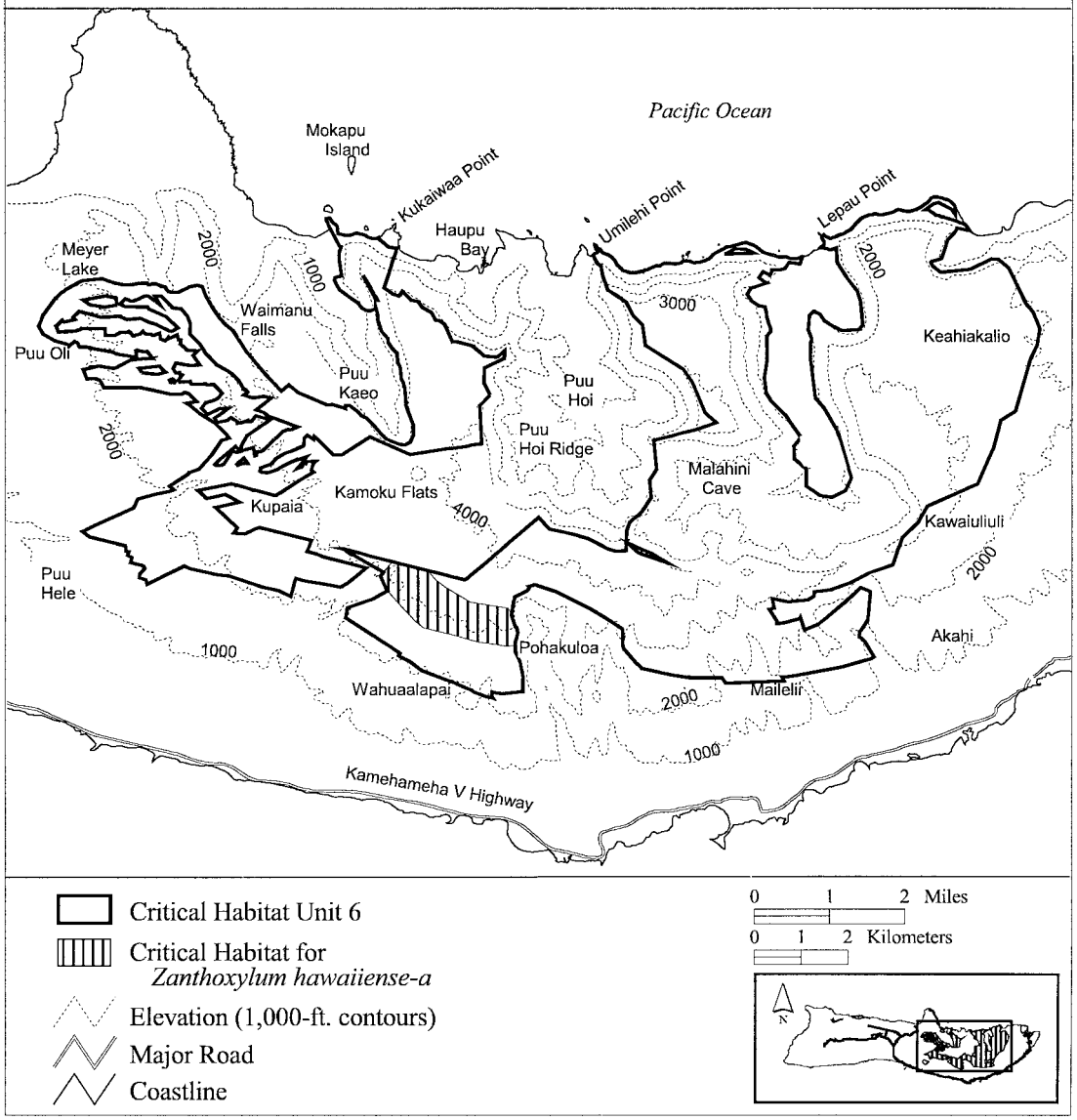


(84) Molokai 6—*Zanthoxylum hawaiiense*—a (259 ha; 640 ac)

(i) Unit consists of the following 23 boundary points: Start at 719023, 2333460; 718836, 2333440; 718456, 2333509; 718235, 2333529; 717759, 2333668; 717061, 2333854; 716909, 2333978; 716661, 2334227; 716274, 2334669; 716143, 2334966; 716364, 2335228; 716429, 2335272; 717190, 2335075; 717206, 2335035; 717344, 2334876; 717572, 2334703; 718083, 2334400; 718256, 2334365; 718877, 2334268; 718926, 2334151; 718974, 2333999; 719085, 2333743; 719036, 2333536; return to starting point.

(ii) **Note:** Map 84 follows:

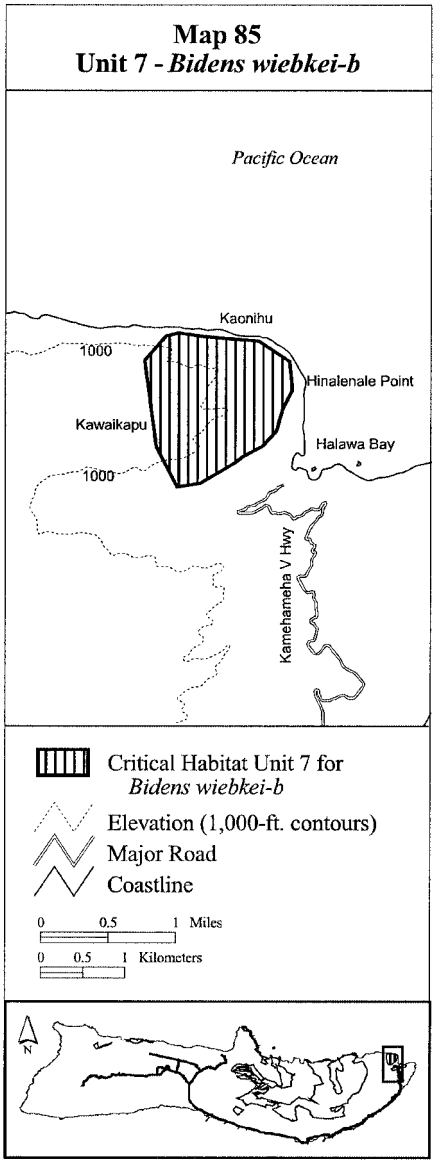
Map 84 Unit 6 - *Zanthoxylum hawaiiense-a*



(85) Molokai 7—*Bidens wiebkei*—b (240 ha; 593 ac)

(i) Unit consists of the following 21 boundary points: Start at 733159, 2342717; 733159, 2342717; 733163, 2342721; 733418, 2343010; 733569, 2343051; 733836, 2343010; 734539, 2342951; 734906, 2342708; 734940, 2342357; 734814, 2342115; 734747, 2341873; 734741, 2341866; 734741, 2341866; 734576, 2341687; 734338, 2341564; 734246, 2341490; 733836, 2341246; 733552, 2341204; 733301, 2341680; 733301, 2341681; 733301, 2341684; return to starting point.

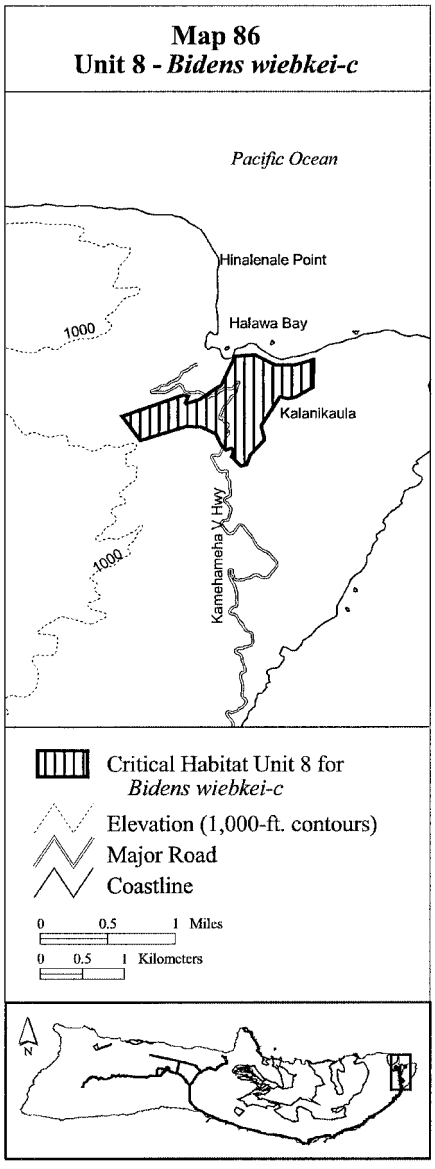
(ii) **Note:** Map 85 follows:



(86) Molokai 8—*Bidens wiebkei*—c (124 ha; 305 ac)

(i) Unit consists of the following 42 boundary points: Start at 734689, 2340744; 734863, 2340794; 734864, 2340794; 735124, 2340970; 735291, 2341321; 735533, 2341329; 735776, 2341212; 735776, 2341212; 735776, 2341212; 735985, 2341212; 736223, 2341276; 736217, 2340947; 736005, 2340825; 735918, 2340811; 735826, 2340828; 735600, 2340485; 735600, 2340485; 735600, 2340485; 735642, 2340318; 735606, 2340279; 735606, 2340279; 735466, 2340126; 735433, 2340017; 735366, 2340000; 735249, 2340109; 735273, 2340184; 735238, 2340212; 735183, 2340197; 735126, 2340248; 735057, 2340393; 735057, 2340393; 735057, 2340393; 734881, 2340469; 734706, 2340477; 734706, 2340477; 734706, 2340477; 734706, 2340477; 734162, 2340310; 733947, 2340597; 734672, 2340853; 734731, 2340835; return to starting point.

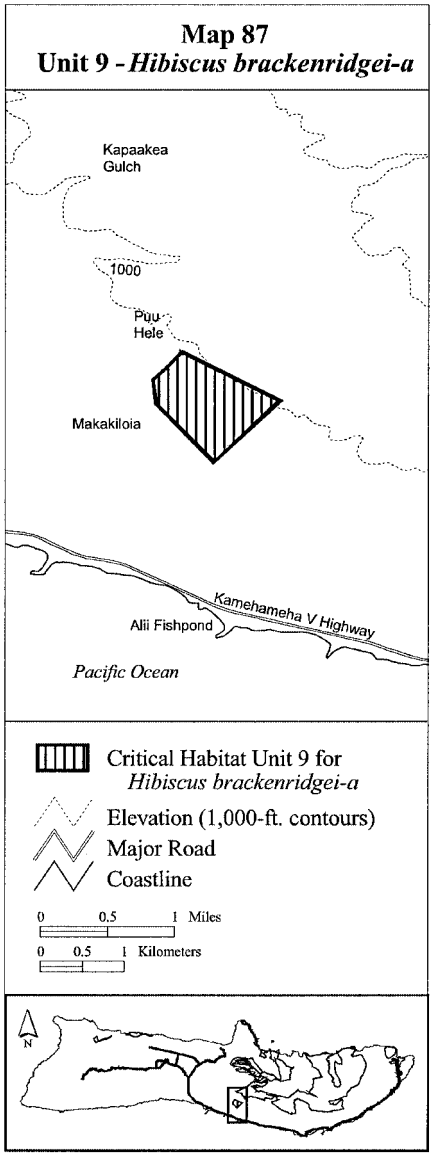
(ii) **Note:** Map 86 follows:



(87) Molokai 9—*Hibiscus brackenridgei*—a (101 ha; 249 ac)

(i) Unit consists of the following 11 boundary points: Start at 709892, 2333333; 709202, 2334013; 709147, 2334290; 709480, 2334623; 709485, 2334639; 709485, 2334639; 709485, 2334641; 709486, 2334643; 709599, 2334575; 709599, 2334575; 710655, 2334053; return to starting point.

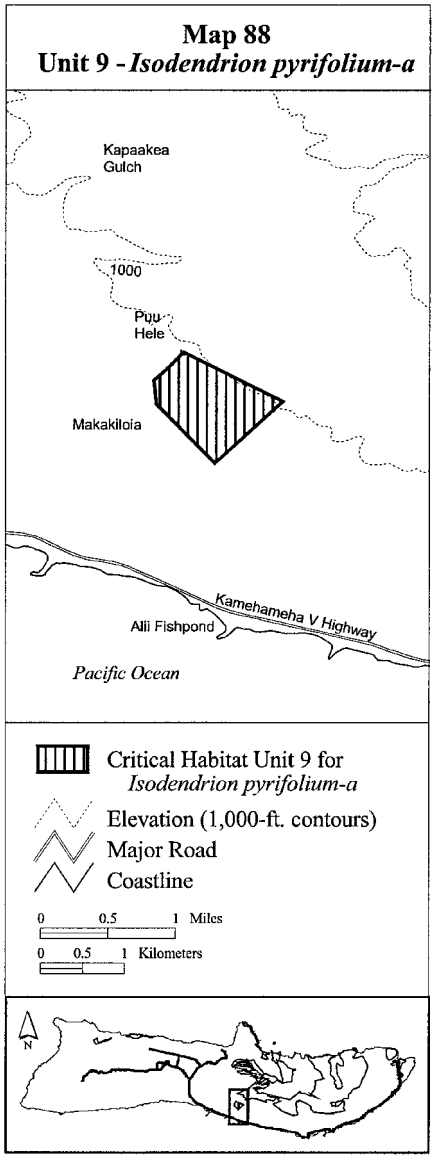
(ii) **Note:** Map 87 follows:



(88) Molokai 9—*Isodendrion pyrifolium*—a (107 ha; 264 ac)

(i) Unit consists of the following 5 boundary points: Start at 709515, 2334641; 710692, 2334052; 709880, 2333311; 709180, 2334022; 709149, 2334306; return to starting point.

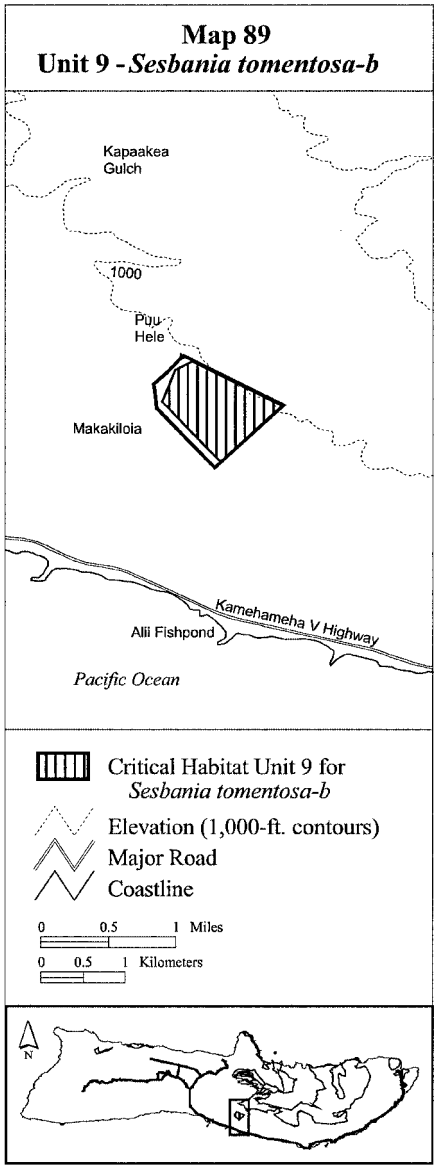
(ii) **Note:** Map 88 follows:



(89) Molokai 9—*Sesbania tomentosa*—b (88 ha; 217 ac)

(i) Unit consists of the following 5 boundary points: Start at 709608, 2334578; 710672, 2334051; 709945, 2333376; 709250, 2334093; 709408, 2334472; return to starting point.

(ii) **Note:** Map 89 follows:



(90) Table of Protected Species Within Each Critical Habitat Unit for Molokai

Unit name	Species occupied	Species unoccupied
Molokai 1—*Tetramolopium rockii*—a		*Tetramolopium rockii.*
Molokai 2—*Sesbania tomentosa*—a	*Sesbania tomentosa.*	
Molokai 2—*Tetramolopium rockii*—b	*Tetramolopium rockii.*	
Molokai 3—*Centaurium sebaeoides*—a	*Centaurium sebaeoides.*	
Molokai 3—*Tetramolopium rockii*—c	*Tetramolopium rockii.*	
Molokai 4—*Brighamia rockii*—a		*Brighamia rockii.*
Molokai 4—*Hibiscus arnottianus* ssp. *immaculatus*		*Hibiscus arnottianus* ssp. *immaculatus.*—a.
Molokai 5—*Brighamia rockii*—b		*Brighamia rockii.*
Molokai 5—*Peucedanum sandwicense*—a	*Peucedanum sandwicense.*	
Molokai 5—*Tetramolopium rockii*—d		*Tetramolopium rockii.*
Molokai 6—*Adenophorus periens*—a		*Adenophorus periens.*
Molokai 6—*Adenophorus periens*—b		*Adenophorus periens.*

Unit name	Species occupied	Species unoccupied
Molokai 6—*Adenophorus periens*—c		*Adenophorus periens.*
Molokai 6—*Alectryon macrococcus*—a	*Alectryon macrococcus.*	
Molokai 6—*Bidens wiebkei*—a	*Bidens wiebkei.*	
Molokai 6—*Brighamia rockii*—c		*Brighamia rockii.*
Molokai 6—*Brighamia rockii*—d	*Brighamia rockii.*	
Molokai 6—*Brighamia rockii*—e	*Brighamia rockii.*	
Molokai 6—*Canavalia molokaiensis*—a		*Canavalia molokaiensis.*
Molokai 6—*Canavalia molokaiensis*—b		*Canavalia molokaiensis.*
Molokai 6—*Canavalia molokaiensis*—c	*Canavalia molokaiensis.*	
Molokai 6—*Clermontia oblongifolia* ssp. *brevipes*—a		*Clermontia oblongifolia* ssp. *brevipes.*
Molokai 6—*Clermontia oblongifolia* ssp. *brevipes*—b		*Clermontia oblongifolia* ssp. *brevipes.*
Molokai 6—*Clermontia oblongifolia* ssp. *brevipes*—c		*Clermontia oblongifolia* ssp. *brevipes.*
Molokai 6—*Ctenitis squamigera*—a	*Ctenitis squamigera.*	
Molokai 6—*Cyanea dunbarii*—a		*Cyanea dunbarii.*
Molokai 6—*Cyanea dunbarii*—b	*Cyanea dunbarii.*	
Molokai 6—*Cyanea dunbarii*—c		*Cyanea dunbarii.*
Molokai 6—*Cyanea grimesiana* ssp. *grimesiana*—a	*Cyanea grimesiana* ssp. *grimesiana*.	
Molokai 6—*Cyanea mannii*—a	*Cyanea mannii.*	
Molokai 6—*Cyanea mannii*—b	*Cyanea mannii.*	
Molokai 6—*Cyanea mannii*—c	*Cyanea mannii.*	
Molokai 6—*Cyanea mannii*—d	*Cyanea mannii.*	
Molokai 6—*Cyanea mannii*—e	*Cyanea mannii.*	
Molokai 6—*Cyanea procera*—a	*Cyanea procera.*	
Molokai 6—*Cyanea procera*—b		*Cyanea procera.*
Molokai 6—*Diellia erecta*—a	*Diellia erecta.*	
Molokai 6—*Diplazium molokaiense*—a		*Diplazium molokaiense.*
Molokai 6—*Eugenia koolauensis*—a		*Eugenia koolauensis.*
Molokai 6—*Flueggea neowawraea*—a		*Flueggea neowawraea.*
Molokai 6—*Hesperomannia arborescens*—a	*Hesperomannia arborescens.*	
Molokai 6—*Hesperomannia arborescens*—b		*Hesperomannia arborescens.*
Molokai 6—*Hibiscus arnottianus* ssp. *immaculatus*—b		*Hibiscus arnottianus* ssp. *immaculatus.*
Molokai 6—*Hibiscus arnottianus* ssp. *immaculatus*—c	*Hibiscus arnottianus* ssp. *immaculatus.*	
Molokai 6—*Hibiscus arnottianus* ssp. *immaculatus*—d	*Hibiscus arnottianus* ssp. *immaculatus.*	
Molokai 6—*Ischaemum byrone*—a	*Ischaemum byrone.*	
Molokai 6—*Ischaemum byrone*—b	*Ischaemum byrone.*	
Molokai 6—*Labordia triflora*—a		*Labordia triflora.*
Molokai 6—*Labordia triflora*—b		*Labordia triflora.*
Molokai 6—*Labordia triflora*—c		*Labordia triflora.*
Molokai 6—*Labordia triflora*—d	*Labordia triflora.*	
Molokai 6—*Lysimachia maxima*—a		*Lysimachia maxima.*
Molokai 6—*Lysimachia maxima*—b		*Lysimachia maxima.*
Molokai 6—*Lysimachia maxima*—c		*Lysimachia maxima.*
Molokai 6—*Mariscus fauriei*—a		*Mariscus fauriei.*
Molokai 6—*Mariscus fauriei*—b	*Mariscus fauriei.*	
Molokai 6—*Melicope mucronulata*—a		*Melicope mucronulata.*
Molokai 6—*Melicope mucronulata*—b		*Melicope mucronulata.*
Molokai 6—*Melicope mucronulata*—c		*Melicope mucronulata.*
Molokai 6—*Melicope mucronulata*—d		*Melicope mucronulata.*
Molokai 6—*Melicope mucronulata*—e		*Melicope mucronulata.*
Molokai 6—*Melicope reflexa*—a		*Melicope reflexa.*
Molokai 6—*Melicope reflexa*—b	*Melicope reflexa.*	
Molokai 6—*Neraudia sericea*—a	*Neraudia sericea.*	
Molokai 6—*Peucedanum sandwicense*—b		*Peucedanum sandwicense.*
Molokai 6—*Peucedanum sandwicense*—c	*Peucedanum sandwicense.*	
Molokai 6—*Phyllostegia mannii*—a		*Phyllostegia mannii.*
Molokai 6—*Phyllostegia mannii*—b		*Phyllostegia mannii.*
Molokai 6—*Phyllostegia mannii*—c		*Phyllostegia mannii.*
Molokai 6—*Plantago princeps*—a		*Plantago princeps.*
Molokai 6—*Pteris lidgatei*—a		*Pteris lidgatei.*
Molokai 6—*Schiedea lydgatei*—a	*Schiedea lydgatei.*	
Molokai 6—*Schiedea lydgatei*—b	*Schiedea lydgatei.*	
Molokai 6—*Schiedea nuttallii*—a		*Schiedea nuttallii.*
Molokai 6—*Schiedea nuttallii*—b		*Schiedea nuttallii.*
Molokai 6—*Schiedea sarmentosa*—a	*Schiedea sarmentosa.*	
Molokai 6—*Schiedea sarmentosa*—b	*Schiedea sarmentosa.*	
Molokai 6—*Silene alexandri*—a		*Silene alexandri.*
Molokai 6—*Silene alexandri*—b		*Silene alexandri.*
Molokai 6—*Silene lanceolata*—a	*Silene lanceolata.*	
Molokai 6—*Spermolepis hawaiiensis*—a	*Spermolepis hawaiiensis.*	
Molokai 6—*Stenogyne bifida*—a	*Stenogyne bifida.*	
Molokai 6—*Zanthoxylum hawaiiense*—a	*Zanthoxylum hawaiiense.*	
Molokai 7—*Bidens wiebkei*—b	*Bidens wiebkei.*	
Molokai 8—*Bidens wiebkei*—c		*Bidens wiebkei.*
Molokai 9—*Isodendrion pyrifolium*—a		*Isodendrion pyrifolium.*

Unit name	Species occupied	Species unoccupied
Molokai 9—*Hibiscus brackenridgei*—a	.....	*Hibiscus brackenridgei.*
Molokai 9—*Sesbania tomentosa*—b	.....	*Sesbania tomentosa.*

(d) *Plants on Molokai; Constituent elements.*

(1) *Flowering plants.*

Family Apiaceae: *Peucedanum sandwicense* (makou)

Molokai 5—*Peucedanum sandwicense*—a, Molokai 6—*Peucedanum sandwicense*—b, and Molokai 6—*Peucedanum sandwicense*—c, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Peucedanum sandwicense* on Molokai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Cliff habitats in brown soil and talus in *Chamaesyce celastroides* var. *amplectans-Chenopodium oahuense* coastal dry shrubland or *Diospyros sandwicensis* forest with one or more of the following associated native species: *Artemisia australis, Dianella sandwicensis, Eragrostis* sp., *Lepidium bidentatum* var. *o-waihiense, Melanthera integrifolia, Metrosideros polymorpha, Osteomeles anthyllidifolia, Peperomia remyi, Pittosporum halophilum, Plectranthus parviflorus, Plumbago zeylanica, Portulaca lutea, Pritchardia hillebrandii, Reynoldsia sandwicensis, Santalum ellipticum, Scaevola sericea, Schiedea globosa, Senna gaudichaudii*, or *Sida fallax*; and

(ii) Elevations between 0 and 724 m (0 and 2,375 ft).

Family Apiaceae: *Spermolepis hawaiiensis* (NCN)

Molokai 6—*Spermolepis hawaiiensis*—a, identified in the legal descriptions in paragraph (c) of this section, constitutes critical habitat for *Spermolepis hawaiiensis* on Molokai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Ridge crests and gulch slopes in dry to mesic shrublands with one or more of the following associated native species: *Dodonaea viscosa, Leptecophylla tameiameiae*, or *Metrosideros polymorpha*; and

(ii) Elevations between 589 and 972 m (1,932 and 3,188 ft).

Family Asteraceae: *Bidens wiebkii* (kookoolau)

Molokai 6—*Bidens wiebkei*—a, Molokai 7—*Bidens wiebkei*—b, and Molokai 8—*Bidens wiebkei*—c, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Bidens wiebkii* on Molokai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Slopes in *Metrosideros polymorpha*-dominated mesic shrublands or dry or mesic *Metrosideros polymorpha-Leptechophylla tameiameiae* lowland shrubland with one or more of the following associated native species: *Antidesma platyphyllum, Dodonaea viscosa, Lysimachia* sp., *Nestegis sandwicensis, Phyllanthus distichus, Pisonia* sp., *Psydrax odorata*, or *Scaevola gaudichaudii*; and

(ii) Elevations between 8 and 1,199 m (26 and 3,933 ft).

Family Asteraceae: *Hesperomannia arborescens* (NCN)

Molokai 6—*Hesperomannia arborescens*—a and Molokai 6—*Hesperomannia arborescens*—b, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Hesperomannia arborescens* on Molokai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Slopes or ridges in wet *Metrosideros polymorpha-Dicranopteris linearis* lowland forest or mesic *Diospyros sandwicensis-Metrosideros polymorpha* lowland forest transition zones with one or more of the following associated native species: *Antidesma* sp., *Boehmeria grandis, Broussaisia arguta, Cibotium glaucum, Cheirodendron* sp., *Clermontia pallida, Coprosma* sp., *Cyrtandra* sp., *Diplopterygium pinnatum, Elaphoglossum* sp., *Freycinetia arborea, Hedyotis* sp., *Ilex anomala, Myrsine* sp., *Nephrolepis exaltata, Nestegis sandwicensis, Pipturus* sp., *Psychotria mauiensis, Smilax melastomifolia, Thelypteris* sp., *Urera glabra*, or *Wikstroemia* sp.; and

(ii) Elevations between 175 and 959 m (574 and 3,146 ft).

Family Asteraceae: *Tetramolopium rockii* (NCN)

Molokai 1—*Tetramolopium rockii*—a, Molokai 2—*Tetramolopium rockii*—b, Molokai 3—*Tetramolopium rockii*—c, and Molokai 5—*Tetramolopium rockii*—d, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Tetramolopium rockii* on Molokai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Hardened calcareous sand dunes or ash-covered basalt in the coastal spray zone or coastal dry shrubland and grassland with one or more of the following associated native species: *Diospyros sandwicensis, Fimbristylis cymosa, Heliotropium anomalum, Melanthera integrifolia, Metrosideros polymorpha, Osteomeles anthyllidifolia, Pouteria sandwicensis, Psydrax odorata, Scaevola* sp., *Sida fallax*, or *Sporobolus virginicus*; and

(ii) Elevations between 0 and 198 m (0 and 649 ft).

Family Campanulaceae: *Brighamia rockii* (pua ala)

Molokai 4—*Brighamia rockii*—a, Molokai 5—*Brighamia rockii*—b, Molokai 6—*Brighamia rockii*—c, Molokai 6—*Brighamia rockii*—d, and Molokai 6—*Brighamia rockii*—e, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Brighamia rockii* on Molokai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Rock crevices on steep basalt sea cliffs, often within the spray zone, in coastal dry or mesic forest, *Eragrostis variabilis* mixed coastal cliff community, or shrubland, or *Pritchardia* sp. coastal mesic forest with one or more of the following associated native species: *Artemisia* sp., *Bidens* sp., *Carex wahuensis* ssp. *wahuensis, Chamaesyce celastroides* var. *amplectans, Cocculus orbiculatus, Cyrtomium falcatum, Cyperus phleoides* ssp. *phleoides, Dianella sandwicensis, Diospyros sandwicensis, Hedyotis littoralis, Lepidium bidentatum* var. *o-waihiense, Metrosideros polymorpha, Osteomeles anthyllidifolia, Pittosporum halophilum, Pandanus tectorius, Peucedanum sandwicensis, Phymatosorus grossus, Pritchardia hillebrandii, Psydrax odorata, Reynoldsia sandwicensis, Scaevola sericea, Schiedea globosa, Senna*

gaudichaudii, Tetramolopium sp., or *Wikstroemia uva-ursi*; and

(ii) Elevations between 0 and 671 m (0 and 2,201 ft).

Family Campanulaceae: *Clermontia oblongifolia* ssp. *brevipes* (oha wai)

Molokai 6—*Clermontia oblongifolia* ssp. *brevipes*—a, Molokai 6—*Clermontia oblongifolia* ssp. *brevipes*—b, and Molokai 6—*Clermontia oblongifolia* ssp. *brevipes*—c, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Clermontia oblongifolia* ssp. *brevipes* on Molokai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Shallow soil on gulch slopes in wet *Metrosideros polymorpha*-dominated forests with one or more of the following associated plant species: *Broussaisia arguta, Cheirodendron trigynum, Cibotium* spp., *Hedyotis terminalis*, or *Melicope* sp.; and

(ii) Elevations between 770 and 1,508 m (2,526 and 4,946 ft).

Family Campanulaceae: *Cyanea dunbarii* (haha)

Molokai 6—*Cyanea dunbarii*—a, Molokai 6—*Cyanea dunbarii*—b, and Molokai 6—*Cyanea dunbarii*—c, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Cyanea dunbarii* on Molokai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Streambanks on moderate to steep slopes in mesic to wet *Dicranopteris linearis-Metrosideros polymorpha* lowland forest with one or more of the following associated native plant species: *Charpentiera obovata, Cheirodendron trigynum, Clermontia kakeana, Diplazium sandwichianum, Freycinetia arborea, Perrottetia sandwicensis*, or *Pipturus albidus*; and

(ii) Elevations between 560 and 1,067 m (1,837 and 3,500 ft).

Family Campanulaceae: *Cyanea grimesiana* ssp. *grimesiana* (haha)

Molokai 6—*Cyanea grimesiana* ssp. *grimesiana*—a, identified in the legal descriptions in paragraph (c) of this section, constitutes critical habitat for *Cyanea grimesiana* ssp. *grimesiana* on Molokai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Cliffs or mesic forest often dominated by *Metrosideros polymorpha* or *Metrosideros polymorpha* and *Acacia koa*, with one or more of the following associated native species: *Antidesma* sp., *Bobea* sp., *Cibotium* sp., *Cyrtandra* sp., *Dicranopteris linearis, Doodia* sp., *Freycinetia arborea, Nephrolepis* sp., *Psychotria* sp., *Syzygium sandwicensis*, or *Xylosma* sp.; and

(ii) Elevations between 94 and 1,324 m (308 and 4,343 ft).

Family Campanulaceae: *Cyanea mannii* (haha)

Molokai 6—*Cyanea mannii*—a, Molokai 6—*Cyanea mannii*—b, Molokai 6—*Cyanea mannii*—c, Molokai 6—*Cyanea mannii*—d, and Molokai 6—*Cyanea mannii*—e, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Cyanea mannii* on Molokai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) The sides of deep gulches in *Metrosideros polymorpha*-dominated montane mesic forests with one or more of the following associated native species: *Dicranopteris linearis, Vaccinium* sp., or *Wikstroemia* sp.; and

(ii) Elevations between 497 and 1,093 m (1,630 and 3,585 ft).

Family Campanulaceae: *Cyanea procera* (haha)

Molokai 6—*Cyanea procera*—a and Molokai 6—*Cyanea procera*—b, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Cyanea procera* on Molokai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Walls of steep gulches in wet *Metrosideros polymorpha*-dominated lowland mixed forest with one or more of the following associated native species: *Asplenium* spp., *Brousaissia arguta, Coprosma ochracea, Cyanea* sp., *Cyrtandra macrocalyx, Dicranopteris linearis, Pipturus albidus, Pisonia* spp., *Scaevola procera*, or *Touchardia latifolia;* and

(ii) Elevations between 331 and 1,209 m (1,086 and 3,966 ft).

Family Caryophyllaceae: *Schiedea lydgatei* (NCN)

Molokai 6—*Schiedea lydgatei*—a and Molokai 6—*Schiedea lydgatei*—b, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Schiedea lydgatei* on Molokai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Ridges in dry to mesic grassland, shrubland, and forest with scattered native trees with one or more of the following associated native species: *Dicranopteris linearis, Dodonaea viscosa, Leptecophylla tameiameiae*, or *Metrosideros polymorpha*; and

(ii) Elevations between 545 and 1,047 m (1,788 and 3,434 ft).

Family Caryophyllaceae: *Schiedea nuttallii* (NCN)

Molokai 6—*Schiedea nuttallii*—a and Molokai 6—*Schiedea nuttallii*—b, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Schiedea nuttallii* on Molokai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Streamside grottos in wet *Metrosideros polymorpha-Cheirodendron trigynum* forest with one or more of the following associated native species: *Asplenium lobulatum, Asplenium macraei, Asplenium unilaterale, Cyrtandra hawaiiensis, Thelypteris sandwicensis*, or *Vandenboschia davallioides*; and

(ii) Elevations between 988 and 1,341 m (3,241 and 4,398 ft).

Family Caryophyllaceae: *Schiedea sarmentosa* (NCN)

Molokai 6—*Schiedea sarmentosa*—a and Molokai 6—*Schiedea sarmentosa*—b, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Schiedea sarmentosa* on Molokai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep or gentle to moderate slopes in *Metrosideros polymorpha-Dodonaea viscosa* lowland dry or mesic shrubland, or dry to mesic forest dominated by *Metrosideros polymorpha* and/or *Diospyros sandwicensis* with one or more of the following associated native species: *Alyxia oliviformis, Bidens menziesii, Carex meyenii, Chamaesyce* sp., *Chenopodium oahuense, Leptecophylla tameiameiae, Lipochaeta rockii, Nestegis sandwicensis, Nothocestrum latifolium, Pleomele auwahiensis, Sida fallax*, or *Sophora chrysophylla*; and

(ii) Elevations between 316 and 1,020 m (1,036 and 3,346 ft).

Family Caryophyllaceae: *Silene alexandri* (NCN)

Molokai 6—*Silene alexandri*—a and Molokai 6—*Silene alexandri*—b, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Silene alexandri* on Molokai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Moderate to steep slopes or cliffs in dry forest with one or more of the following associated native species: *Bidens menziesii, Carex wahuensis, Diospyros sandwicensis, Dodonaea viscosa, Leptecophylla tameiameiae*, or *Schiedea* spp.; and

(ii) Elevations between 316 and 1,020 m (1,036 and 3,346 ft).

Family Caryophyllaceae: *Silene lanceolata* (NCN)

Molokai 6—*Silene lanceolata*—a, identified in the legal descriptions in paragraph (c) of this section, constitutes critical habitat for *Silene lanceolata* on Molokai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Gulch slopes, ridge tops, and cliffs in dry to mesic shrubland with one or more of the following associated native species: *Bidens menziesii, Carex wahuensis, Diospyros sandwicensis, Dodonaea viscosa, Dubautia linearis, Leptecophylla tameiameiae, Metrosideros polymorpha*, or *Schiedea* spp.; and

(ii) Elevations between 581 and 1,043 m (1,906 and 3,421 ft).

Family Cyperaceae: *Mariscus fauriei* (NCN)

Molokai 6—*Mariscus fauriei*—a and Molokai 6—*Mariscus fauriei*—b, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Mariscus fauriei* on Molokai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Lava substrate or *Diospyros sandwicensis*-dominated lowland dry forests with one or more of the following associated native species: *Peperomia* sp., *Psydrax odorata,* or *Rauvolfia sandwicensis;* and

(ii) Elevations between 436 and 887 m (1,430 and 2,909 ft).

Family Euphorbiaceae: *Flueggea neowawraea* (mehamehame)

Molokai 6—*Flueggea neowawraea*—a, identified in the legal descriptions in paragraph (c) of this section, constitutes critical habitat for *Flueggea neowawraea* on Molokai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Gulches in mesic forest; and

(ii) Elevations between 450 and 618 m (1,476 and 2,027 ft).

Family Fabaceae: *Canavalia molokaiensis* (awikiwiki)

Molokai 6—*Canavalia molokaiensis*—a, Molokai 6—*Canavalia molokaiensis*—b, and Molokai 6—*Canavalia molokaiensis*—c, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Canavalia molokaiensis* on Molokai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Exposed sites, both dry and mesic, on steep slopes in *Metrosideros polymorpha-Dodonaea viscosa* lowland shrubland and mesic shrublands with one or more of the following associated native species: *Artemisia* sp., *Chamaesyce* sp., *Coprosma* sp., *Leptecophylla tameiameiae,* or *Wikstroemia* sp.; and

(ii) Elevations between 503 and 1,013 m (1,650 and 3,323 ft).

Family Fabaceae: *Sesbania tomentosa* (ohai)

Molokai 2—*Sesbania tomentosa*—a and Molokai 9—*Sesbania tomentosa*—b, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Sesbania tomentosa* on Molokai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Windswept slopes, sea cliffs and weathered basaltic slopes in *Scaevola sericea* coastal dry shrubland with one or more of the following associated native species: *Dodonaea viscosa, Jacquemontia ovalifolia* ssp. *sandwicensis, Melanthera integrifolia,* or *Sida fallax;* and

(ii) Elevations between 0 and 318 m (0 and 1,043 ft).

Family Gentianaceae: *Centaurium sebaeoides* (awiwi)

Molokai 3—*Centaurium sebaeoides*—a, identified in the legal descriptions in paragraph (c) of this section, constitutes critical habitat for *Centaurium sebaeoides* on Molokai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Volcanic or clay soils or cliffs in arid coastal areas with one or more of the following associated native species: *Artemisia* sp., *Bidens* sp., *Chamaesyce celastroides, Cyperus phleoides, Dodonaea viscosa, Fimbristylis cymosa, Heteropogon contortus, Jacquemontia ovalifolia, Lipochaeta heterophylla, Lipochaeta succulenta, Lycium sandwicense, Lysimachia mauritiana, Melanthera integrifolia, Panicum fauriei, Panicum torridum, Scaevola sericea, Schiedea globosa, Sida fallax,* or *Wikstroemia uva-ursi;* and

(ii) Elevations between 0 and 39 m (0 and 128 ft).

Family Lamiaceae: *Phyllostegia mannii* (NCN)

Molokai 6—*Phyllostegia mannii*—a, Molokai 6—*Phyllostegia mannii*—b, and Molokai 6—*Phyllostegia mannii*—c, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Phyllostegia mannii* on Molokai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Shaded sites in sometimes foggy and windswept, wet, open *Metrosideros polymorpha*-dominated montane forest with a native shrub and *Cibotium* sp. understory with one or more of the following associated native species: *Asplenium* sp., *Broussaisia arguta, Cheirodendron trigynum, Coprosma ochracea, Cyanea* sp., *Dicranopteris linearis, Hedyotis hillebrandii, Pipturus albidus, Pouteria sandwicensis, Psychotria* sp., *Touchardia latifolia, Vaccinium* sp., or *Wikstroemia* sp.; and

(ii) Elevations between 603 and 1,508 m (1,978 and 4,946 ft).

Family Lamiaceae: *Stenogyne bifida* (NCN)

Molokai 6—*Stenogyne bifida*—a, identified in the legal descriptions in paragraph (c) of this section, constitutes critical habitat for *Stenogyne bifida* on Molokai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Gulch slopes in *Metrosideros polymorpha*-dominated montane mesic to wet forest with one or more of the following associated native species: *Broussaisia arguta, Cheirodendron trigynum, Cibotium* sp., *Cyanea* sp., *Dicranopteris linearis, Dodonaea*

viscosa, Hedyotis hillebrandii, Hedyotis sp., *Leptecophylla tameiameiae, Pipturus albidus, Pouteria sandwicensis, Psychotria* sp., *Vaccinium* sp., or *Wikstroemia* sp.; and

(ii) Elevations between 467 and 1,300 m (1,532 and 4,264 ft).

Family Loganiaceae: *Labordia triflora* (kamakahala)

Molokai 6—*Labordia triflora*—a, Molokai 6—*Labordia triflora*—b, Molokai 6—*Labordia triflora*—c, and Molokai 6—*Labordia triflora*—d, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Labordia triflora* on Molokai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Mixed mesic *Metrosideros polymorpha* forest, with one or more of the following associated native species: *Coprosma* sp., *Myrsine lessertiana, Nephrolepis exaltata, Pouteria sandwicensis, Sadleria cyatheoides,* or *Tetraplasandra hawaiensis;* and

(ii) Elevations between 207 and 1,097 m (679 and 3,598 ft).

Family Malvaceae: *Hibiscus arnottianus* ssp. *immaculatus* (kokio keokeo)

Molokai 4—*Hibiscus arnottianus* ssp. *immaculatus*—a, Molokai 6—*Hibiscus arnottianus* ssp. *immaculatus*—b, Molokai 6—*Hibiscus arnottianus* ssp. *immaculatus*—c, and Molokai 6—*Hibiscus arnottianus* ssp. *immaculatus*—d, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Hibiscus arnottianus* ssp. *immaculatus* on Molokai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep sea cliffs in mesic forests with one or more of the following associated native species: *Antidesma platyphyllum, Athyrium* spp., *Boehmeria grandis, Cyanea grimesiana, Diospyros sandwicensis, Metrosideros polymorpha, Pipturus* spp., *Psydrax odorata,* or *Urera glabra;* and

(ii) Elevations between 8 and 813 m (26 and 2,667 ft).

Family Malvaceae: *Hibiscus brackenridgei* (mau hao hele)

Molokai 9—*Hibiscus brackenridgei*—a, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Hibiscus brackenridgei* on Molokai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Slopes in lowland dry forest and shrubland; and

(ii) Elevations between 174 to 317 m (571 to 1,040 ft).

Family Myrtaceae: *Eugenia koolauensis* (nioi)

Molokai 6—*Eugenia koolauensis*—a, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Eugenia koolauensis* on Molokai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Rocky gulches or gentle slopes with deep soil with one or more of the following associated native species: *Diospyros sandwicensis, Erythrina sandwicensis, Nesoluma polynesicum, Nestegis sandwicensis, Nototrichium sandwicensis, Reynoldsia sandwicensis,* or *Xylosma hawaiiense;* and

(ii) Elevations between 475 and 992 m (1,558 and 3,254 ft).

Family Plantaginaceae: *Plantago princeps* (laukahi kuahiwi)

Molokai 6—*Plantago princeps*—a, identified in the legal descriptions in paragraph (c) of this section, constitutes critical habitat for *Plantago princeps* on Molokai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Streambanks in *Metrosideros polymorpha* lowland mesic forest with one or more of the following associated native species: *Coprosma* sp., *Cyanea* sp., *Dodonaea viscosa, Dryopteris unidentata, Pipturus albidus,* or *Wikstroemia oahuensis;* and

(ii) Elevations between 1,008 and 1,213 m (3,306 and 3,979 ft).

Family Poaceae: *Ischaemum byrone* (Hilo ischaemum)

Molokai 6—*Ischaemum byrone*—a and Molokai 6—*Ischaemum byrone*—b, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Ischaemum byrone* on Molokai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Coastal dry shrubland or *Artemisia* sp. cliff communities, near the ocean, among rocks or basalt cliffs or talus slopes with one or more of the following associated native species: *Bidens molokaiensis, Fimbristylis cymosa, Hedyotis littoralis, Lysimachia mauritiana,* or *Pandanus tectorius;* and

(ii) Elevations between sea level and 235 m (0 and 771 ft).

Family Primulaceae: *Lysimachia maxima* (NCN)

Molokai 6—*Lysimachia maxima*—a, Molokai 6—*Lysimachia maxima*—b, and Molokai 6—*Lysimachia maxima*—c, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Lysimachia maxima* on Molokai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest with one or more of the following associated native species: *Dubautia* sp., *Hedyotis* sp., *Ilex anomala, Psychotria* sp., or *Vaccinium* sp.; and

(ii) Elevations between 446 and 1,329 m (1,463 and 4,359 ft).

Family Rutaceae: *Melicope mucronulata* (alani)

Molokai 6—*Melicope mucronulata*—a, Molokai 6—*Melicope mucronulata*—b, Molokai 6—*Melicope mucronulata*—c, Molokai 6—*Melicope mucronulata*—d, and Molokai 6—*Melicope mucronulata*—e, identified in the legal description in paragraph (c) of this section, constitute critical habitat for *Melicope mucronulata* on Molokai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep, west- or north-facing slopes in mesic *Diospyros sandwicensis-Metrosideros polymorpha* forest, *Metrosideros polymorpha-Dodonaea viscosa* shrubland, or *Metrosideros polymorpha-Leptechophylla tameiameiae* shrubland with one or more of the following associated native species: *Alyxia oliviformis, Alphitonia ponderosa, Coprosma foliosa, Hedyotis terminalis, Melicope hawaiensis, Myrsine lanaiensis, Nestegis sandwicensis, Ochrosia compta, Osteomeles anthyllidifolia, Phyllanthus* sp., *Pittosporum* sp., *Pleomele auwahiensis,* or *Psychotria mariniana;* and

(ii) Elevations between 354 and 1,015 m (1,161 and 3,329 ft).

Family Rutaceae: *Melicope reflexa* (alani)

Molokai 6—*Melicope reflexa*—a Molokai 6—*Melicope reflexa*—b, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Melicope reflexa* on

Molokai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Wet *Metrosideros polymorpha*-dominated forest with native trees such as *Cheirodendron* sp., with one or more of the following associated native species: *Alyxia oliviformis, Antidesma platyphyllum, Cheirodendron trigynum, Cibotium* spp., *Dicranopteris linearis, Freycinetia arborea,* or *Syzygium sandwicensis;* and

(ii) Elevations between 319 and 1,508 m (1,046 and 4,946 ft).

Family Rutaceae: *Zanthoxylum hawaiiense* (ae)

Molokai 6—*Zanthoxylum hawaiiense*—a, identified in the legal descriptions in paragraph (c) of this section, constitutes critical habitat for *Zanthoxylum hawaiiense* on Molokai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Gulch slopes in mesic *Metrosideros polymorpha* or *Diospyros sandwicensis* forest with one or more of the following associated native species: *Alyxia oliviformis, Dodonaea viscosa, Leptecophylla tameiameiae, Myrsine lanaiensis, Nestegis sandwicensis, Osteomeles anthyllidifolia, Pleomele auwahiensis,* or *Psychotria* sp.; and

(ii) Elevations between 754 and 1,084 m (2,473 and 3,555 ft).

Family Sapindaceae: *Alectryon macrococcus* var. *macrococcus* (mahoe)

Molokai 6—*Alectryon macrococcus*—a, identified in the legal descriptions in paragraph (c) of this section, constitutes critical habitat for *Alectryon macrococcus* var. *macrococcus* on Molokai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Talus slopes or gulches within dry or mesic lowland forest with one or more of the following associated native species: *Dodonaea viscosa, Lipochaeta* sp., *Myrsine* sp., *Nestegis sandwicensis, Nothocestrum* sp., *Pleomele* sp., *Psychotria* sp., or *Streblus pendulina;* and

(ii) Elevations between 616 and 1,026 m (2,020 and 3,365 ft).

Family Urticaceae: *Neraudia sericea* (NCN)

Molokai 6—*Neraudia sericea*—a, identified in the legal descriptions in paragraph (c) of this section, constitutes critical habitat for *Neraudia sericea* on Molokai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Gulch slopes and gulch bottoms in lowland dry to mesic *Metrosideros polymorpha-Dodonaea viscosa-Leptechophylla tameiameiae* shrubland or forest with one or more of the following associated native species: *Alyxia oliviformis, Coprosma* sp., *Hedyotis* sp., or *Pleomele auwahiensis;* and

(ii) Elevations between 701 and 1,043 m (2,299 and 3,421 ft).

Family Violaceae: *Isodendrion pyrifolium* (wahine noho kula)

Molokai 9—*Isodendrion pyrifolium*—a, identified in the legal descriptions in paragraph (c) of this section, constitutes critical habitat for *Isodendrion pyrifolium* on Molokai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Dry shrublands with one or more of the following associated native species: *Bidens menziesii, Dodonaea viscosa, Heteropogon contortus,* or *Leptecophylla tameiameiae;* and

(ii) Elevations between 173 and 322 m (567 and 1,056 ft).

(2) *Ferns and fern allies.*

Family Adiantaceae: *Pteris lidgatei* (NCN)

Molokai 6—*Pteris lidgatei*—a, identified in the legal descriptions in paragraph (c) of this section, constitutes critical habitat for *Pteris lidgatei* on Molokai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep streambanks in wet forest, and

(ii) Elevations between 160 and 1,251 m (525 and 4,103 ft).

Family Aspleniaceae: *Ctenitis squamigera* (pauoa)

Molokai 6—*Ctenitis squamigera*—a, identified in the legal descriptions in paragraph (c) of this section, constitutes critical habitat for *Ctenitis squamigera* on Molokai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Mesic forest and gulch slopes with one or more of the following associated native species: *Carex meyenii, Diospyros sandwicensis, Dryopteris unidentata, Metrosideros polymorpha, Nephrolepis exaltata, Nestegis sandwicensis, Pleomele auwahiensis, Pouteria sandwicensis,* or *Xylosma hawaiiense;* and

(ii) Elevations between 757 and 1,133 m (2,483 and 3,716 ft).

Family Aspleniaceae: *Diellia erecta* (asplenium-leaved diellia)

Molokai 6—*Diellia erecta*—a, identified in the legal descriptions in paragraph (c) of this section, constitutes critical habitat for *Diellia erecta* on Molokai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Mixed mesic forest and mesic *Diospyros sandwicensis* forest with one or more of the following associated native species: *Alyxia oliviformis, Bobea* sp., *Coprosma foliosa, Dodonaea viscosa, Dryopteris unidentata, Dubautia linearis* ssp. *opposita, Leptecophylla tameiameiae, Metrosideros polymorpha, Myrsine* sp., *Ochrosia compta, Pleomele auwahiensis, Psychotria* sp., *Sophora chrysophylla, Syzygium sandwicensis,* or *Wikstroemia* sp.; and

(ii) Elevations between 716 and 1,046 m (2,348 and 3,431 ft).

Family Aspleniaceae: *Diplazium molokaiense* (NCN)

Molokai 6—*Diplazium molokaiense*—a, identified in the legal descriptions in paragraph (c) of this section, constitutes critical habitat for *Diplazium molokaiense* on Molokai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep, rocky, wooded gulch walls in wet forests; and

(ii) Elevations between 97 and 1,349 m (318 and 4,425 ft).

Family Grammitidaceae: *Adenophorous periens* (pendant kihi fern)

Molokai 6—*Adenophorus periens*—a, Molokai 6—*Adenophorus periens*—b, and Molokai 6—*Adenophorus periens*—c, identified in the legal descriptions in paragraph (c) of this section, constitute critical habitat for *Adenophorous periens* on Molokai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Well-developed, closed canopy providing deep shade and high humidity on *Metrosideros polymorpha* trunks, in *Metrosideros polymorpha-*

Myrsine lessertiana forest with one or more of the following associated native species: *Anoectochilus sandvicensis, Broussasia arguta, Cheirodendron trigynum, Cibotium glaucum, Coprosma ochracea, Cyanea* sp., *Cyrtandra* sp., *Dicranopteris linearis, Freycinetia arborea, Hedyotis terminalis, Ilex anomala, Labordia hirtella, Leptecophylla tameiameiae, Machaerina angustifolia, Melicope* sp., *Psychotria* spp., *Stenogyne kamehamehae, Syzygium sandwicensis, Vaccinium calycinum,* or *Viola chamissoniana* ssp. *robusta;* and

(ii) Elevations between 816 and 1,508 m (2,676 and 4,946 ft).

Dated: February 27, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

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Federal Register

Tuesday,
March 18, 2003

Part III

Federal Reserve System

12 CFR Part 202
Equal Credit Opportunity; Final Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R–1008]

Equal Credit Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is publishing a final rule amending Regulation B, pursuant to the Board's policy of periodically reviewing and updating its regulations. Regulation B implements the Equal Credit Opportunity Act. Among other things, the final rule retains the general prohibition against inquiring about, or noting, applicant characteristics for nonmortgage credit transactions, and creates an exception when such data are collected for the purpose of conducting a self-test. The final rule also requires creditors to retain certain records related to prescreened solicitations for 25 months, to enable Federal financial enforcement agencies to assess whether or how national origin, race, age, or other prohibited bases of discrimination under the ECOA are taken into account in prescreened solicitations. The official staff commentary has also been amended; consideration of several previously proposed amendments has been deferred to allow for supplemental comment.

DATES: Effective April 15, 2003; however, to allow time for any necessary operational changes, the mandatory compliance date is April 15, 2004.

FOR FURTHER INFORMATION CONTACT: John C. Wood, Counsel; Kathleen C. Ryan or David A. Stein, Senior Attorneys; or Minh-Duc T. Le, Attorney; Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (''TDD'') only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691–1691f, makes it unlawful for a creditor to discriminate against an applicant in any aspect of a credit transaction on the basis of the applicant's national origin, marital status, religion, sex, color, race, age (provided the applicant has the capacity to contract), receipt of public assistance benefits, or the good faith exercise of a right under the Consumer Credit Protection Act (15 U.S.C. 1601 *et seq.*).

The ECOA is implemented by the Board's Regulation B. In addition to a general prohibition against discrimination, the regulation contains specific rules concerning: the taking and evaluation of credit applications, how credit history information is reported on accounts used by spouses, procedures and notices for credit denials and other adverse action, and limitations on requiring signatures of persons other than the applicant on credit documents. The regulation also excepts certain types of credit (such as securities credit) from some requirements, and provides model forms for optional use by creditors.

When enacted in 1974, the ECOA prohibited discrimination on the basis of marital status and sex. In 1976, the Act was amended to designate other prohibited bases of discrimination, including race and national origin. Over the years, several significant amendments have been made. In 1989, the ECOA was amended by the Women's Business Ownership Act of 1988 (Pub. L. 100–533, 102 Stat. 2692) to require that creditors give business applicants notice of the right to a written statement of reasons for a credit denial, and to impose a record retention requirement for certain business credit applications. In 1991, the ECOA was amended by the Federal Deposit Insurance Corporation Improvement Act (Pub. L. 102–242, 105 Stat. 2236) to provide applicants with the right to obtain a copy of any appraisal report used in connection with an application for credit to be secured by residential real property. The amendments also established referral responsibilities on the part of the Federal financial supervisory agencies (for referrals to the Department of Justice and the Department of Housing and Urban Development) for certain violations of the ECOA. The Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104–208, 110 Stat. 3009) amended the ECOA to create a privilege against disclosure for information developed by creditors as a result of ''self-tests'' they conduct.

II. Review of Regulation B

Pursuant to requirements of section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994, section 610(c) of the Regulatory Flexibility Act of 1994, and section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996, the Board began a review of Regulation B in March 1998. (The Board's previous comprehensive review of Regulation B was completed in 1985.) An Advance Notice of Proposed Rulemaking (Advance Notice) was published to solicit general comment on revisions to the regulation, and also identified specific issues for comment (63 FR 12326, March 12, 1998). The Board received 330 comment letters on the Advance Notice. Most commenters addressed only the issues identified in the Advance Notice.

In August 1999, the Board issued a proposed rule (64 FR 44581, August 16, 1999). The major proposed revisions included the following: Removing the general prohibition against creditors' noting or inquiring about applicant characteristics such as race, national origin, and sex for nonmortgage credit; requiring creditors to retain certain records for prescreened credit solicitations; and expanding from 12 to 25 months the record retention period for most business credit applications.

For public utilities, securities, and business credit, credit extended to governments, and incidental credit (for example, credit extended by a physician), Regulation B provides exceptions from certain of the notice, record retention, and other requirements. The Board proposed to retain the general categories of exceptions with some modifications. Other proposed revisions to the regulation (and to the official staff commentary) involved the definition of an ''application'' (including guidance on the distinction between an inquiry about credit and an application for credit); the definition of ''creditor''; the term ''adverse action''; the credit evaluation of married and unmarried applicants; and what constitutes evidence of a joint application for credit.

In addition to comments on the proposed revisions, the Board requested specific suggestions for other revisions that would facilitate compliance with, or improve, the regulation. Approximately 750 comments were received on the proposed rulemaking, and are discussed below under the relevant sections. Industry commenters opposed most of the major proposed revisions to the regulation, but provided suggestions for additional revisions to help facilitate compliance with the regulation, such as providing additional reasons, or clarifying existing reasons, for adverse action on the model forms. Most of the comments addressed the proposal to remove the prohibition on data notation, expressing views both for and against.

III. Summary of Revisions to the Regulation

Major revisions adopted by the Board include rules that adjust the limited

exceptions for public utilities credit (§ 202.3(a)); create an exception to the general prohibition against inquiring about, or noting, applicant characteristics for nonmortgage credit transactions for the purpose of conducting a self-test (§ 202.5(b)(1)); and require record retention for prescreened credit solicitations (§ 202.12(b)(7)). Other amendments clarify the definitions of ''adverse action'' (§ 202.2(c)) and ''creditor'' (§ 202.2(l)); the rules for evaluating married and unmarried credit applicants (§ 202.6(b)(8)); and certain rules about obtaining signatures of nonapplicants (§ 202.7(d)(1)).

IV. Section-by-Section Analysis

The following discussion addresses the regulatory revisions section-by-section. Technical and non-substantive revisions generally are not separately discussed. Revisions to the official staff commentary are addressed in parts V and VI.

Section 202.1—Authority, scope and purpose

There are no revisions to this section.

Section 202.2—Definitions

Sections 202.2(c)(1) and (2), and 202.2(l) have been revised. Proposed revisions to § 202.2(f) were not adopted.

2(c) Adverse action

2(c)(1)

Adverse action on a class of accounts—Section 202.2(c)(1)(ii) provides that adverse action includes a creditor's termination of or unfavorable change to the terms of an account, unless the action affects ''all or a substantial portion of a class of the creditor's accounts.'' Under the proposal, ''substantial portion'' was changed to ''substantially all'' to clarify that a creditor's action must affect the overwhelming majority of accounts in a designated class to be excluded from the definition of adverse action. This revision emphasized that the exception applies only when the creditor's action is not based on the individual credit characteristics of the affected accountholders. For example, the exception would apply where a creditor terminates all secured credit accounts because it no longer offers that type of credit. The exception would not apply if the creditor terminated only those secured credit accounts that could not be moved into another card program after an evaluation of the individual credit characteristics of the accountholders.

Industry commenters expressed concern that the proposal would significantly narrow the application of the exception. Some of these commenters noted that adverse action notices would serve no useful purpose in the circumstances outside the narrower exception. On the other hand, community groups urged the Board to revise the exception so that it would apply only if *all* accounts in a class were adversely affected.

The revision has been adopted by the Board as proposed. The ECOA and Regulation B require creditors to give consumers reasons for an adverse credit decision. This notice requirement enables some recipients to identify and remedy errors in credit reports and credit problems generally, and may also help in the detection of unlawful credit discrimination. The exception in § 202.2(c)(1)(ii) is intended to address the limited circumstance where an adverse action notice will not likely serve the intended informational or antidiscrimination goals. The Board expects to request supplemental comment on guidance for defining a ''class of accounts.''

2(c)(2)

Section 202.2(c)(2)(iii) has been revised to conform to changes in § 202.2(c)(1)(ii).

2(f) Application

The Board proposed to revise § 202.2(f) to include in the definition of application a request for a preapproved loan under procedures in which a creditor issues creditworthy persons a written commitment to extend credit up to a designated amount that is valid for a designated period of time, even if subject to conditions. In the final rule, the proposed language on preapprovals is not included in the regulation's definition of application, but is instead contained in the official staff commentary, which clarifies that certain preapprovals are covered by the definition of application. (*See* comment 2(f)–5 and the supplementary information thereto.) A technical change in the definition (replacing ''established'' with ''used'') has been made for clarity.

2(l) Creditor

Section 202.2(l) has been adopted substantially as proposed. The final rule changes the words ''regularly participates in the decision of whether or not to extend credit'' to ''regularly participates in a credit decision, including setting the terms of the credit'' to clarify the definition of ''creditor.''

Some commenters agreed with the proposed clarification, noting that it makes the rules parallel for insured depository institutions and private-sector loan intermediaries. A few commenters disagreed with the proposal, believing the scope of the definition was unclear. Other commenters asked that the Board clarify that a potential assignee that establishes terms of general applicability for credit extensions that it may acquire, but does not otherwise participate in setting the terms of individual loans, is not a creditor for purposes of the regulation. The final rule clarifies that the definition of creditor includes those who make the decision to deny or extend credit, as well as those who negotiate and set the terms of the credit with the consumer. But a potential assignee who establishes underwriting guidelines for its purchases but does not influence individual credit decisions is not a creditor. (*See* comment 2(l)–1).

Section 202.3—Limited Exceptions for Certain Classes of Transactions

The regulation provides certain exceptions for public utilities, securities, incidental, and government credit. Each of these types of credit remains subject to the general prohibition against discrimination on a prohibited basis. The exceptions generally address issues such as record retention, furnishing credit information, and inquiries about marital status and spousal information.

Revisions were proposed to the exceptions for public utilities, securities, and incidental credit. Based on comments and further analysis, the Board believes that providing certain exceptions is still appropriate, and that applying the rules of Regulation B in their entirety would not contribute substantially to effectuating the purposes of the Act, as discussed below.

3(a) Public Utilities Credit

3(a)(2) Exceptions

Public utilities credit refers to extensions of credit that involve public utility services if the charges for the service, delayed payment, and any discount for prompt payment are filed with or regulated by a governmental unit, such as a public utilities commission. Public utilities credit is currently subject to all of the regulatory requirements except those relating to furnishing credit information to consumer reporting agencies, collecting information about marital status, and retaining records. Under the proposed rule, only the exception for record retention would have been retained. The final rule has been modified. As discussed below, public utilities credit

is now subject to all of the regulatory requirements except those relating to record retention and marital status information.

Commenters generally supported the proposal to remove the exception relating to the furnishing of credit information under § 202.10 (concerning accounts held or used by spouses). A number of commenters believed that removing the exception would help spouses build credit histories. A few commenters mistakenly thought the proposal required public utility companies that do not currently report payment history information to start reporting such information. The requirements of § 202.10 apply only to creditors that furnish credit information to consumer reporting agencies or to other creditors. Such creditors are required to furnish information that reflects the participation of both spouses if the applicant's spouse is permitted to use or is contractually liable on the account. Because some creditors now consider public utility payments as a source of repayment history for underwriting purposes, eliminating the exception from § 202.10 seems necessary to facilitate the availability of this information to such other creditors.

Upon further analysis, the Board has retained the marital status exception. Although some public utilities do not currently collect marital status information, or are prohibited by state law from doing so, others may collect such information. Permitting utility firms to collect such information is consistent with eliminating the exception for furnishing credit information—those creditors that collect marital status information and report to credit bureaus will be able to reflect the participation of both spouses on the account.

The final rule retains the exception for record retention because public utility companies must keep records pursuant to regulations of other governmental bodies—often for longer periods of time than required by the ECOA. Extending this exception is appropriate because requiring record retention pursuant to Regulation B would not contribute substantially to effectuating the purposes of the Act.

3(b) Securities Credit

3(b)(2) Exceptions

Securities credit is credit subject to section 7 of the Securities Exchange Act of 1934, regulations under that act, and rules of the self-regulatory organizations. Brokers and dealers are required to inquire about the financial activities of spouses to comply with the rules of the Securities Exchange Act and the National Association of Securities Dealers. For this reason, Regulation B excepts securities credit from several provisions including, among others, rules governing signature requirements, record retention, and asking about the sex of an applicant.

Because securities credit is subject to an extensive regulatory scheme, the Board proposed to retain the limited exceptions for such credit, with one exception—information about the sex of an applicant. The proposal to eliminate the exception was for consistency with the Board's proposal under § 202.5 to remove the general prohibition against the collection of applicant characteristics for nonmortgage credit. Since the Board has retained the general prohibition, there is a continued need for an exception regarding the sex of an applicant. Technical revisions have been made for clarity with no substantive change intended.

3(c) Incidental Credit

3(c)(1) Definition

Currently, incidental credit is limited to consumer credit that is not: (1) Made pursuant to the terms of a credit card account, (2) subject to a finance charge under Regulation Z (Truth in Lending), or (3) payable by agreement in more than four installments. This type of credit might be extended by a local merchant that does not normally extend credit, for example, to a long-standing customer; or by a doctor or lawyer, as an accommodation to a patient or a client.

The proposed rule would have expanded the definition of incidental credit to include incidental business credit. While some commenters supported the expansion, other commenters opposed it because of concerns about discrimination against minority-owned businesses. Upon further analysis, based on commenters' concerns about possible discrimination, the Board has retained the current definition of incidental credit.

3(c)(2) Exceptions

Incidental credit is excepted from a number of provisions in the regulation including those that govern requests for information about an applicant's marital status, an applicant's spouse or former spouse, and sources of an applicant's income. The proposed rule would have eliminated the exception for requesting information about the sex of an applicant, consistent with the Board's proposal under § 202.5 to remove the general prohibition against the collection of applicant characteristics for nonmortgage credit. Since the general prohibition has been retained, this exception also has been retained.

3(d) Government Credit

The exceptions for government credit apply to extensions of credit made to governments or governmental subdivisions, agencies, or instrumentalities. The exceptions do not apply to credit extended by such entities; for example, a government agency that extends credit to a consumer who applies for individual credit may not require the signature of another person (including the spouse) on a credit instrument if the applicant is individually creditworthy. The Board believes that extending the exceptions for government credit remains appropriate, as applying the rules would not contribute substantially to effectuating the purposes of the Act.

Section 202.4—General Rules

Section 202.4 has been revised, as proposed, to incorporate general rules that apply under the regulation, some of which were previously in other sections. Specifically, § 202.4(a) contains the general rule against discrimination; § 202.4(b) (former § 202.5(a)) contains the general rule against discouraging applications; and § 202.4(c) (former § 202.5(e)) contains the requirement for written applications in mortgage transactions covered by § 202.13(a).

Section 202.4(d) is new and generally requires written notices and other disclosures to be provided in a clear and conspicuous manner and in a form an applicant may retain. Most of the other consumer protection regulations administered by the Board already contain these standards.

The clear and conspicuous and the retainability standards have been revised in response to commenters' concerns. Some commenters stated that the proposed language appeared to suggest that disclosures under the sections specified (§§ 202.5, 202.5a (now § 202.14), 202.9, and 202.13(c)) are required to be given in writing. While certain disclosures under §§ 202.9 and 202.14 are required to be in writing, others may be provided orally. Accordingly, the final rule provides generally that if a disclosure is given in writing, it must be clear and conspicuous and in a form the applicant may retain.

Other commenters suggested that the retainability requirement should not apply to certain disclosures given on or with an application, such as those under §§ 202.5 and 202.13. These disclosures relate, for example, to the option not to

list income from alimony, child support, or separate maintenance, and to the collection of information about an applicant's national origin, race, sex, marital status, and age for mortgage credit. These disclosures are relevant primarily at the time of application. In addition, since the application will be submitted to the creditor, the only way to provide the disclosures to the applicant in retainable form would be to provide an extra copy of the application. The final rule exempts disclosures under §§ 202.5 and 202.13 (even if provided in writing) from the retainability requirement.

In addition, the Board issued an interim final rule in April 2001 concerning the electronic delivery of disclosures under Regulation B. (66 FR 17779, April 4, 2001.) A new § 202.4(b) was added in that rulemaking to provide rules on foreign-language disclosures. The present rulemaking re-designates that revision as § 202.4(e).

Section 202.5—Rules Concerning Requests for Information

Section 202.5 has been revised from the proposal. The final rule adopted by the Board retains the general prohibition against creditors' inquiring about, or noting, an applicant's sex, race, color, religion, or national origin for nonmortgage credit products, subject to some exceptions, including a new exception that permits collection for the purpose of conducting a self-test that meets the requirements of § 202.15, as discussed below.

Because the ECOA makes it unlawful for creditors to consider any prohibited bases of discrimination in a credit transaction, Regulation B has generally prohibited creditors from inquiring about, or noting, an applicant's sex, race, color, religion and national origin. This general prohibition was intended to discourage discrimination, based on the premise that if creditors cannot inquire about or note applicants' personal characteristics, such as national origin or race, they are less likely unlawfully to consider the information in connection with a credit transaction.

For home mortgage lending, there were specific concerns at the time the regulation was adopted in the 1970s about discrimination based on applicants' personal characteristics; and thus Regulation B requires creditors to record the applicant's national origin or race, marital status, sex, and age in applications for purchasing or refinancing home loans. (This requirement was added in 1977 when the regulation was amended to implement expanded coverage of the ECOA to include national origin, race, and other prohibited bases of discrimination. As enacted by the Congress in 1974, the ECOA initially barred discrimination only on the basis of sex and marital status.) The data collection enables enforcement agencies to better monitor home mortgage lenders' compliance with the ECOA. In 1989, the Congress amended the Home Mortgage Disclosure Act (HMDA), implemented by the Board's Regulation C, to impose a similar data collection requirement that applies to mortgage loans more broadly, encompassing home improvement loans in addition to purchase-money and refinanced home loans.

In 1995, the Board proposed to remove the prohibition against noting applicants' personal characteristics for nonmortgage credit products. The proposed revision was published at the time the federal financial regulatory agencies were revising regulations that implement the Community Reinvestment Act to respond to concerns about whether creditors were meeting the needs of their communities, particularly for small business and small farm lending. The majority of commenters on the 1995 proposal opposed removal of the prohibition. After extensive deliberation, the Board withdrew the proposal in December 1996, and stated that, given the political sensitivity of the issues, the matter was better left to the Congress.

In 1998, the Board again solicited comment in its Advance Notice of Proposed Rulemaking on removal of the prohibition. The Board raised the issue in response to concerns that continued to be expressed by the Department of Justice and some of the federal financial regulatory agencies. These agencies pointed to anecdotal evidence of discrimination in connection with small business and other types of credit. Comments received in response to the Advance Notice were fairly evenly divided between those in support of, and those in opposition to, lifting the ban. Most of those who favored lifting the prohibition were focused, however, on removing it for small business lending only.

In its August 1999 proposed rule to amend Regulation B, the Board proposed to remove the general prohibition against inquiring about or noting information about an applicant's race, national origin, religion, color, or sex to allow voluntary collection of such data for nonmortgage credit products. Consideration of applicant characteristics such as race in evaluating creditworthiness, except as permitted by law, would continue to be prohibited. The Board recognized that removing the prohibition could give loan officers access to information on applicants' personal characteristics that might not otherwise be available and, thus, could provide the opportunity for unlawful discrimination. Also, the usefulness of the data for fair lending enforcement would depend on whether creditors implemented standards for uniform collection of the data—such as by product, for all applicants, or for all borrowers. Nevertheless, the Board believed that removing the prohibition for all nonmortgage credit might allow issues of credit discrimination to be better addressed. Because data notation by the creditor would be on a voluntary basis, creditors could target those products where they might have particular concern about potential discrimination.

The proposed rule lifting the prohibition also provided that applicants could not be required to provide information about their race, national origin, religion, color, or sex. Creditors that chose to engage in data notation would have been required to disclose—at the time they requested the information—that providing the data was optional, and that the creditor would not take the information (or the applicant's decision not to provide it) into account in any aspect of the credit transaction. A proposed model notice was included.

More than 600 commenters addressed the issue of data notation raised by the 1999 proposal. Many commenters—including most of the federal financial regulatory agencies, the Department of Justice, the Department of Housing and Urban Development, small businesses and their trade associations, consumer advocates, community organizations, individual consumers, and a few banks—favored removing the prohibition. Enforcement agencies and others believed that creditors' ability to collect and analyze information about the ethnicity and race of applicants and an agency's ability to review that information could provide a better fair lending tool than prohibiting the notation of such information. A significant number of these commenters favored removing the prohibition for all nonmortgage credit products, but most of those who favored lifting the ban focused their comments on small business lending.

Most of the commenters favoring removal of the prohibition believed that mandatory collection is the more effective way to monitor and enforce fair lending compliance for small business and other nonmortgage loans. Consumer advocate and community group

commenters generally endorsed voluntary data collection, but often as a first step toward mandatory data collection and disclosure. These commenters also believed that standards for data collection were needed and urged the Board to develop HMDA-like standards for data collection on nonmortgage loans. These commenters said that allowing data notation would enable creditors and government agencies to monitor for possible discriminatory practices, and might enable creditors to better target underserved markets. Some commenters believed that, in the case of home mortgage lending, the mandatory collection and disclosure of data have increased access to those products for low-income and minority consumers.

Most industry commenters preferred to retain the general prohibition. A number of them indicated that they would not collect data if the prohibition were removed. These commenters expressed reservations about the Board's lifting the prohibition, including concerns about the likely pressure to collect data and the risk of litigation based on unreliable data. Commenters also expressed concern that creditors that obtained data about ethnicity, race, and other personal characteristics would be placed at a competitive disadvantage relative to other lenders because some consumers might find notation offensive. Some commenters expressed concern that a requirement for mandatory collection of data would soon follow the lifting of the prohibition, which would impose substantial burdens and costs on institutions. Many commenters criticized the lack of standards to ensure the collection of accurate and reliable data. They expressed concern, for example, that the lack of any uniform guidance regarding how to determine the minority-owned or women-owned status of small businesses would render any data meaningless. Some commenters believed the current rule has been effective in discouraging discrimination by denying creditors access to information that would enable them to discriminate on a prohibited basis. Some commenters, including individual consumers, asserted that data notation intrudes upon consumers' privacy.

Some commenters indicated that if the prohibition were removed, they would likely not collect information about applicants' personal characteristics unless collection was subject to the ECOA's self-test privilege, and urged the Board to extend the self-test privilege to information about applicants' personal characteristics. (Under the statutory amendments of 1996, the self-test privilege protects creditors against disclosure of the results of a self-test to a government agency in an examination or investigation or by an agency or an applicant in any proceeding or lawsuit alleging a violation of the ECOA or Regulation B.) In the August 1999 proposal, the Board noted that creditors choosing to collect applicant characteristics would likely do so on the application form or in the application process, and therefore the privilege would not apply to this data collection. Industry commenters challenged this view of the scope of the self-test privilege.

Some congressional commenters submitted a legal analysis which included the argument that the prohibition against inquiring about applicants' personal characteristics is required by the ECOA and must be enforced by the Board, and which stated that creditors would continue to be barred from collecting information about personal characteristics even if the Board amended Regulation B to remove the regulatory prohibition. They argued in their legal analysis that the ECOA's enumeration of exceptions to the general prohibition against discrimination on the basis of race, color, sex, national origin, religion, age and certain other characteristics implied a prohibition on any other collection by creditors of data regarding these personal characteristics of applicants. The Board disagrees with this analysis; the fact that the ECOA provides that certain types of inquiries regarding personal characteristics are permitted does not mean that other inquiries are prohibited.

The Board believes that it has the authority under the ECOA to permit data collection. The Board has express authority under the ECOA to adopt regulations that carry out the purposes of the Act. The ECOA does not contain an express prohibition against inquiring about an applicant's personal characteristics; it prohibits the practice of discriminating on a prohibited basis, a prohibition that the Board's amendment does not change. The Board adopted its regulatory provision prohibiting collection of personal characteristics data in order to further the purpose of the ECOA. The Board believes it is well within its authority to adopt the self-testing exception to its regulatory prohibition because it better achieves the purposes of both the central prohibition against discrimination contained in the ECOA and the self-testing provision in the ECOA.

The fact that the ECOA provides that certain types of inquiries regarding personal characteristics are permitted does not imply that other inquiries are prohibited. The list of exceptions in the ECOA is needed for another purpose. The list allows creditors to inquire about characteristics of an applicant and to use that information in the credit decision—such as asking about marital status to determine property rights. Without expressly permitting these inquiries, a creditor could not use information about an applicant's personal characteristics in making its decision without violating the ECOA's central prohibition. Removal by the Board in whole or in part of the regulatory prohibition on inquiring about characteristics of applicants does not allow the creditor to consider this information in violation of the ECOA.

Based on comments received and its own analysis and for the reasons stated below, the Board has retained the general prohibition on inquiring about, or noting, information about nonmortgage credit applicants' personal characteristics, such as race and national origin; and has created an exception for collection of this information by a creditor for the purpose of conducting a self-test under § 202.15.

The Board adopted its regulatory provision prohibiting collection of personal characteristic data for nonmortgage credit in order to further the purposes of the ECOA. The Board believes that the existing prohibition, by restricting creditors' access to information about applicants' personal characteristics, contributes to reducing or avoiding credit discrimination. Lifting the prohibition and permitting creditors to collect and use data on applicant characteristics for any purpose without limitation, as was proposed, would create some risk of use of the data for discriminatory purposes. For example, lifting the prohibition without constraints could have resulted in selective inquiries or notation. Moreover, without standards, the reliability of voluntarily collected data is questionable.

At the same time, creditors desiring to monitor and assure compliance with the ECOA by collecting information about applicants' personal characteristics should not be prevented from doing so. The Board believes that creating an exception for collecting such information as part of a self-test would further the purposes of the ECOA by providing creditors with an additional tool for measuring and improving their levels of compliance with the ECOA and Regulation B. Permitting data notation

as part of a self-test would enable creditors to develop compliance programs that utilize data about applicant characteristics in a controlled and targeted manner. The Board has, therefore, created an exception to the general regulatory prohibition to permit creditors to inquire about, and note, information about nonmortgage credit applicants' personal characteristics for the purpose of conducting self-tests under § 202.15.

The Congress adopted the self-test privilege in 1996 as part of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104–208, 110 Stat. 3009). The purpose for creating a self-test privilege was ''to encourage institutions to undertake candid and complete self-tests for possible fair lending violations and to act decisively to correct any discovered problems.'' S. Rep. No. 104–185, at 15 (Dec. 14, 1995). Section 202.15 of Regulation B, which implements the self-test provision, defines a self-test as a program, practice, or study designed and used specifically to determine compliance with the Act and regulation, that creates data or factual information that is not available and cannot be derived from loan or application files or other records related to credit transactions. The privilege applies only if the creditor takes appropriate corrective action when it determines that it is more likely than not that a violation has occurred. The results of the self-test cannot be obtained by a government agency in an examination or investigation, or by an agency or an applicant in any proceeding or lawsuit alleging a violation of the ECOA or Regulation B.

As adopted by the Board, § 202.5 of the final rule retains the general prohibition on collecting information about applicants' personal characteristics and creates an exception to permit the collection of personal characteristics for the purpose of conducting a self-test. Section 202.5(a) now contains the general rules previously contained in former § 202.5(b). Section 202.5(a)(1) has been revised to apply to information requests in connection with a credit transaction to reflect more accurately the scope of the regulation. Certain headings in § 202.5(a) have been revised for clarity. Former §§ 202.5(a) and (e) have been moved to § 202.4 to facilitate compliance with the regulation.

New § 202.5(b) sets forth the general prohibition against a creditor's inquiring about the race, color, religion, national origin, or sex of an applicant or any other person in connection with a credit transaction. The general prohibition incorporates the rules previously contained in the first sentences of former § 202.5(d)(3) and (5). The general prohibition is subject to the exceptions found in subsections (b)(1) and (2).

Section 202.5(b)(1), which is new, permits creditors to inquire about, and note, personal characteristics such as race or national origin for the purpose of conducting a self-test under § 202.15 to determine the creditor's compliance with the ECOA or Regulation B. To qualify for this exception, the creditor must satisfy all the elements of a self-test as set forth in § 202.15, and must provide the disclosures required by § 202.5(b)(1) at the time the information is requested. (A model notice is included in Appendix C.)

This exception to the general prohibition applies to a self-test even if the creditor should subsequently lose or waive the self-test privilege by disclosing any privileged information as provided in § 202.15(d)(2)(i) and (ii). Other laws or regulations, such as the Gramm-Leach-Bliley Act privacy regulations, may restrict other disclosure of such data.

Creditors that opt to conduct a self-test may rely upon the principles discussed below. Much of this guidance is set forth in § 202.15 and the accompanying official staff commentary and this preamble. Any additional guidance, including the guidance provided in this preamble, will be incorporated into the official staff commentary at a later date, as appropriate. A ''self-test'' is defined as any program, practice, or study that is designed and used specifically to determine the extent or effectiveness of a creditor's compliance with the Act or Regulation B and creates new data or factual information that is not available and cannot be derived from loan or application files or other records related to credit transactions. 12 CFR 202.15(b)(1).

The constraints imposed by the regulation's self-test provision will help ensure that the information is not used to discriminate on a prohibited basis and is only collected and used for the purpose of monitoring compliance with the ECOA and Regulation B and for taking appropriate corrective action. Any information about applicant's personal characteristics collected as part of a self-test would have to be kept separate from the loan or application files and from other business records related to credit transactions, in order for the privilege to apply. Thus, creditors may not place such data with non-privileged business records, such as the credit application, loan documents, or minutes of loan-committee meetings. *See* 12 CFR Supp. I, 202.15(b)(1)(ii)–2 and 202.15(b)(3)(ii)–1. In response to the issue raised by certain commenters, the Board notes that the existing regulation regarding the self-test privilege does not prohibit collection of data in the application process. Although creditors may collect the information during the application process, the information may not be placed with nonprivileged business records, such as the credit application or loan documents, and may not be considered in extending credit.

Information about applicants' personal characteristics that is collected pursuant to this exception should be analyzed in a timely fashion as part of a program, practice, or study under the self-test provision. Timely analysis of data is essential to ensure that a self-test was conducted to determine compliance with the ECOA and Regulation B. Creditors retain the flexibility to establish the time, place, scope, and methodology of any self-test. *See* 12 CFR Supp. I, 202.15(b)(3)(i)–1. In preparing to conduct a self-test that involves the collection of applicants' personal characteristics, creditors would be expected to develop a written plan that describes, among other things, the specific purpose of the self-test, the methodology to be used, the geographic area covered by the test, the types of credit transactions involved, the identity of the entity that will conduct the test and analyze the data (such as the creditor's audit department), and the timing of the test, including the expected start date and end date or the expected duration of the test. The creditor is generally required to retain records regarding a self-test, including personal-characteristics data and all other written or recorded information about the self-test for 25 months after a test has been completed (and longer in the case of an investigation or enforcement proceeding or civil action of which the creditor has received notice.) *See* 12 CFR 202.12(b)(6).

Currently, creditors may use ''mystery shoppers'' or fictitious applicants (''testers'') to determine compliance with the ECOA at the pre-application stage. With the revision to the regulation, creditors would have the flexibility to utilize and develop a variety of self-testing techniques (internally or using independent third-parties) to ensure ECOA compliance at various stages of a credit transaction using information collected about applicant characteristics combined with other information. For example, a self-test using information about actual applicants' personal characteristics might better determine whether, at the application stage, persons seeking credit

are being treated differently from other applicants on the basis of race, age, sex, religion, or national origin; or, for loan originations, whether disparities based on race or other prohibited bases of discrimination may exist in the terms and conditions of loan agreements entered into by similarly situated applicants. A self-test might also be conducted to test account review or collection procedures, or other aspects of the credit transaction where unlawful discrimination might occur.A creditor may not use the data collected under the new exception for other purposes, such as marketing, unless necessary to take corrective action, without losing the self-test privilege.

The data about applicant characteristics collected as part of a self-test may only be used and evaluated by persons conducting the self-test. The data may not be used or evaluated by persons involved in a credit transaction, except in the context of taking corrective action when it is more likely than not that a violation has occurred. The data may not be used in a credit decision. In collecting information about personal characteristics as part of a self-test, creditors must disclose to applicants that providing the information is optional, that the information is being collected to monitor for compliance with the ECOA and will not be used in making a credit decision, and where applicable, that certain information will be noted based on visual observation or surname.

The self-test provision requires that creditors take appropriate and timely corrective action when the self-test shows that it is ''more likely than not'' that a violation of the ECOA or Regulation B has occurred, even though no violation has been formally adjudicated. 12 CFR 202.15(c)(1) (emphasis added). Creditors should ensure that corrective action is taken on a timely basis and is ''reasonably likely to remedy the cause and effect of a likely violation.'' 12 CFR 202.15(a)(2) and 202.15(c)(1). The commentary to § 202.15(c) suggests various forms of corrective action that may be appropriate, such as correcting institutional policies or procedures that may have contributed to the likely violation and adopting new policies as appropriate, or improving audit and oversight systems to avoid a recurrence of the likely violation. *See* 12 CFR Supp. I, 202.15(c)(2)–3. The appropriateness of a particular form of corrective action is determined on a case-by-case basis and the scope of the corrective action that is required depends upon the scope of the self-test. *See* 12 CFR Supp. I, 202.15(c)(2)–1. No corrective action is required if a self-test does not identify any likely violation of the ECOA or Regulation B. *See* 12 CFR Supp. I, 202.15(a)(2)–1.

Section 202.5(b)(2) permits a limited inquiry that may indicate the sex of an applicant through an optional designation of title on an application form. This exception is identical to the exception previously contained in former § 202.5(d)(3). No substantive change is intended.

Section 202.5(c) is substantially unchanged. Section 202.5(d)(1)–(3) incorporates the provisions previously contained in former § 202.5(d)(1), (d)(2), and (d)(4) without substantive change.

New § 202.5(e) permits creditors to inquire about the permanent residency and immigration status of an applicant or any other person in connection with a credit transaction. This rule was previously contained in former § 202.5(d)(5). The exception for inquiries about the permanent residence and immigration status has been conformed to the general rule in § 202.5(b), which explicitly covers both an applicant and any other person in connection with a credit transaction, such as a guarantor or co-signer.

Section 202.5a—Rules on Providing Appraisal Reports

This section now appears as § 202.14.

Section 202.6—Rules Concerning Evaluation of Applications

Sections 202.6(b)(8) and (9) have been adopted, as proposed.

6(b) Specific Rules Concerning use of Information

6(b)(8)

Section 202.6(b)(8) of the regulation, adopted as proposed, makes clear that a creditor may not evaluate married and unmarried applicants by different standards. Some commenters were concerned that the rule would prevent creditors from considering state property laws. The rule provides that the requirement applies except as otherwise permitted or required by law. Thus, a creditor may consider the rules in §§ 202.5, 202.6, and 202.7 in evaluating applications. But a creditor that aggregates the incomes of married co-applicants, for example, is required to aggregate the incomes of unmarried co-applicants under this rule.

6(b)(9)

Section 202.6(b)(9) has been adopted as proposed, consistent with the Board's decision to retain the general prohibition in § 202.5 (against collecting applicants' personal characteristics) except for the purpose of conducting a self-test under § 202.15. This provision clarifies that data collected for a self-test may not be used in any aspect of a credit transaction.

Section 202.7—Rules Concerning Extensions of Credit

Section 202.7(d)(1) has been revised.

7(d) Signature of Spouse or Other Person

Section 202.7(d)(1) provides that a creditor may not require the signature of a person other than the applicant, or joint applicant, on any credit instrument if the applicant is individually creditworthy. Over the years, the Board has received questions about how creditors can establish that applicants intend to apply jointly. Although the issue arises in consumer credit, it is more prevalent in the context of business credit. Some creditors have sought to treat the submission of a joint financial statement or other evidence of jointly held assets as an application for joint credit. The proposed rule bars a creditor from presuming that the submission of joint financial information constitutes an application for joint credit.

Some commenters disagreed with the proposal, stating that a creditor should always be able to deem the submission of joint information as an application for joint credit. Other commenters believed the rule should simply state that the mere submission of joint information may not be used to establish intent and something more is needed.

Evidence of intent to apply for joint credit requires more than the submission of joint financial information. The fact that a credit applicant owns property with another and submits information concerning the property and the joint owner in order to establish creditworthiness does not mean that both owners intend to be obligated for the extension of credit; other evidence must expressly reflect that intent. Section 202.7(d)(1) has been adopted as proposed. Additional guidance concerning how to evidence intent to apply for joint credit is provided in the official staff commentary in comment 7(d)(1)–3. Also, *see* the supplementary information to Appendix B concerning revisions to Model Application Forms 1–4.

Section 202.8—Special-Purpose Credit Programs

The proposed revisions to § 202.8(a)(3) have not been adopted.

8(a) Standards for Programs

Section 202.8(a)(3) addresses special-purpose credit programs offered by for-profit organizations, or in which for-profit organizations participate. Under the proposed rule, that section would have been revised to delete the phrase ''special social needs.'' The meaning of the phrase is specifically set forth in § 202.8(a)(3)(i) and (ii). Although few commenters addressed the issue, there was some concern that by removing the phrase, a creditor might not understand that the program must meet special social needs. Upon further analysis, because the legislative history of this provision is clear that special-purpose credit programs offered by for-profit organizations must meet special social needs, and because the statute includes the phrase, the proposed revision was not adopted.

Section 202.9—Notifications

A technical revision has been made to § 202.9(a)(3)(i)(B). The proposed revision to § 202.9(a)(3)(ii)(A) has not been adopted. Section 202.9(b)(2) has been revised as proposed.

9(a) Notification of Action Taken, ECOA Notice, and Statement of Specific Reasons

9(a)(3) Notification to Business Credit Applicants

A technical revision has been made to § 202.9(a)(3)(i)(B) to omit the proposed language requiring a creditor to provide the disclosure of an applicant's right to a statement of reasons in a form the applicant may retain. New § 202.4(d) requires that disclosures provided in writing be clear and conspicuous and in a form the applicant may retain. Since the disclosure required by § 202.9(a)(3)(i)(B) must be in writing, the language referring to retention is deleted as unnecessary.

The regulation provides for exceptions from certain notification and record retention requirements for business credit. The Board is required periodically to review the exceptions to determine whether they should be retained. The ECOA provides that the Board may extend an exception if the Board determines, after making an express finding, ''that the application of [the Act] or of any provision of [the Act] of such transaction would not contribute substantially to effecting the purposes of [the Act].'' 15 U.S.C. 1691b. As discussed below, the Board expressly finds that application of additional provisions of the ECOA to business credit would not contribute substantially to effectuating the purposes of the Act.

In the proposal, the Board stated its belief that applying the notification rules in full, or changing the current threshold of $1 million in gross revenues to distinguish between large and small businesses for purposes of Regulation B, would not contribute substantially to effectuating the purposes of the ECOA. The $1 million threshold is consistent with the legislative history of the Women's Business Ownership Act of 1988 (Pub. L. No. 100–533, 102 Stat. 2692), which amended the ECOA. That history suggests that the amendments were intended primarily to apply to small businesses. When the rule was adopted in 1989, 86 percent of all businesses had gross revenues of $1 million or less a year; nearly the same percentage of all businesses (85 percent) currently fall below that threshold. In addition, a gross revenue test is likely easier for creditors to administer than other suggested tests, such as basing the exceptions on the sophistication of the applicant. Commenters did not oppose this aspect of the proposal.

The Board proposed to revise § 202.9(a)(3)(ii)(A) to require that creditors disclose, to businesses with gross revenues in excess of $1 million in the preceding fiscal year, the right to a written statement of reasons for denial or other adverse action. Under the regulation, creditors must provide a written statement of reasons for adverse action if the applicant requests the statement within 60 days of being notified of adverse action. But although the regulation requires creditors to notify business credit applicants (orally or in writing) of the adverse action, it does not require notification of the right to obtain the statement of reasons. The Board stated in its proposal that requiring the disclosure should not significantly increase the compliance burden for creditors, and would benefit applicants who may not be aware of their right to the written statement of reasons.

Some commenters supported or did not oppose the proposed change; some commenters urged that creditors be required to provide business applicants with a written notice of reasons for adverse action, or of the right to request such reasons. Other commenters suggested that notification of the right to reasons is unnecessary because businesses in this category are sophisticated and communication between the creditor and the applicant is extensive and ongoing.

Based on the comments and further analysis, the Board believes that notification of the right to request the reasons for adverse action would not contribute substantially to effectuating the purposes of the ECOA. Accordingly, the final rule does not include the requirement.

9(b) Form of ECOA Notice and Statement of Specific Reasons

9(b)(2) Statement of Specific Reasons

Section 202.9(b)(2), adopted as proposed, clarifies that whether a creditor's denial of credit is based on the creditworthiness of the applicant, a joint applicant, or guarantor, the reasons for adverse action must be specific. For example, a general statement that ''the guarantor did not meet the creditor's standards of creditworthiness'' is insufficient.

The legislative history of the requirement to provide specific reasons for adverse action indicates that the purposes of the disclosure are to help achieve the anti-discrimination goals of the ECOA and to educate and inform consumers. These dual purposes are served by the clarification in § 202.9(b)(2). For example, the disclosure may discourage a creditor from discriminating based on a co-applicant's or guarantor's race, sex, age, or other prohibited basis. Also, the disclosure may help educate and inform applicants, co-applicants, or guarantors as to reasons for denial that are not apparent from looking at their credit report.

Many commenters were concerned about the co-applicant's or guarantor's privacy when the reasons for adverse action pertaining to creditworthiness are given to the primary applicant. When a person agrees to be a co-applicant, guarantor, or similar party, however, there is (or should be) a general understanding that information will be shared. Accordingly, the rule has been adopted as proposed.

Section 202.10—Furnishing of Credit Information

There are no revisions to this section.

Section 202.11—Relation to State Law

There are no revisions to this section.

Section 202.12—Record Retention

The proposed revisions to § 202.12(b)(1)–(4) have not been adopted. New § 202.12(b)(7) has been adopted, as proposed.

12(b) Preservation of Records

Section 703(a)(4) of the ECOA requires creditors to retain records or other data related to business loans as may be necessary to evidence compliance with the Act. These records must be retained for no less than one year, unless otherwise excepted. Section 202.12(b) requires creditors to retain credit applications and other records for

12 months for credit extended to businesses with gross revenues of $1 million or less. For businesses with gross revenues in excess of $1 million, a creditor must retain records for 60 days. If within that time the applicant requests in writing the reasons for adverse action, or requests that records be retained, the creditor must retain the records for 12 months.

The Board proposed to extend the record retention period to 25 months for credit applications involving businesses with gross revenues of $1 million or less in response to concerns expressed by some Reserve Banks and enforcement agencies about the short duration of the record retention period for business credit. (The rule would remain unchanged for credit applications involving larger businesses or extensions of trade credit, credit incident to a factoring agreement, or other similar types of business credit.) The volume of business loans on a yearly basis for some financial institutions is low, and the banking agencies have changed the frequency of examinations (from 18 to 24 months or, in some instances, to 36 months). Thus, it is sometimes difficult for examiners to obtain an adequate sample in order to determine whether the creditor is complying with the requirements of Regulation B. The Board believed that extending the record retention period would better enable the federal financial regulatory agencies to monitor and enforce compliance with the ECOA. Also, the Board believed that previously expressed concerns about storing business credit files might no longer be compelling given technological advances and the increased use of electronic storage.

Community groups and a civil rights organization supported the proposed extension of the record retention period, to better determine patterns of unlawful discrimination in connection with business credit. Some industry commenters also supported the proposed extension; they believed compliance would be easier with consistent rules for consumer and small business credit. Most industry commenters opposed the proposal, however, stating that it would impose a significant burden by increasing the need for storage space and equipment and for additional employees. Some of these commenters noted that business documentation is typically more voluminous than documentation for consumer loans, and that a substantial amount of business loan documentation is kept in paper form. One commenter stated that the burden would be greater for smaller creditors than for larger creditors; larger creditors likely benefit from the development of standardized business loan products and credit scoring models, while smaller creditors may rely more heavily on judgmental evaluation and paper documentation. Some commenters believed that records for the 12-month period preceding an examination are sufficient to establish lending patterns within a financial institution.

The final rule retains the current record retention period of 12 months. Although an expanded retention period could assist the enforcement agencies in monitoring and enforcing compliance with the Act, the Board believes that the benefits of expanding the record retention requirement are outweighed by the compliance burdens. For example, the use of electronic record storage for many business credit records is not as prevalent as the Board believed when it issued the proposal.

12(b)(7) Prescreened Solicitations

Section 202.12(b)(7) is new and has been adopted to require record retention for certain information used in prescreened credit solicitations so that enforcement agencies can review and analyze creditors' possible use of prohibited bases in connection with such solicitations. The ECOA prohibits discrimination by a creditor against an applicant—a person who has requested or received credit—on a prohibited basis regarding any aspect of a credit transaction. A credit transaction is defined by Regulation B as covering every aspect of an applicant's dealings with a creditor, beginning with requests for information. Thus, the coverage of the ECOA encompasses a person who has, at a minimum, sought credit. But because a person could be discouraged from seeking credit or credit information, the regulation expressly prohibits a creditor from engaging in any practice (including its advertisements) that would discourage a reasonable person, on a prohibited basis, from applying for credit.

In some circumstances, consumers do not have to initiate a request for credit, but rather respond to a solicitation from the creditor. Creditors use a number of techniques to identify potential customers. For instance, creditors will often specify criteria to consumer reporting agencies, which then draw on information from credit files to compile lists of persons who meet those criteria. This marketing technique—involving prescreened solicitations—is typically carried out through mailed solicitations as well as by telemarketing. In the marketing of some credit products through prescreened solicitations, creditors often offer discounted introductory rates, attractive credit terms, and enhancements (such as purchase discounts, in the case of credit cards) that may not be available through other application channels.

Prescreened credit solicitations, particularly for credit cards, are not new. With advances in technology that facilitate the building of databases, however, the use of prescreened solicitations has become more commonplace and more sophisticated. Prescreened solicitations can be used to target consumers most likely to use a particular credit product, or to target segments of the population that are most likely to respond to the offer of credit. Conversely, prescreened solicitations can be used to exclude some consumers from receiving offers of credit. They can potentially be used to target consumers in low-income neighborhoods (which are often predominantly minority) for less favorable credit products or credit terms on the supposition that these consumers are less creditworthy. The Board has become aware (through the compliance examination function of the Board and other federal financial regulatory agencies) of instances in which creditors, primarily in the credit card industry, have used age to identify potential recipients of preapproved credit.

Over the years, there has been concern that Regulation B generally does not apply to marketing through prescreened solicitations. When the regulation was originally implemented in 1975, the definition of ''credit transaction'' included ''solicitation of prospective applicants by advertising or other means.'' Thus, the prohibition against discrimination based on marital status and sex applied to solicitations. In December 1976—when Regulation B was revised to prohibit discrimination based on national origin, race, and other specified bases—the definition of credit transaction omitted any reference to solicitations. In the final rule, the regulation instead prohibited creditors from discouraging persons on a prohibited basis from applying for credit.

Under the proposed rule, the Board would require that creditors retain their existing records for those prescreened solicitations defined as ''firm offers of credit'' under the Fair Credit Reporting Act (FCRA). Creditors would retain information about the criteria used to select potential customers, the text of any solicitation, complaints that might be received about the solicitation, and the portion of the marketing plan related to the solicitation.

The Board received about 100 comment letters on this proposal. Commenters generally acknowledged that prospective applicants and advertisements are covered by the regulation's rule against discouraging prospective applicants on a prohibited basis. But some of them questioned the Board's legal authority to require record retention for prescreened solicitations given that the ECOA and the regulation's protections generally apply only to persons who have requested credit.

The Board has clear authority to require the retention of information regarding prescreened solicitation practices. In enacting the ECOA, the Congress found that there is a need to ensure that creditors exercise their responsibility to make credit available with fairness and impartiality and without discrimination on a prohibited basis. Thus, creditors must make credit available equally to all creditworthy customers regardless of race, national origin, sex, or other prohibited bases of credit discrimination. In this regard, Regulation B prohibits a creditor from making any statement, in advertising or otherwise, that would discourage on a prohibited basis a reasonable person from making or pursuing an application for credit.

The ECOA authorizes the Board to prescribe regulations to carry out the purposes of the Act including, in particular, regulations that ''in the judgment of the Board are necessary or proper to effectuate the purposes of this title, to prevent circumvention or evasion thereof, or to facilitate or substantiate compliance therewith.'' 15 U.S.C. 1691b(a)(1). This provides the Board authority to require creditors to retain records that the Board believes are necessary to assure that creditors are not circumventing or evading the requirements of the ECOA and Regulation B.

Prescreened solicitations are an increasingly important mechanism for making certain types of credit available to consumers, and can be an effective way of enhancing a creditor's compliance with the ECOA. On the other hand, prescreened solicitations also could provide a means for creditors to circumvent or evade the ECOA and defeat its purposes by excluding prospective applicants on a prohibited basis. The Board believes that, in order to help monitor solicitation practices and prevent evasion or circumvention of the ECOA, creditors should be required to retain records related to prescreened solicitations, so that enforcement agencies can review and analyze creditor practices in generating offers of credit. The Board believes that imposing this recordkeeping requirement is within its authority and is consistent with the Act's purpose.

Some commenters criticized the proposed requirements as burdensome. In particular, they expressed concern about the retention of correspondence relating to complaints and the retention of ''components of marketing plans related to solicitations.'' They did not, however, quantify in cost or time the additional burdens associated with the requirements.

Commenters focused on how correspondence about complaints is kept and organized, rather than suggesting that creditors do not retain such correspondence. They said that complaint correspondence may not be stored and tracked by solicitation in existing complaint tracking systems, and may not be retained in a central location within a financial institution. Also, commenters noted that marketing plans may vary significantly from creditor to creditor; some plans may not have a specific ''component'' devoted to prescreened solicitations.

Consumer representatives and others supporting the proposed record retention believed that the benefit of the requirement substantially outweighs any compliance burden. They believed that creditors already retain most, if not all, of the documents required by the proposal for business or other reasons, such as to monitor the effectiveness of their marketing approach. Many of these commenters believed that Regulation B should cover creditors' pre-application marketing practices more generally, beyond credit advertisements and beyond the record retention requirements that were proposed.

Based on comments and its own further analysis, the Board is adopting the proposal requiring creditors to retain records related to the text of the solicitation, the criteria used to select potential customers for prescreened solicitations, and correspondence related to consumer complaints. The Board believes that record retention will provide useful information without imposing excessive burden for determining at some future date whether additional steps might be warranted for coverage of prescreened solicitations by Regulation B.

Nothing in the final rule requires creditors to establish a separate database or set of files for correspondence relating to complaints about prescreened solicitations. Creditors will not be required to match consumer complaints with specific solicitation programs. Creditors have the flexibility to retain correspondence in any manner that would make it reasonably accessible and understandable to examiners.

The Board has made one modification to reduce compliance burden. Upon further analysis, the Board believes that the proposed requirement to identify and retain the component of the marketing plan to which the solicitation relates may be overly burdensome. And since prescreened solicitations may be one aspect of a creditor's overall marketing program, reviewing a single component may not provide the proper context. Therefore, the Board is not adopting the proposed requirement related to creditors' marketing plans.

The Board believes that these steps will enable the Board to monitor solicitation practices, based on information that creditors currently maintain, in a systematic way. Generally, for business and other reasons, creditors retain much of the required information. For example, under the Fair Credit Reporting Act (FCRA), persons that use information in consumer reports to select consumers to receive offers of credit are required to maintain the criteria used to select the consumers for three years after the date the offer is made to the consumer. The Board's rule requires a 25-month retention period.

There will be some incremental burden associated with retaining information in a form necessary to demonstrate compliance. The Board believes, however, that the costs of retaining these records for purposes of examination under Regulation B will not likely be substantial; and commenters did not provide evidence to the contrary.

Section 202.13—Information for Monitoring Purposes

Technical revisions have been made to this section to conform to a directive issued in 1997 by the U.S. Office of Management and Budget. For ethnicity, the standards provide for requesting data on whether (or not) individuals are Hispanic or Latino. The standards prescribe five racial designations: American Indian or Alaska Native; Asian; Black or African American; Native Hawaiian or Other Pacific Islander; and White. The standards eliminate the option of designating ''Other,'' which Regulation B currently allows. The standards also require that respondents be offered the option of selecting more than one racial designation. 62 FR 58782, 58786 (October 30, 1997).

The Appendix B model application form for use in complying with § 202.13 is issued by Fannie Mae and Freddie

Mac, which are in the process of making revisions to their forms. Creditors may continue to use the current model form until the Board publishes a revised form that reflects the new ethnicity and racial designations.

Section 202.14—Rules on Providing Appraisal Reports

The rules previously contained in § 202.14, Enforcement, Penalties, and Liabilities, have been moved to § 202.17. Section 202.14 now contains the rules from former § 202.5a. There are no revisions to this section.

Section 202.15—Incentives for Self-testing and Self-correction

Technical revisions have been made to § 202.15(d)(1).

Section 202.16—Requirements for Electronic Communication

Section 202.16 now contains the rules from former § 202.17. Section 202.16 contains an interim final rule published in April 2001, incorporating the requirements of the Electronic Signatures in Global and National Commerce Act (the E-Sign Act) into Regulation B for disclosures provided by electronic communication (66 FR 17779, April 4, 2001). The interim final rule is republished for convenience; the Board lifted the mandatory compliance date for the interim final rule in August 2001 (66 FR 41439, August 8, 2001). Any substantive revisions to the interim final rule for § 202.16—as well as for other electronic disclosures under Regulations E, M, Z, and DD—will be made at a future date.

Section 202.17—Enforcement, Penalties, and Liabilities

Section 202.17 now contains the rules from former § 202.14. Technical revisions have been made to § 202.17(a) and (b). Proposed revisions to § 202.17(c) have not been adopted.

17(c) Failure of Compliance

The Board proposed to delete the third sentence of § 202.17(c) to conform with the proposal to remove the general prohibition against data notation. Consistent with the Board's decision to retain the general prohibition in § 202.5 against noting applicants' personal characteristics in nonmortgage credit transactions, except for the purpose of conducting a self-test, the proposed revision has not been adopted. Section 202.17(c) is retained in its current form.

Appendix A to Part 202—Federal Enforcement Agencies

Appendix A has been revised to reflect changes in the names and addresses of some agencies.

Appendix B to Part 202—Model Application Forms

Technical revisions have been made to the introductory paragraphs. As proposed, the ''Residential Loan Application'' has been replaced with an updated ''Uniform Residential Loan Application'' (Freddie Mac 65/Fannie Mae 1003). Also, the first four model forms have been revised to clarify the guidance in the official staff commentary in comment 7(d)(1)–3 concerning how to evidence applicants' intent to apply for joint credit.

Appendix C—Sample Notification Forms

Appendix C has been revised in the final rule, consistent with the Board's decision to retain the general prohibition in § 202.5 against notation of applicants' personal characteristics for nonmortgage credit except for the purpose of conducting a self-test. New model form C–10 is added to provide the disclosure requirements for creditors that request applicants' race, ethnicity, and other such characteristics for conducting a self-test under § 202.15.

A number of commenters suggested revisions to the sample forms, such as using consistent language for all references to the Fair Credit Reporting Act, and adding or rearranging adverse action reasons. Some of these suggestions are adopted, with no substantive change intended.

Appendix D—Issuance of Staff Interpretations

There are no revisions to this section.

V. Summary of Revisions to the Commentary

Major revisions to the commentary include clarifying that the definition of application includes certain preapproval requests (§ 202.2(f)); providing an exception from the requirement to provide a notice of incompleteness for preapprovals that constitute applications (§ 202.9(c)(1)); and clarifying the record retention requirements for prescreened solicitations (§ 202.12(b)(7)). The commentary also clarifies when an inquiry about credit becomes an application for credit (§§ 202.2(f) and 202.9).

VI. Section-by-Section Analysis

The following discussion addresses the commentary revisions section-by-section. Technical and non-substantive revisions generally are not separately discussed. Proposed amendments to several provisions of the staff commentary relating to the definition of ''adverse action'' are not being adopted at this time in order to allow the Board to solicit supplemental comment.

Section 202.1—Authority, Scope and Purpose

There are no revisions to this section.

Section 202.2—Definitions

Revisions have been made to comments in § 202.2(f) concerning the definition of application; and § 202.2(l) concerning the definition of creditor. A technical revision has been made to a comment in § 202.2(z).

2(c) Adverse Action

Proposed comments 2(c)(1)(i)–2; 2(c)(1)(ii)–1; 2(c)(2)(i)–1; 2(c)(2)(ii)–3; and a revision to 2(c)(2)(ii)–2 are not being adopted at this time. These interpretations will be reviewed and reissued for additional public comment.

2(f) Application

A technical change (replacing ''established'' with ''used'') has been made to comment 2(f)–2 to conform the comment to the technical change in the definition of application in § 202.2(f) of the regulation.

Comments 2(f)–3 and –5 have been adopted as proposed with some modifications. Comment 2(f)–3 clarifies that prequalification requests are subject to the same test applicable to inquiries. In addition, the term ''applicant'' has been changed to ''consumer.'' Using ''applicant'' presumes that an application exists, while the point of the comment is that, in the case of an inquiry or prequalification request, an application may or may not exist depending upon the circumstances. Also, cross-references have been added in comment 2(f)–3, referencing comment 9–5, which provides a more detailed discussion of when a prequalification request becomes an application, and new comment 2(f)–5, which clarifies when a request for a preapproval constitutes an application.

The treatment of inquiries and prequalification requests, on the one hand, and certain preapproval requests, on the other, now differs for purposes of determining whether an application exists. Comment 2(f)–5 clarifies this difference. As discussed in the supplementary information to § 202.2(f) of the regulation, the Board proposed to include within the definition of application a request for a preapproved loan under procedures in which a

creditor issues creditworthy persons a written commitment to extend credit up to a designated amount that is valid for a designated period of time, even if subject to conditions. The Board further stated that a ''preapproval'' without procedures involving a written commitment would be treated as a prequalification.

Some commenters supported the proposed revision, noting that preapprovals should be considered applications since creditors require applicants to complete applications before issuing written commitments to lend. Other commenters opposed the proposal, arguing that it would have a chilling effect on lenders offering preapproval programs, and would discourage potential applicants; that the utility of covering preapprovals as applications is questionable since they generally contain contingencies and are subject to verification; and that many applicants requesting preapprovals never return to the creditor to pursue the request, suggesting that notices required by § 202.9 would not be useful.

The Board believes that preapproval requests are applications, because they involve requests for extensions of credit made in accordance with creditors' procedures. The fact that a preapproval request is not a completed application is not relevant, because Regulation B generally applies even to applications that are incomplete. (But see comment 9(c)(1)–1). In addition, Regulation C (Home Mortgage Disclosure) as revised (67 FR 7222, February 15, 2002) includes preapproval requests as applications for purposes of that regulation. In general, the Board believes that the coverage of applications under Regulations B and C should be consistent, to the extent possible. Accordingly, comment 2(f)–5 clarifies that certain preapproval requests constitute applications for purposes of Regulation B. The text of the final comment has been revised slightly to more closely parallel the Regulation C amendment relating to preapprovals.

Commenters raised an issue concerning the treatment of an inquiry in regard to a creditor's preapproval program. For example, if a creditor has a preapproval program involving written commitments and other features discussed in comment 2(f)–5, a request for preapproval under the program constitutes an application. If, however, a consumer merely inquires about the program, but does not initiate a preapproval request under it, commenters questioned whether the creditor must treat the inquiry as an application. The Board believes that whether the inquiry in this case is an application should be determined under the criteria set forth in comments 2(f)–3 and 9–5.

Finally, some commenters asked whether a preapproval that constitutes an application includes preapproved credit solicitations. Prescreened solicitations are not applications for purposes of Regulation B. (*See* § 202.12(b)(7)).

2(l) Creditor

Comment 2(l)–2 has been revised to clarify the type of creditors subject only to the general prohibitions against discrimination and discouragement in §§ 202.4(a) and (b), respectively.

Some industry commenters expressed concern that the clarification would include in the definition of creditor persons without discretion to decide whether credit will be extended. The Board recognizes that in the credit application process persons may play a variety of roles, from accepting applications through extending or denying credit. Comment 2(l)–2 is intended to clarify that where the only role a person plays is accepting and referring applications for credit, or selecting creditors to whom applications will be made, the person meets the definition of creditor, but only for purposes of the prohibitions against discrimination and discouragement. For example, an automobile dealer may merely accept and refer applications for credit, or it may accept applications, perform underwriting, and make a decision whether to extend credit. Where the automobile dealer only accepts applications for credit and refers those applications to another creditor who makes the credit decision—for example, where the dealer does not participate in setting the terms of the credit or making the credit decision—the dealer is subject only to §§ 202.4(a) and (b) for purposes of compliance with Regulation B.

2(z) Prohibited Basis

A technical revision has been made to comment 2(z)–1 for clarity. Comment 2(z)–3 has been amended to reflect the change in the name of the Aid to Families with Dependent Children program.

Section 202.3—Limited Exceptions for Certain Classes of Transactions

A technical revision has been made to comment 3–1.

Section 202.4—General Rule Prohibiting Discrimination

Section 202.4 has been substantially revised, as proposed. Former comment 4(a)–1 has been divided into comments 4(a)–1 and –2. Additional examples of disparate treatment have been included in comment 4(a)–2. Comments 4(b)–1 and –2 are former comments 5(a)–1 and –2, respectively, with minor revisions. References to ''potential'' applicants in former comment 5(a)–1, which is now comment 4(b)–1, have been changed to ''prospective'' applicants with no substantive change intended. Comments 4(c)–1, –2, and –3 are former comments 5(e)–1, –2, and –3, respectively. New comment 4(d)–1 clarifies the ''clear and conspicuous'' requirement.

Section 202.5—Rules Concerning Taking of Applications

Section 202.5 has been substantially revised. Comments 5(a)–1 and –2 have been moved to comments 4(b)–1 and –2, respectively, consistent with changes to the regulation. Comment 5(b)–1 has been re-designated as comment 5(a)(1)–1. Comments 5(b)(2)–1, –2, and –3 have been re-designated as comments 5(a)(2)–1, –2, and –3, respectively, consistent with the restructuring of the regulation and the Board's decision to retain the general prohibition against inquiring about, or noting, applicants' personal characteristics for nonmortgage credit, with some exceptions. Comments 5(d)(1)–1 and 5(d)(2)–1, –2, and –3 have not been revised. Comments 5(e)–1, –2, and –3 have been moved to comments 4(c)–1, –2, and –3, respectively, consistent with changes to the regulation.

Section 202.5a—Rules on Providing Appraisal Reports

Former § 202.5a is now § 202.14.

Section 202.6—Rules Concerning Evaluation of Applications

Comments to §§ 202.6(a), 202.6(b)(1), (2), (5) and (8) have been revised.

6(a) General Rule Concerning use of Information

Comment 6(a)–1 has been revised to reflect the exception for collecting applicant characteristics for purposes of a self-test.

6(b) Specific Rules Concerning use of Information

6(b)(1)

As proposed, former comment 6(b)(1)–1 has been divided and certain portions have been moved to § 202.6(b)(8) of the regulation and other portions have been moved to § 202.6(b)(8) of the commentary for clarity. Comment 6(b)(1)–2 has been re-designated as 6(b)(1)–1.

6(b)(2)

Technical revisions have been made to comments 6(b)(2)–2 and –3, with no substantive change intended. A technical amendment to comment 6(b)(2)–6 reflects the change in the name of the Aid to Families with Dependent Children program.

6(b)(5)

Comments 6(b)(5)–1, –3, and –4 have been revised for clarity, with no substantive change intended.

6(b)(8)

New comment 6(b)(8)–1 incorporates a portion of former comment 6(b)(1)–1 and clarifies that a creditor may consider the marital status of an applicant or joint applicant to ascertain its rights and remedies under state law for the particular extension of credit.

Section 202.7—Rules Concerning Extensions of Credit

Revisions have been made in comments to § 202.7(d)(1).

7(d)(1)

Comment 7(d)(1)–1, adopted substantially as proposed, clarifies that when an applicant is individually creditworthy, a creditor may not require the signature of any person besides the applicant on a credit instrument. A cross-reference has been added to note the special rule under comment 7(d)(6)–1 for guarantors of closely held corporations.

Comment 7(d)(1)–3 provides guidance on how to evidence applicants' intent to apply for joint credit. The proposed rule clarified that creditors must document in some manner a person's intent to become jointly liable for a credit obligation, and provided examples. Some commenters expressed concern that the Board is requiring written applications for business credit. Other commenters believed that the best method to evidence intent is to require written applications. A few commenters asked that the Board afford creditors the flexibility to determine how to evidence intent for joint credit.

Written applications for business credit are not required, nor has the Board proposed to require such applications. While creditors are required to have documentation evidencing intent to apply for joint credit, creditors have the flexibility to determine the methods used to establish intent. The comment has been adopted substantially as proposed, with revisions for clarity. First, the comment clarifies that evidence of intent must be provided at the time of application. Accordingly, a creditor could not use the fact that two parties signed the note, for example, as evidence of intent to be jointly liable at the time of application. Second, the examples in the proposed rule have been revised to provide greater clarity. Consistent with providing greater clarity in the examples, some of the model forms in Appendix B have been modified slightly to reflect this guidance.

Section 202.8—Special Purpose Credit Programs

Minor revisions have been made in comments to § 202.8(a). Proposed revisions to comments in § 202.8(c) and (d) have not been adopted.

8(a) Standards for Programs

Comment 8(a)–5 adds an example of how creditors designing a special purpose credit program may determine need, and has been adopted as proposed.

8(c) Special Rule Concerning Requests and Use of Information

Proposed revisions to comment 8(c)–1 have not been adopted, reflecting the Board's decision to retain the general prohibition under § 202.5 against the collection of applicant characteristic information, except for the purpose of conducting a self-test. Technical revisions have been made for clarity.

8(d) Special Rule in the Case of Financial Need

Proposed revisions to comment 8(d)–1 have not been adopted, reflecting the Board's decision to retain the general prohibition under § 202.5 against the collection of applicant characteristic information, except for the purpose of conducting a self-test. Technical revisions have been made for clarity.

Section 202.9—Notifications

Revisions have been made in comments to §§ 202.9, 202.9(b)(2), 202.9(c), and 202.9(g). In comment 9–5 concerning prequalifications, the discussion of preapprovals has been removed as proposed, and certain preapproval requests are now treated differently from prequalification requests, as clarified in comments 2(f)–3 and 2(f)–5. Also, in response to public comments, language has been added to clarify that a creditor may tell consumers not only the maximum amount they may borrow under various loan programs, but also the rates and other terms available, without turning prequalification requests into applications for credit.

Some commenters suggested adding language to clarify that the specific information that a creditor may evaluate about a consumer in a prequalification includes credit information. The Board believes that the language in the comment as revised is sufficiently broad to cover credit information. Creditors should bear in mind, however, that unless an application for credit has been made by the consumer, or the creditor has written instructions from the consumer to obtain a credit report, a permissible purpose for obtaining a credit report on the consumer may not exist under the Fair Credit Reporting Act.

9(b) Form of ECOA Notice and Statement of Specific Reasons

9(b)(2)

Comment 9(b)(2)–7 has been adopted as proposed with minor revisions for clarity. The proposed comment clarified that in a combined credit scoring and judgmental system where an applicant is neither approved nor denied based on the first component of the system but is denied based on the second component, the adverse action reasons must come from both components of the system. Several commenters found the comment confusing. These commenters believed that the proposed language of the comment contradicts the general rule of the comment that the reasons for denial must come from the component of the system the applicant failed. The comment, however, is intended to address several distinct situations.

The comment applies when applications are automatically denied based on the first component, for example the credit scoring component, and are not forwarded to the judgmental component. In those cases, the adverse action reasons must come solely from the credit scoring component. The comment also applies when applications pass the credit scoring system, are automatically forwarded to the judgmental component, and are denied based on the judgmental component. In those cases, the adverse action reasons must come solely from the judgmental component. These examples are consistent with the rule that the reasons for denial must come from the component the applicant failed.

The amendments to the comment apply when a creditor utilizes a scorecard with ''gray bands,'' meaning that the applicant's score does not pass or fail the credit scoring component but falls within a range where referral to an analyst for judgmental review is required. If credit is denied, the adverse action reasons must come from both the credit scoring component and the judgmental component of the system.

Providing one or more adverse action reasons from the credit scoring component will help educate consumers about why their credit score did not pass the credit scoring component. In all situations addressed by the comment, a combination of more than four principal adverse action reasons is not likely to be helpful to applicants.

9(c) Incomplete Applications

9(c)(1) Notice Alternatives

As discussed in the supplementary information to § 202.2(f) of the regulation and commentary, the definition of application includes certain preapproval requests. Some commenters expressed concern that in many cases applicants make preapproval requests and then fail to follow through on the request. Under § 202.9(c), within 30 days of receiving an application that is incomplete regarding matters that the applicant can complete, the creditor must notify the applicant of action taken or of the incompleteness. According to some commenters, where a preapproval request remains incomplete, sending the applicant a notice of incompleteness does not appear useful.

The Board believes that in the case of a traditional application, the applicant is interested in pursuing a loan, but may be unaware that the application remains incomplete in some respect; in this situation, a notice of incompleteness can serve an important function. This seems less likely in the case of a preapproval request, which is often a less complicated and more expeditious process. Therefore, comment 9(c)(1)–1 has been added to include an exception from the requirement to provide a notice of incompleteness for preapprovals that meet the definition of ''application'' as clarified in comment 2(f)–5. This exception parallels the amendment to Regulation C (Home Mortgage Disclosure), which treats preapproval requests as applications, but does not require reporting of preapproval requests that remain incomplete. (*See* 67 FR 7222, February 15, 2002.)

9(g) Applications Submitted Through a Third Party

The proposed revisions to comment 9(g)–1 clarified that the requirements of § 202.9(a)(2) apply to applications submitted through a third party. The requirement to include the address of each creditor gives the applicant the information necessary to request a statement of specific reasons for the adverse action or an explanation of the reasons. Accordingly, comment 9(g)–1 has been adopted as proposed.

Section 202.10—Furnishing of Credit Information

There are no revisions to this section.

Section 202.11—Relation to State Law

There are no revisions to this section.

Section 202.12—Record Retention

As proposed, comments in § 202.12(b) have been added to reflect changes to the regulation concerning retention of certain records related to prescreened solicitations.

12(b)(7) Prescreened Solicitations

The Board proposed to add three new comments to new § 202.12(b)(7) to clarify the record retention requirements for prescreened solicitations. With one exception, the comments have been adopted as proposed, with technical revisions for clarity. Proposed comment 12(b)(7)–3 would have clarified the regulatory requirement to retain the portion of the marketing plan to which the solicitation relates. Since the final rule eliminates the marketing plan requirement, the proposed comment has not been adopted. Comment 12(b)(7)–3 now clarifies the requirement to retain records of correspondence relating to complaints (whether formal or informal) about prescreened solicitations. (*See* detailed discussion in the supplementary information to § 202.12(b)(7) of the regulation.)

Section 202.13—Information for Monitoring Purposes

The proposed revision to a comment in § 202.13(a) has not been adopted. A technical revision has been made for clarity. Comments in § 202.13(b) have been revised.

13(a) Information To Be Requested

Comment 13(a)–7 has been retained, consistent with the Board's decision to retain the general prohibition against the notation of applicant characteristics for nonmortgage credit transactions, subject to certain exceptions. The citation in the comment has been revised to conform with the reorganization of the regulation.

13(b) Obtaining of Information

Consistent with a revision to § 202.13(a) of the regulation, comment 13(b)–1 has been revised to clarify the guidance issued in 1997 by the Office of Management and Budget.

Comment 13(b)–3 has been revised to make the treatment of applications received by telephone consistent with Appendix A, paragraph V.D. 2., and Appendix B, paragraph I.B.4. of Regulation C (Home Mortgage Disclosure) for the purpose of collecting monitoring information. Comment 13(b)–4 combines existing comments 13(b)–4 and –5, and has been revised to make the treatment of applications received electronically consistent with comment 203.4(a)(7)–5 of Regulation C.

Comment 13(b)–7 has been retained and re-designated as comment 13(b)–6, consistent with the Board's decision to retain the general prohibition against the notation of applicant characteristics for nonmortgage credit transactions, except for the purpose of conducting a self-test.

Section 202.14—Rules on Providing Appraisal Reports

Section 202.14 is former § 202.5a. There are no revisions to comments in this section.

Section 202.15—Incentives for Self-testing and Self-correction

The proposed addition of a comment to § 202.15(b)(3) has not been adopted.

15(b)(3)

As discussed earlier, the Board is retaining the general prohibition against inquiring about, or noting, information about an applicant's personal characteristics, such as race or national origin, except for the purpose of conducting a self-test under § 202.15. Accordingly, proposed comment 15(b)(3)(ii)-2—which would have clarified that the collection of information about an applicant's characteristics does not qualify for the self-test privilege—has not been adopted. For a discussion of the exception for self-testing, see § 202.5(b)(1) and the supplementary information to that section.

Section 202.16—Requirements for Electronic Communication

Section 202.16 is former § 202.17. The comments in § 202.16 have been republished for convenience. Consistent with the Board's decision to lift the mandatory compliance date for the interim final rule in § 202.16 (66 FR 41439, August 8, 2001), the comments in this section are not currently in effect on a mandatory basis and will be separately finalized. Accordingly, there are no revisions to comments in this section.

Section 202.17—Enforcement, Penalties, and Liabilities

Section 202.17 is former § 202.14. There are no revisions to comments in this section.

Appendix B to Part 202—Model Application Forms

Comment 1 to Appendix B has been revised to delete a reference to U.S. Office of Management and Budget classifications. Other proposed changes to comment 1 have not been adopted, reflecting the Board's decision to retain the general prohibition against the collection of applicant characteristics for nonmortgage credit. Consistent with that decision, comment 2 has been retained.

Appendix C—Sample Notification Forms

There are no revisions to the comment in Appendix C.

VII. Reorganization of the Regulation

Provisions of the regulation and commentary are re-designated as indicated in the tables below. While the tables present a substantially complete summary of the reorganization, they should not be used as a substitute for a detailed comparison of the revised regulation with the old regulation.

TABLE 1.—SECTION 202.2—DEFINITIONS

Current	Revised
Comment 2(f)-5	Comment 2(f)–6.

TABLE 2.—SECTION 202.3—LIMITED EXCEPTIONS FOR CERTAIN CLASSES OF TRANSACTIONS

Current	New
Regulation 202.3(a)(2)(ii)	Deleted.
Regulation 202.3(a)(2)(iii)	Regulation 202.3(a)(2)(ii).
Regulation 202.3(b)(2)(i)	Regulation 202.3(b)(2)(ii).
Regulation 202.3(b)(2)(ii)	Regulation 202.3(b)(2)(iii).
Regulation 202.3(b)(2)(iii)	Regulation 202.3(b)(2)(i).
Regulation 202.3(c)(2)(i)	Regulation 202.3(c)(2)(ii).
Regulation 202.3(c)(2)(ii)	Regulation 202.3(c)(2)(iii).
Regulation 202.3(c)(2)(iii)	Regulation 202.3(c)(2)(iv).
Regulation 202.3(c)(2)(iv)	Regulation 202.3(c)(2)(i).

TABLE 3.—SECTION 202.4—GENERAL RULES

Current	Revised
Comment 202.4–1	Comment 4(a)–1, –2.
Regulation 202.4(b)	Regulation 202.4(e).

TABLE 4.—SECTION 202.5—RULES CONCERNING REQUESTS FOR INFORMATION

Current	Revised
Regulation 202.5(a)	Regulation 202.4(b).
Comment 202.5(a)–1	Comment 202.4(b)–1.
Comment 202.5(a)–2	Comment 202.4(b)–2.
Comment 202.5(b)–1	Comment 202.5(a)(1)–1.
Regulation 202.5(b)(1)	Regulation 202.5(a)(1).
Regulation 202.5(b)(2)	Regulation 202.5(a)(2).
Comment 202.5(b)(2)–1	Comment 202.5(a)(2)–1.
Comment 202.5(b)(2)–2	Comment 202.5(a)(2)–2.
Comment 202.5(b)(2)–3	Comment 202.5(a)(2)–3.
Regulation 202.5(b)(3)	Regulation 202.5(a)(3).
Regulation 202.5(d)(3)	Regulation 202.5(b), (b)(2).
Regulation 202.5(d)(4)	Regulation 202.5(d)(3).
Regulation 202.5(d)(5)	Regulation 202.5(b), (e).
Regulation 202.5(e)	Regulation 202.4(c).
Comment 202.5(e)–1	Comment 202.4(c)–1.
Comment 202.5(e)–2	Comment 202.4(c)–2.
Comment 202.5(e)–3	Comment 202.4(c)–3.

TABLE 5.—SECTION 202.5A—RULES ON PROVIDING APPRAISAL REPORTS

Current	Revised
Regulation 202.5a(a)	Regulation 202.14(a).
Comment 202.5a(a)–1	Comment 202.14(a)–1.
Comment 202.5a(a)–2	Comment 202.14(a)–2.
Comment 202.5a(a)(2)(i)–1	Comment 202.14(a)(2)(i)–1.
Comment 202.5a(a)(2)(ii)–1	Comment 202.14(a)(2)(ii)–1.
Regulation 202.5a(b)	Regulation 202.14(b).
Regulation 202.5a(c)	Regulation 202.14(c).
Comment 202.5a(c)–1	Comment 202.14(c)–1.

TABLE 5.—SECTION 202.5A—RULES ON PROVIDING APPRAISAL REPORTS—Continued

Current	Revised
Comment 202.5a(c)–2	Comment 202.14(c)–2.

TABLE 6.—SECTION 202.6—RULES CONCERNING EVALUATION OF APPLICATIONS

Current	Revised
Comment 202.6(b)(1)–1	Regulation 202.6(b)(8), Comment 202.6(b)(8)–1.
Comment 202.6(b)(1)–2	Comment 202.6(b)(1)–1.

TABLE 7.—SECTION 202.7—RULES CONCERNING EXTENSIONS OF CREDIT

Current	Revised
Comment 7(d)(1)–1	Comment 7(d)(1)–2.

TABLE 8.—SECTION 202.13—INFORMATION FOR MONITORING PURPOSES

Current	Revised
Regulation 202.13(a)	Regulation 202.13(a)(1), (a)(2).
Regulation 202.13(a)(1)	Regulation 202.13(a)(1)(i).
Regulation 202.13(a)(2)	Regulation 202.13(a)(1)(ii).
Regulation 202.13(a)(3)	Regulation 202.13(a)(1)(iii).
Regulation 202.13(a)(4)	Regulation 202.13(a)(1)(iv).
Comment 202.13(b)–4, –5	Comment 202.13(b)–4.
Comment 202.13(b)–6	Comment 202.13(b)–5.
Comment 202.13(b)–7	Comment 202.13(b)–6.

TABLE 9.—SECTION 202.14—ENFORCEMENT, PENALTIES AND LIABILITIES

Current	Revised
Regulation 202.14(a)	Regulation 202.17(a).
Regulation 202.14(b)	Regulation 202.17(b).
Regulation 202.14(c)	Regulation 202.17(c).
Comment 202.14(c)–1	Comment 202.17(c)–1.
Comment 202.14(c)–2	Comment 202.17(c)–2.

TABLE 10.—SECTION 202.17—REQUIREMENTS FOR ELECTRONIC COMMUNICATIONS

Current	Revised
Regulation 202.17(a)	Regulation 202.16(a).
Regulation 202.17(b)	Regulation 202.16(b).
Comment 202.17(b)–1	Comment 202.16(b)–1.
Comment 202.17(b)–2	Comment 202.16(b)–2.
Comment 202.17(b)–3	Comment 202.16(b)–3.
Comment 202.17(b)–4	Comment 202.16(b)–4.
Comment 202.17(b)–5	Comment 202.16(b)–5.
Regulation 202.17(c)	Regulation 202.16(c).
Regulation 202.17(d)	Regulation 202.16(d).
Comment 202.17(d)(1)–1	Comment 202.16(d)(1)–1.
Comment 202.17(d)(2)–1	Comment 202.16(d)(2)–1.
Comment 202.17(d)(2)–2	Comment 202.16(d)(2)–2.
Regulation 202.17(e)	Regulation 202.16(e).
Comment 202.17(e)–1	Comment 202.16(e)–1.
Regulation 202.17(f)	Regulation 202.16(f).
Comment 202.17(f)–1	Comment 202.16(f)–1.

VIII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506; 5 CFR 1320, Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the U.S. Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OMB

control number for this final rule is 7100–0201.

The information collection that is revised by this rulemaking is found in 12 CFR part 202. This information collection is mandatory to evidence compliance with the requirements of 15 U.S.C. 1691b(a)(1) and Public Law 104–208, § 2302(a), and also to ensure that credit is made available to all creditworthy customers without discrimination on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to contract), receipt of public assistance income, or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act (15 U.S.C. 1600 *et seq.*).

Regulation B applies to all types of creditors, not just state member banks (SMBs). However, under the Paperwork Reduction Act, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for entities that are supervised by the Federal Reserve. Appendix A of Regulation B defines these creditors as SMBs, branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. Other Federal agencies account for the paperwork burden for the institutions they supervise. Creditors are required to retain records for 12 to 25 months as evidence of compliance.

The estimated annual burden for entities supervised by the Federal Reserve is approximately 175,700 hours for the 1,312 creditors that are ''respondents'' for purposes of the Paperwork Reduction Act. In conjunction with the proposed revisions to Regulation B, the Board sought comment on the burden estimate for the proposed changes. Approximately 750 comments were received on the proposed rulemaking. Commenters generally opposed most of the major proposed revisions to the regulation, but provided suggestions for additional revisions to help facilitate compliance with the regulation. Creditors commented that the burden estimate in the proposed rulemaking was too low; however, none quantified or provided evidence of acceptable higher estimates.

The increase in the estimated annual burden, from previously published burden estimates, is due to the new disclosure requirement associated with § 202.5(b)(1). Section 202.5(b)(1) requires creditors that collect applicant characteristics for purposes of conducting a self-test to disclose to credit applicants that providing the information is optional, that the creditor will not take the information into account in any aspect of the credit transaction, and, if applicable, that the information will be noted by visual observation or surname if the applicant chooses not to provide it. To help ease burden, a model notice is provided in Appendix C to Regulation B.

The exact burden of the disclosure requirement is difficult to quantify because it is unclear how many creditors will choose to conduct self-tests, but that burden is expected to be minimal given that a model form is provided. The estimated annual burden for the new disclosure is approximately 10,000 hours. The estimated annual burden represents about 3.5 percent of total Federal Reserve System burden.

For purposes of the PRA, no paperwork burden is associated with the recordkeeping requirement for information about prescreened solicitations (§ 202.12(b)(7)). The final rule generally requires creditors to retain information they already retain for business purposes. Thus, there will likely be some incremental compliance burden but no additional paperwork burden; and commenters did not provide any comments to the contrary.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality normally arises. However, the information may be protected from disclosure under exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522(b)).

The Board has a continuing interest in the public's opinions of the Federal Reserve's collections of information. At any time, comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0201), Washington, DC 20503.

IX. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 604(a)), the Board has prepared a final regulatory flexibility analysis of these revisions to Regulation B. The final rule is a consequence of Board policy to review and update its regulations periodically. The Board's previous comprehensive review of Regulation B was completed in 1985.

The Board received no comments specifically responding to the initial regulatory flexibility analysis published in conjunction with the proposed rule. As discussed in the supplementary information presented above, however, many comments the Board received discussed the compliance burdens arising from particular proposals. Such comments are summarized throughout the supplementary information, as are the Board's responses. The supplementary information also contains discussions of the alternative measures the Board considered, and in some cases adopted, to reduce burden.

Some changes in the final rule should not impose additional burden on institutions. The general prohibition on data notation for nonmortgage credit products has been retained, subject to an exception to allow the collection of applicants' personal characteristics for the purpose of conducting a self-test under § 202.15. To the extent creditors choose to collect these data, however, the final rule requires a disclosure to be made to applicants. The Board has tried to minimize any burden imposed by the disclosure requirement by publishing a model disclosure form. The exact burden of the disclosure requirement is difficult to quantify; it is uncertain how many creditors will choose to conduct self-tests and collect these data.

The final rule imposes a new requirement upon creditors to retain certain records in connection with certain prescreened solicitations. This requirement will enable the Board and the other enforcement agencies to monitor solicitation practices in a systematic way that to date has not been possible, based on information that creditors currently maintain. The Board will at some future date determine whether additional steps might be warranted for coverage of prescreened solicitations by Regulation B.

Although the new rule will impose some burden on creditors, the Board has sought to minimize burden by tracking existing legal requirements and current business practice. For example, users of consumer reports are required to retain some prescreening information under the Fair Credit Reporting Act. The final rule under Regulation B parallels this requirement. In addition, many creditors retain part or much of the solicitation information for business purposes, such as to evaluate marketing plans.

The Board has modified the final rule to further reduce compliance burden. The proposed rule would have required creditors to keep the marketing plan to

which a solicitation relates. The Board has not adopted this requirement because it may be overly burdensome. And since prescreened solicitations may be one aspect of a creditor's overall marketing program, reviewing a single component might not have provided the proper context. While creditors will be required to keep information relating to complaints about solicitations, creditors will not be required to store the information in a centralized database or set of files. Creditors will have the flexibility to retain such correspondence in any manner that would be reasonably accessible and understandable to examiners.

Burdens associated with the requirement to retain records relating to prescreened solicitations likely will be greater for large creditors than for small creditors, because large creditors are more active in this area. The number of small creditors affected by the recordkeeping requirement is unknown but is likely to be small.

The proposed rule would have required creditors to retain records for 25 months rather than 12 months for certain types of business credit. The Board has not adopted the proposed rule, based on its belief that the compliance burden would outweigh the benefits. For example, the use of electronic record storage for many business credit records is not as prevalent as the Board believed when it issued the proposal. Thus, no additional burden is imposed by the final rule.

In light of the purposes of the Equal Credit Opportunity Act, the Board believes it is not feasible to create different rules for large and small creditors.

List of Subjects in 12 CFR Part 202

Aged, Banks, Banking, Civil rights, Consumer protections, Credit, Discrimination, Federal Reserve System, Marital status discrimination, Penalties, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination.

For the reasons set forth in the preamble, 12 CFR part 202 is revised as follows:

PART 202—EQUAL CREDIT OPPORTUNITY ACT (REGULATION B)

Regulation B (Equal Credit Opportunity)

Sec.

202.1 Authority, scope and purpose.
202.2 Definitions.
202.3 Limited exceptions for certain classes of transactions.
202.4 General rules.
202.5 Rules concerning requests for information.
202.6 Rules concerning evaluation of applications.
202.7 Rules concerning extensions of credit.
202.8 Special purpose credit programs.
202.9 Notifications.
202.10 Furnishing of credit information.
202.11 Relation to state law.
202.12 Record retention.
202.13 Information for monitoring purposes.
202.14 Rules on providing appraisal reports.
202.15 Incentives for self-testing and self-correction.
202.16 Requirements for electronic communication.
202.17 Enforcement, penalties and liabilities.
Appendix A to Part 202—Federal Enforcement Agencies
Appendix B to Part 202—Model Application Forms
Appendix C to Part 202—Sample Notification Forms
Appendix D to Part 202—Issuance of Staff Interpretations
Supplement I to Part 202—Official Staff Interpretations

Authority: 15 U.S.C. 1691–1691f.

§ 202.1 Authority, scope and purpose.

(a) *Authority and scope.* This regulation is issued by the Board of Governors of the Federal Reserve System pursuant to title VII (Equal Credit Opportunity Act) of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 *et seq.*). Except as otherwise provided herein, this regulation applies to all persons who are creditors, as defined in § 202.2(1). Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 *et seq.* and have been assigned OMB No. 7100–0201.

(b) *Purpose.* The purpose of this regulation is to promote the availability of credit to all creditworthy applicants without regard to race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to contract); to the fact that all or part of the applicant's income derives from a public assistance program; or to the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The regulation prohibits creditor practices that discriminate on the basis of any of these factors. The regulation also requires creditors to notify applicants of action taken on their applications; to report credit history in the names of both spouses on an account; to retain records of credit applications; to collect information about the applicant's race and other personal characteristics in applications for certain dwelling-related loans; and to provide applicants with copies of appraisal reports used in connection with credit transactions.

§ 202.2 Definitions.

For the purposes of this regulation, unless the context indicates otherwise, the following definitions apply.

(a) *Account* means an extension of credit. When employed in relation to an account, the word use refers only to open-end credit.

(b) *Act* means the Equal Credit Opportunity Act (title VII of the Consumer Credit Protection Act).

(c) *Adverse action*—(1) The term means:

(i) A refusal to grant credit in substantially the amount or on substantially the terms requested in an application unless the creditor makes a counteroffer (to grant credit in a different amount or on other terms) and the applicant uses or expressly accepts the credit offered;

(ii) A termination of an account or an unfavorable change in the terms of an account that does not affect all or substantially all of a class of the creditor's accounts; or

(iii) A refusal to increase the amount of credit available to an applicant who has made an application for an increase.

(2) The term does not include:

(i) A change in the terms of an account expressly agreed to by an applicant.

(ii) Any action or forbearance relating to an account taken in connection with inactivity, default, or delinquency as to that account;

(iii) A refusal or failure to authorize an account transaction at point of sale or loan, except when the refusal is a termination or an unfavorable change in the terms of an account that does not affect all or substantially all of a class of the creditor's accounts, or when the refusal is a denial of an application for an increase in the amount of credit available under the account;

(iv) A refusal to extend credit because applicable law prohibits the creditor from extending the credit requested; or

(v) A refusal to extend credit because the creditor does not offer the type of credit or credit plan requested.

(3) An action that falls within the definition of both paragraphs (c)(1) and (c)(2) of this section is governed by paragraph (c)(2) of this section.

(d) *Age* refers only to the age of natural persons and means the number of fully elapsed years from the date of an applicant's birth.

(e) *Applicant* means any person who requests or who has received an extension of credit from a creditor, and includes any person who is or may

become contractually liable regarding an extension of credit. For purposes of § 202.7(d), the term includes guarantors, sureties, endorsers, and similar parties.

(f) *Application* means an oral or written request for an extension of credit that is made in accordance with procedures used by a creditor for the type of credit requested. The term application does not include the use of an account or line of credit to obtain an amount of credit that is within a previously established credit limit. A *completed application* means an application in connection with which a creditor has received all the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested (including, but not limited to, credit reports, any additional information requested from the applicant, and any approvals or reports by governmental agencies or other persons that are necessary to guarantee, insure, or provide security for the credit or collateral). The creditor shall exercise reasonable diligence in obtaining such information.

(g) *Business credit* refers to extensions of credit primarily for business or commercial (including agricultural) purposes, but excluding extensions of credit of the types described in § 202.3(a)–(d).

(h) *Consumer credit* means credit extended to a natural person primarily for personal, family, or household purposes.

(i) *Contractually liable* means expressly obligated to repay all debts arising on an account by reason of an agreement to that effect.

(j) *Credit* means the right granted by a creditor to an applicant to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment therefor.

(k) *Credit card* means any card, plate, coupon book, or other single credit device that may be used from time to time to obtain money, property, or services on credit.

(l) *Creditor* means a person who, in the ordinary course of business, regularly participates in a credit decision, including setting the terms of the credit. The term creditor includes a creditor's assignee, transferee, or subrogee who so participates. For purposes of § 202.4(a) and (b), the term creditor also includes a person who, in the ordinary course of business, regularly refers applicants or prospective applicants to creditors, or selects or offers to select creditors to whom requests for credit may be made. A person is not a creditor regarding any violation of the Act or this regulation committed by another creditor unless the person knew or had reasonable notice of the act, policy, or practice that constituted the violation before becoming involved in the credit transaction. The term does not include a person whose only participation in a credit transaction involves honoring a credit card.

(m) *Credit transaction* means every aspect of an applicant's dealings with a creditor regarding an application for credit or an existing extension of credit (including, but not limited to, information requirements; investigation procedures; standards of creditworthiness; terms of credit; furnishing of credit information; revocation, alteration, or termination of credit; and collection procedures).

(n) *Discriminate against an applicant* means to treat an applicant less favorably than other applicants.

(o) *Elderly* means age 62 or older.

(p) *Empirically derived and other credit scoring systems*—(1) *A credit scoring system* is a system that evaluates an applicant's creditworthiness mechanically, based on key attributes of the applicant and aspects of the transaction, and that determines, alone or in conjunction with an evaluation of additional information about the applicant, whether an applicant is deemed creditworthy. To qualify as an *empirically derived, demonstrably and statistically sound, credit scoring system*, the system must be:

(i) Based on data that are derived from an empirical comparison of sample groups or the population of creditworthy and noncreditworthy applicants who applied for credit within a reasonable preceding period of time;

(ii) Developed for the purpose of evaluating the creditworthiness of applicants with respect to the legitimate business interests of the creditor utilizing the system (including, but not limited to, minimizing bad debt losses and operating expenses in accordance with the creditor's business judgment);

(iii) Developed and validated using accepted statistical principles and methodology; and

(iv) Periodically revalidated by the use of appropriate statistical principles and methodology and adjusted as necessary to maintain predictive ability.

(2) A creditor may use an empirically derived, demonstrably and statistically sound, credit scoring system obtained from another person or may obtain credit experience from which to develop such a system. Any such system must satisfy the criteria set forth in paragraph (p)(1)(i) through (iv) of this section; if the creditor is unable during the development process to validate the system based on its own credit experience in accordance with paragraph (p)(1) of this section, the system must be validated when sufficient credit experience becomes available. A system that fails this validity test is no longer an empirically derived, demonstrably and statistically sound, credit scoring system for that creditor.

(q) *Extend credit* and *extension of credit* mean the granting of credit in any form (including, but not limited to, credit granted in addition to any existing credit or credit limit; credit granted pursuant to an open-end credit plan; the refinancing or other renewal of credit, including the issuance of a new credit card in place of an expiring credit card or in substitution for an existing credit card; the consolidation of two or more obligations; or the continuance of existing credit without any special effort to collect at or after maturity).

(r) *Good faith* means honesty in fact in the conduct or transaction.

(s) *Inadvertent error* means a mechanical, electronic, or clerical error that a creditor demonstrates was not intentional and occurred notwithstanding the maintenance of procedures reasonably adapted to avoid such errors.

(t) *Judgmental system of evaluating applicants* means any system for evaluating the creditworthiness of an applicant other than an empirically derived, demonstrably and statistically sound, credit scoring system.

(u) *Marital status* means the state of being unmarried, married, or separated, as defined by applicable state law. The term ''unmarried'' includes persons who are single, divorced, or widowed.

(v) *Negative factor or value,* in relation to the age of elderly applicants, means utilizing a factor, value, or weight that is less favorable regarding elderly applicants than the creditor's experience warrants or is less favorable than the factor, value, or weight assigned to the class of applicants that are not classified as elderly and are most favored by a creditor on the basis of age.

(w) *Open-end credit* means credit extended under a plan in which a creditor may permit an applicant to make purchases or obtain loans from time to time directly from the creditor or indirectly by use of a credit card, check, or other device.

(x) *Person* means a natural person, corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(y) *Pertinent element of creditworthiness,* in relation to a judgmental system of evaluating

applicants, means any information about applicants that a creditor obtains and considers and that has a demonstrable relationship to a determination of creditworthiness.

(z) *Prohibited basis* means race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to enter into a binding contract); the fact that all or part of the applicant's income derives from any public assistance program; or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act or any state law upon which an exemption has been granted by the Board.

(aa) *State* means any state, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

§ 202.3 Limited exceptions for certain classes of transactions.

(a) *Public utilities credit*—(1) *Definition.* Public utilities credit refers to extensions of credit that involve public utility services provided through pipe, wire, or other connected facilities, or radio or similar transmission (including extensions of such facilities), if the charges for service, delayed payment, and any discount for prompt payment are filed with or regulated by a government unit.

(2) *Exceptions.* The following provisions of this regulation do not apply to public utilities credit:

(i) Section 202.5(d)(1) concerning information about marital status; and

(ii) Section 202.12(b) relating to record retention.

(b) *Securities credit*—(1) *Definition.* Securities credit refers to extensions of credit subject to regulation under section 7 of the Securities Exchange Act of 1934 or extensions of credit by a broker or dealer subject to regulation as a broker or dealer under the Securities Exchange Act of 1934.

(2) *Exceptions.* The following provisions of this regulation do not apply to securities credit:

(i) Section 202.5(b) concerning information about the sex of an applicant;

(ii) Section 202.5(c) concerning information about a spouse or former spouse;

(iii) Section 202.5(d)(1) concerning information about marital status;

(iv) Section 202.7(b) relating to designation of name to the extent necessary to comply with rules regarding an account in which a broker or dealer has an interest, or rules regarding the aggregation of accounts of spouses to determine controlling interests, beneficial interests, beneficial ownership, or purchase limitations and restrictions;

(v) Section 202.7(c) relating to action concerning open-end accounts, to the extent the action taken is on the basis of a change of name or marital status;

(vi) Section 202.7(d) relating to the signature of a spouse or other person;

(vii) Section 202.10 relating to furnishing of credit information; and

(viii) Section 202.12(b) relating to record retention.

(c) *Incidental credit*—(1) *Definition.* Incidental credit refers to extensions of consumer credit other than the types described in paragraphs (a) and (b) of this section:

(i) That are not made pursuant to the terms of a credit card account;

(ii) That are not subject to a finance charge (as defined in Regulation Z, 12 CFR 226.4); and

(iii) That are not payable by agreement in more than four installments.

(2) *Exceptions.* The following provisions of this regulation do not apply to incidental credit:

(i) Section 202.5(b) concerning information about the sex of an applicant, but only to the extent necessary for medical records or similar purposes;

(ii) Section 202.5(c) concerning information about a spouse or former spouse;

(iii) Section 202.5(d)(1) concerning information about marital status;

(iv) Section 202.5(d)(2) concerning information about income derived from alimony, child support, or separate maintenance payments;

(v) Section 202.7(d) relating to the signature of a spouse or other person;

(vi) Section 202.9 relating to notifications;

(vii) Section 202.10 relating to furnishing of credit information; and

(viii) Section 202.12(b) relating to record retention.

(d) *Government credit*—(1) *Definition.* Government credit refers to extensions of credit made to governments or governmental subdivisions, agencies, or instrumentalities.

(2) *Applicability of regulation.* Except for § 202.4(a), the general rule against discrimination on a prohibited basis, the requirements of this regulation do not apply to government credit.

§ 202.4 General rules.

(a) *Discrimination.* A creditor shall not discriminate against an applicant on a prohibited basis regarding any aspect of a credit transaction.

(b) *Discouragement.* A creditor shall not make any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application.

(c) *Written applications.* A creditor shall take written applications for the dwelling-related types of credit covered by § 202.13(a).

(d) *Form of disclosures.* A creditor that provides in writing any disclosures or information required by this regulation must provide the disclosures in a clear and conspicuous manner and, except for the disclosures required by §§ 202.5 and 202.13, in a form the applicant may retain.

(e) *Foreign-language disclosures.* Disclosures may be made in languages other than English, provided they are available in English upon request.

§ 202.5 Rules concerning requests for information.

(a) *General rules*—(1) *Requests for information.* Except as provided in paragraphs (b) through (d) of this section, a creditor may request any information in connection with a credit transaction.[1]

(2) *Required collection of information.* Notwithstanding paragraphs (b) through (d) of this section, a creditor shall request information for monitoring purposes as required by § 202.13 for credit secured by the applicant's dwelling. In addition, a creditor may obtain information required by a regulation, order, or agreement issued by, or entered into with, a court or an enforcement agency (including the Attorney General of the United States or a similar state official) to monitor or enforce compliance with the Act, this regulation, or other federal or state statutes or regulations.

(3) *Special-purpose credit.* A creditor may obtain information that is otherwise restricted to determine eligibility for a special purpose credit program, as provided in § 202.8(b), (c), and (d).

(b) *Limitation on information about race, color, religion, national origin, or sex.* A creditor shall not inquire about the race, color, religion, national origin, or sex of an applicant or any other person in connection with a credit transaction, except as provided in paragraphs (b)(1) and (b)(2) of this section.

(1) *Self-test.* A creditor may inquire about the race, color, religion, national origin, or sex of an applicant or any other person in connection with a credit transaction for the purpose of

[1] This paragraph does not limit or abrogate any Federal or State law regarding privacy, privileged information, credit reporting limitations, or similar restrictions on obtainable information.

conducting a self-test that meets the requirements of § 202.15. A creditor that makes such an inquiry shall disclose orally or in writing, at the time the information is requested, that:

(i) The applicant will not be required to provide the information;

(ii) The creditor is requesting the information to monitor its compliance with the federal Equal Credit Opportunity Act;

(iii) Federal law prohibits the creditor from discriminating on the basis of this information, or on the basis of an applicant's decision not to furnish the information; and

(iv) If applicable, certain information will be collected based on visual observation or surname if not provided by the applicant or other person.

(2) *Sex.* An applicant may be requested to designate a title on an application form (such as Ms., Miss, Mr., or Mrs.) if the form discloses that the designation of a title is optional. An application form shall otherwise use only terms that are neutral as to sex.

(c) *Information about a spouse or former spouse*—(1) *General rule.* Except as permitted in this paragraph, a creditor may not request any information concerning the spouse or former spouse of an applicant.

(2) *Permissible inquiries.* A creditor may request any information concerning an applicant's spouse (or former spouse under paragraph (c)(2)(v) of this section) that may be requested about the applicant if:

(i) The spouse will be permitted to use the account;

(ii) The spouse will be contractually liable on the account;

(iii) The applicant is relying on the spouse's income as a basis for repayment of the credit requested;

(iv) The applicant resides in a community property state or is relying on property located in such a state as a basis for repayment of the credit requested; or

(v) The applicant is relying on alimony, child support, or separate maintenance payments from a spouse or former spouse as a basis for repayment of the credit requested.

(3) *Other accounts of the applicant.* A creditor may request that an applicant list any account on which the applicant is contractually liable and to provide the name and address of the person in whose name the account is held. A creditor may also ask an applicant to list the names in which the applicant has previously received credit.

(d) *Other limitations on information requests*—(1) *Marital status.* If an applicant applies for individual unsecured credit, a creditor shall not inquire about the applicant's marital status unless the applicant resides in a community property state or is relying on property located in such a state as a basis for repayment of the credit requested. If an application is for other than individual unsecured credit, a creditor may inquire about the applicant's marital status, but shall use only the terms *married, unmarried,* and *separated.* A creditor may explain that the category *unmarried* includes single, divorced, and widowed persons.

(2) *Disclosure about income from alimony, child support, or separate maintenance.* A creditor shall not inquire whether income stated in an application is derived from alimony, child support, or separate maintenance payments unless the creditor discloses to the applicant that such income need not be revealed if the applicant does not want the creditor to consider it in determining the applicant's creditworthiness.

(3) *Childbearing, childrearing.* A creditor shall not inquire about birth control practices, intentions concerning the bearing or rearing of children, or capability to bear children. A creditor may inquire about the number and ages of an applicant's dependents or about dependent-related financial obligations or expenditures, provided such information is requested without regard to sex, marital status, or any other prohibited basis.

(e) *Permanent residency and immigration status.* A creditor may inquire about the permanent residency and immigration status of an applicant or any other person in connection with a credit transaction.

§ 202.6 Rules concerning evaluation of applications.

(a) *General rule concerning use of information.* Except as otherwise provided in the Act and this regulation, a creditor may consider any information obtained, so long as the information is not used to discriminate against an applicant on a prohibited basis.[2]

(b) *Specific rules concerning use of information*—(1) Except as provided in the Act and this regulation, a creditor shall not take a prohibited basis into account in any system of evaluating the creditworthiness of applicants.

(2) *Age, receipt of public assistance.* (i) Except as permitted in this paragraph, a creditor shall not take into account an applicant's age (provided that the applicant has the capacity to enter into a binding contract) or whether an applicant's income derives from any public assistance program.

(ii) In an empirically derived, demonstrably and statistically sound, credit scoring system, a creditor may use an applicant's age as a predictive variable, provided that the age of an elderly applicant is not assigned a negative factor or value.

(iii) In a judgmental system of evaluating creditworthiness, a creditor may consider an applicant's age or whether an applicant's income derives from any public assistance program only for the purpose of determining a pertinent element of creditworthiness.

(iv) In any system of evaluating creditworthiness, a creditor may consider the age of an elderly applicant when such age is used to favor the elderly applicant in extending credit.

(3) *Childbearing, childrearing.* In evaluating creditworthiness, a creditor shall not make assumptions or use aggregate statistics relating to the likelihood that any category of persons will bear or rear children or will, for that reason, receive diminished or interrupted income in the future.

(4) *Telephone listing.* A creditor shall not take into account whether there is a telephone listing in the name of an applicant for consumer credit but may take into account whether there is a telephone in the applicant's residence.

(5) *Income.* A creditor shall not discount or exclude from consideration the income of an applicant or the spouse of an applicant because of a prohibited basis or because the income is derived from part-time employment or is an annuity, pension, or other retirement benefit; a creditor may consider the amount and probable continuance of any income in evaluating an applicant's creditworthiness. When an applicant relies on alimony, child support, or separate maintenance payments in applying for credit, the creditor shall consider such payments as income to the extent that they are likely to be consistently made.

(6) *Credit history.* To the extent that a creditor considers credit history in evaluating the creditworthiness of similarly qualified applicants for a similar type and amount of credit, in evaluating an applicant's creditworthiness a creditor shall consider:

(i) The credit history, when available, of accounts designated as accounts that the applicant and the applicant's spouse are permitted to use or for which both are contractually liable;

[2] The legislative history of the Act indicates that the Congress intended an ''effects test'' concept, as outlined in the employment field by the Supreme Court in the cases of *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971), and *Albemarle Paper Co.* v. *Moody,* 422 U.S. 405 (1975), to be applicable to a creditor's determination of creditworthiness.

(ii) On the applicant's request, any information the applicant may present that tends to indicate the credit history being considered by the creditor does not accurately reflect the applicant's creditworthiness; and

(iii) On the applicant's request, the credit history, when available, of any account reported in the name of the applicant's spouse or former spouse that the applicant can demonstrate accurately reflects the applicant's creditworthiness.

(7) *Immigration status.* A creditor may consider the applicant's immigration status or status as a permanent resident of the United States, and any additional information that may be necessary to ascertain the creditor's rights and remedies regarding repayment.

(8) *Marital status.* Except as otherwise permitted or required by law, a creditor shall evaluate married and unmarried applicants by the same standards; and in evaluating joint applicants, a creditor shall not treat applicants differently based on the existence, absence, or likelihood of a marital relationship between the parties.

(9) *Race, color, religion, national origin, sex.* Except as otherwise permitted or required by law, a creditor shall not consider race, color, religion, national origin, or sex (or an applicant's or other person's decision not to provide the information) in any aspect of a credit transaction.

(c) *State property laws.* A creditor's consideration or application of state property laws directly or indirectly affecting creditworthiness does not constitute unlawful discrimination for the purposes of the Act or this regulation.

§ 202.7 Rules concerning extensions of credit.

(a) *Individual accounts.* A creditor shall not refuse to grant an individual account to a creditworthy applicant on the basis of sex, marital status, or any other prohibited basis.

(b) *Designation of name.* A creditor shall not refuse to allow an applicant to open or maintain an account in a birth-given first name and a surname that is the applicant's birth-given surname, the spouse's surname, or a combined surname.

(c) *Action concerning existing open-end accounts*—(1) *Limitations.* In the absence of evidence of the applicant's inability or unwillingness to repay, a creditor shall not take any of the following actions regarding an applicant who is contractually liable on an existing open-end account on the basis of the applicant's reaching a certain age or retiring or on the basis of a change in the applicant's name or marital status:

(i) Require a reapplication, except as provided in paragraph (c)(2) of this section;

(ii) Change the terms of the account; or

(iii) Terminate the account.

(2) *Requiring reapplication.* A creditor may require a reapplication for an open-end account on the basis of a change in the marital status of an applicant who is contractually liable if the credit granted was based in whole or in part on income of the applicant's spouse and if information available to the creditor indicates that the applicant's income may not support the amount of credit currently available.

(d) *Signature of spouse or other person*—(1) *Rule for qualified applicant.* Except as provided in this paragraph, a creditor shall not require the signature of an applicant's spouse or other person, other than a joint applicant, on any credit instrument if the applicant qualifies under the creditor's standards of creditworthiness for the amount and terms of the credit requested. A creditor shall not deem the submission of a joint financial statement or other evidence of jointly held assets as an application for joint credit.

(2) *Unsecured credit.* If an applicant requests unsecured credit and relies in part upon property that the applicant owns jointly with another person to satisfy the creditor's standards of creditworthiness, the creditor may require the signature of the other person only on the instrument(s) necessary, or reasonably believed by the creditor to be necessary, under the law of the state in which the property is located, to enable the creditor to reach the property being relied upon in the event of the death or default of the applicant.

(3) *Unsecured credit—community property states.* If a married applicant requests unsecured credit and resides in a community property state, or if the applicant is relying on property located in such a state, a creditor may require the signature of the spouse on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to make the community property available to satisfy the debt in the event of default if:

(i) Applicable state law denies the applicant power to manage or control sufficient community property to qualify for the credit requested under the creditor's standards of creditworthiness; and

(ii) The applicant does not have sufficient separate property to qualify for the credit requested without regard to community property.

(4) *Secured credit.* If an applicant requests secured credit, a creditor may require the signature of the applicant's spouse or other person on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to make the property being offered as security available to satisfy the debt in the event of default, for example, an instrument to create a valid lien, pass clear title, waive inchoate rights, or assign earnings.

(5) *Additional parties.* If, under a creditor's standards of creditworthiness, the personal liability of an additional party is necessary to support the credit requested, a creditor may request a cosigner, guarantor, endorser, or similar party. The applicant's spouse may serve as an additional party, but the creditor shall not require that the spouse be the additional party.

(6) *Rights of additional parties.* A creditor shall not impose requirements upon an additional party that the creditor is prohibited from imposing upon an applicant under this section.

(e) *Insurance.* A creditor shall not refuse to extend credit and shall not terminate an account because credit life, health, accident, disability, or other credit-related insurance is not available on the basis of the applicant's age.

§ 202.8 Special purpose credit programs.

(a) *Standards for programs.* Subject to the provisions of paragraph (b) of this section, the Act and this regulation permit a creditor to extend special purpose credit to applicants who meet eligibility requirements under the following types of credit programs:

(1) Any credit assistance program expressly authorized by federal or state law for the benefit of an economically disadvantaged class of persons;

(2) Any credit assistance program offered by a not-for-profit organization, as defined under section 501(c) of the Internal Revenue Code of 1954, as amended, for the benefit of its members or for the benefit of an economically disadvantaged class of persons; or

(3) Any special purpose credit program offered by a for-profit organization, or in which such an organization participates to meet special social needs, if:

(i) The program is established and administered pursuant to a written plan that identifies the class of persons that the program is designed to benefit and sets forth the procedures and standards for extending credit pursuant to the program; and

(ii) The program is established and administered to extend credit to a class of persons who, under the organization's customary standards of

creditworthiness, probably would not receive such credit or would receive it on less favorable terms than are ordinarily available to other applicants applying to the organization for a similar type and amount of credit.

(b) *Rules in other sections*—(1) *General applicability.* All the provisions of this regulation apply to each of the special purpose credit programs described in paragraph (a) of this section except as modified by this section.

(2) *Common characteristics.* A program described in paragraph (a)(2) or (a)(3) of this section qualifies as a special purpose credit program only if it was established and is administered so as not to discriminate against an applicant on any prohibited basis; however, all program participants may be required to share one or more common characteristics (for example, race, national origin, or sex) so long as the program was not established and is not administered with the purpose of evading the requirements of the Act or this regulation.

(c) *Special rule concerning requests and use of information.* If participants in a special purpose credit program described in paragraph (a) of this section are required to possess one or more common characteristics (for example, race, national origin, or sex) and if the program otherwise satisfies the requirements of paragraph (a) of this section, a creditor may request and consider information regarding the common characteristic(s) in determining the applicant's eligibility for the program.

(d) *Special rule in the case of financial need.* If financial need is one of the criteria under a special purpose credit program described in paragraph (a) of this section, the creditor may request and consider, in determining an applicant's eligibility for the program, information regarding the applicant's marital status; alimony, child support, and separate maintenance income; and the spouse's financial resources. In addition, a creditor may obtain the signature of an applicant's spouse or other person on an application or credit instrument relating to a special purpose credit program if the signature is required by federal or state law.

§ 202.9 Notifications.

(a) *Notification of action taken, ECOA notice, and statement of specific reasons*—(1) *When notification is required.* A creditor shall notify an applicant of action taken within:

(i) 30 days after receiving a completed application concerning the creditor's approval of, counteroffer to, or adverse action on the application;

(ii) 30 days after taking adverse action on an incomplete application, unless notice is provided in accordance with paragraph (c) of this section;

(iii) 30 days after taking adverse action on an existing account; or

(iv) 90 days after notifying the applicant of a counteroffer if the applicant does not expressly accept or use the credit offered.

(2) *Content of notification when adverse action is taken.* A notification given to an applicant when adverse action is taken shall be in writing and shall contain a statement of the action taken; the name and address of the creditor; a statement of the provisions of § 701(a) of the Act; the name and address of the federal agency that administers compliance with respect to the creditor; and either:

(i) A statement of specific reasons for the action taken; or

(ii) A disclosure of the applicant's right to a statement of specific reasons within 30 days, if the statement is requested within 60 days of the creditor's notification. The disclosure shall include the name, address, and telephone number of the person or office from which the statement of reasons can be obtained. If the creditor chooses to provide the reasons orally, the creditor shall also disclose the applicant's right to have them confirmed in writing within 30 days of receiving the applicant's written request for confirmation.

(3) *Notification to business credit applicants.* For business credit, a creditor shall comply with the notification requirements of this section in the following manner:

(i) With regard to a business that had gross revenues of $1 million or less in its preceding fiscal year (other than an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit), a creditor shall comply with paragraphs (a)(1) and (2) of this section, except that:

(A) The statement of the action taken may be given orally or in writing, when adverse action is taken;

(B) Disclosure of an applicant's right to a statement of reasons may be given at the time of application, instead of when adverse action is taken, provided the disclosure contains the information required by paragraph (a)(2)(ii) of this section and the ECOA notice specified in paragraph (b)(1) of this section;

(C) For an application made entirely by telephone, a creditor satisfies the requirements of paragraph (a)(3)(i) of this section by an oral statement of the action taken and of the applicant's right to a statement of reasons for adverse action.

(ii) With regard to a business that had gross revenues in excess of $1 million in its preceding fiscal year or an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit, a creditor shall:

(A) Notify the applicant, within a reasonable time, orally or in writing, of the action taken; and

(B) Provide a written statement of the reasons for adverse action and the ECOA notice specified in paragraph (b)(1) of this section if the applicant makes a written request for the reasons within 60 days of the creditor's notification.

(b) *Form of ECOA notice and statement of specific reasons*—(1) *ECOA notice.* To satisfy the disclosure requirements of paragraph (a)(2) of this section regarding section 701(a) of the Act, the creditor shall provide a notice that is substantially similar to the following: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is [name and address as specified by the appropriate agency listed in appendix A of this regulation].

(2) *Statement of specific reasons.* The statement of reasons for adverse action required by paragraph (a)(2)(i) of this section must be specific and indicate the principal reason(s) for the adverse action. Statements that the adverse action was based on the creditor's internal standards or policies or that the applicant, joint applicant, or similar party failed to achieve a qualifying score on the creditor's credit scoring system are insufficient.

(c) *Incomplete applications*—(1) *Notice alternatives.* Within 30 days after receiving an application that is incomplete regarding matters that an applicant can complete, the creditor shall notify the applicant either:

(i) Of action taken, in accordance with paragraph (a) of this section; or

(ii) Of the incompleteness, in accordance with paragraph (c)(2) of this section.

(2) *Notice of incompleteness.* If additional information is needed from an applicant, the creditor shall send a

written notice to the applicant specifying the information needed, designating a reasonable period of time for the applicant to provide the information, and informing the applicant that failure to provide the information requested will result in no further consideration being given to the application. The creditor shall have no further obligation under this section if the applicant fails to respond within the designated time period. If the applicant supplies the requested information within the designated time period, the creditor shall take action on the application and notify the applicant in accordance with paragraph (a) of this section.

(3) *Oral request for information.* At its option, a creditor may inform the applicant orally of the need for additional information. If the application remains incomplete the creditor shall send a notice in accordance with paragraph (c)(1) of this section.

(d) *Oral notifications by small-volume creditors.* In the case of a creditor that did not receive more than 150 applications during the preceding calendar year, the requirements of this section (including statements of specific reasons) are satisfied by oral notifications.

(e) *Withdrawal of approved application.* When an applicant submits an application and the parties contemplate that the applicant will inquire about its status, if the creditor approves the application and the applicant has not inquired within 30 days after applying, the creditor may treat the application as withdrawn and need not comply with paragraph (a)(1) of this section.

(f) *Multiple applicants.* When an application involves more than one applicant, notification need only be given to one of them but must be given to the primary applicant where one is readily apparent.

(g) *Applications submitted through a third party.* When an application is made on behalf of an applicant to more than one creditor and the applicant expressly accepts or uses credit offered by one of the creditors, notification of action taken by any of the other creditors is not required. If no credit is offered or if the applicant does not expressly accept or use the credit offered, each creditor taking adverse action must comply with this section, directly or through a third party. A notice given by a third party shall disclose the identity of each creditor on whose behalf the notice is given.

(h) *Duties of third parties.* A third party may use electronic communication in accordance with the requirements of § 202.16, as applicable, to comply with the requirements of paragraph (g) of this section on behalf of a creditor.

§ 202.10 Furnishing of credit information.

(a) *Designation of accounts.* A creditor that furnishes credit information shall designate:

(1) Any new account to reflect the participation of both spouses if the applicant's spouse is permitted to use or is contractually liable on the account (other than as a guarantor, surety, endorser, or similar party); and

(2) Any existing account to reflect such participation, within 90 days after receiving a written request to do so from one of the spouses.

(b) *Routine reports to consumer reporting agency.* If a creditor furnishes credit information to a consumer reporting agency concerning an account designated to reflect the participation of both spouses, the creditor shall furnish the information in a manner that will enable the agency to provide access to the information in the name of each spouse.

(c) *Reporting in response to inquiry.* If a creditor furnishes credit information in response to an inquiry, concerning an account designated to reflect the participation of both spouses, the creditor shall furnish the information in the name of the spouse about whom the information is requested.

§ 202.11 Relation to state law.

(a) *Inconsistent state laws.* Except as otherwise provided in this section, this regulation alters, affects, or preempts only those state laws that are inconsistent with the Act and this regulation and then only to the extent of the inconsistency. A state law is not inconsistent if it is more protective of an applicant.

(b) *Preempted provisions of state law*—(1) A state law is deemed to be inconsistent with the requirements of the Act and this regulation and less protective of an applicant within the meaning of section 705(f) of the Act to the extent that the law:

(i) Requires or permits a practice or act prohibited by the Act or this regulation;

(ii) Prohibits the individual extension of consumer credit to both parties to a marriage if each spouse individually and voluntarily applies for such credit;

(iii) Prohibits inquiries or collection of data required to comply with the Act or this regulation;

(iv) Prohibits asking about or considering age in an empirically derived, demonstrably and statistically sound, credit scoring system to determine a pertinent element of creditworthiness, or to favor an elderly applicant; or

(v) Prohibits inquiries necessary to establish or administer a special purpose credit program as defined by § 202.8.

(2) A creditor, state, or other interested party may request that the Board determine whether a state law is inconsistent with the requirements of the Act and this regulation.

(c) *Laws on finance charges, loan ceilings.* If married applicants voluntarily apply for and obtain individual accounts with the same creditor, the accounts shall not be aggregated or otherwise combined for purposes of determining permissible finance charges or loan ceilings under any federal or state law. Permissible loan ceiling laws shall be construed to permit each spouse to become individually liable up to the amount of the loan ceilings, less the amount for which the applicant is jointly liable.

(d) *State and federal laws not affected.* This section does not alter or annul any provision of state property laws, laws relating to the disposition of decedents' estates, or federal or state banking regulations directed only toward insuring the solvency of financial institutions.

(e) *Exemption for state-regulated transactions*—(1) *Applications.* A state may apply to the Board for an exemption from the requirements of the Act and this regulation for any class of credit transactions within the state. The Board will grant such an exemption if the Board determines that:

(i) The class of credit transactions is subject to state law requirements substantially similar to those of the Act and this regulation or that applicants are afforded greater protection under state law; and

(ii) There is adequate provision for state enforcement.

(2) *Liability and enforcement.* (i) No exemption will extend to the civil liability provisions of section 706 of the Act or the administrative enforcement provisions of section 704 of the Act.

(ii) After an exemption has been granted, the requirements of the applicable state law (except for additional requirements not imposed by federal law) will constitute the requirements of the Act and this regulation.

§ 202.12 Record retention.

(a) *Retention of prohibited information.* A creditor may retain in its files information that is prohibited by the Act or this regulation for use in

evaluating applications, without violating the Act or this regulation, if the information was obtained:

(1) From any source prior to March 23, 1977;

(2) From consumer reporting agencies, an applicant, or others without the specific request of the creditor; or

(3) As required to monitor compliance with the Act and this regulation or other federal or state statutes or regulations.

(b) *Preservation of records*—(1) *Applications.* For 25 months (12 months for business credit, except as provided in paragraph (b)(5) of this section) after the date that a creditor notifies an applicant of action taken on an application or of incompleteness, the creditor shall retain in original form or a copy thereof:

(i) Any application that it receives, any information required to be obtained concerning characteristics of the applicant to monitor compliance with the Act and this regulation or other similar law, and any other written or recorded information used in evaluating the application and not returned to the applicant at the applicant's request;

(ii) A copy of the following documents if furnished to the applicant in written form (or, if furnished orally, any notation or memorandum made by the creditor):

(A) The notification of action taken; and

(B) The statement of specific reasons for adverse action; and

(iii) Any written statement submitted by the applicant alleging a violation of the Act or this regulation.

(2) *Existing accounts.* For 25 months (12 months for business credit, except as provided in paragraph (b)(5) of this section) after the date that a creditor notifies an applicant of adverse action regarding an existing account, the creditor shall retain as to that account, in original form or a copy thereof:

(i) Any written or recorded information concerning the adverse action; and

(ii) Any written statement submitted by the applicant alleging a violation of the Act or this regulation.

(3) *Other applications.* For 25 months (12 months for business credit, except as provided in paragraph (b)(5) of this section) after the date that a creditor receives an application for which the creditor is not required to comply with the notification requirements of § 202.9, the creditor shall retain all written or recorded information in its possession concerning the applicant, including any notation of action taken.

(4) *Enforcement proceedings and investigations.* A creditor shall retain the information beyond 25 months (12 months for business credit, except as provided in paragraph (b)(5) of this section) if the creditor has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation of the Act or this regulation, by the Attorney General of the United States or by an enforcement agency charged with monitoring that creditor's compliance with the Act and this regulation, or if it has been served with notice of an action filed pursuant to section 706 of the Act and § 202.17 of this regulation. The creditor shall retain the information until final disposition of the matter, unless an earlier time is allowed by order of the agency or court.

(5) *Special rule for certain business credit applications.* With regard to a business that had gross revenues in excess of $1 million in its preceding fiscal year, or an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit, the creditor shall retain records for at least 60 days after notifying the applicant of the action taken. If within that time period the applicant requests in writing the reasons for adverse action or that records be retained, the creditor shall retain records for 12 months.

(6) *Self-tests.* For 25 months after a self-test (as defined in § 202.15) has been completed, the creditor shall retain all written or recorded information about the self-test. A creditor shall retain information beyond 25 months if it has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation, or if it has been served with notice of a civil action. In such cases, the creditor shall retain the information until final disposition of the matter, unless an earlier time is allowed by the appropriate agency or court order.

(7) *Prescreened solicitations.* For 25 months after the date on which an offer of credit is made to potential customers (12 months for business credit, except as provided in paragraph (b)(5) of this section), the creditor shall retain in original form or a copy thereof:

(i) The text of any prescreened solicitation;

(ii) The list of criteria the creditor used to select potential recipients of the solicitation; and

(iii) Any correspondence related to complaints (formal or informal) about the solicitation.

§ 202.13 Information for monitoring purposes.

(a) *Information to be requested*—(1) A creditor that receives an application for credit primarily for the purchase or refinancing of a dwelling occupied or to be occupied by the applicant as a principal residence, where the extension of credit will be secured by the dwelling, shall request as part of the application the following information regarding the applicant(s):

(i) Ethnicity, using the categories Hispanic or Latino, and not Hispanic or Latino; and race, using the categories American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White;

(ii) Sex;

(iii) Marital status, using the categories married, unmarried, and separated; and

(iv) Age.

(2) *Dwelling* means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes, but is not limited to, an individual condominium or cooperative unit and a mobile or other manufactured home.

(b) *Obtaining information.* Questions regarding ethnicity, race, sex, marital status, and age may be listed, at the creditor's option, on the application form or on a separate form that refers to the application. The applicant(s) shall be asked but not required to supply the requested information. If the applicant(s) chooses not to provide the information or any part of it, that fact shall be noted on the form. The creditor shall then also note on the form, to the extent possible, the ethnicity, race, and sex of the applicant(s) on the basis of visual observation or surname.

(c) *Disclosure to applicant(s).* The creditor shall inform the applicant(s) that the information regarding ethnicity, race, sex, marital status, and age is being requested by the federal government for the purpose of monitoring compliance with federal statutes that prohibit creditors from discriminating against applicants on those bases. The creditor shall also inform the applicant(s) that if the applicant(s) chooses not to provide the information, the creditor is required to note the ethnicity, race and sex on the basis of visual observation or surname.

(d) *Substitute monitoring program.* A monitoring program required by an agency charged with administrative enforcement under section 704 of the Act may be substituted for the requirements contained in paragraphs (a), (b), and (c) of this section.

§ 202.14 Rules on providing appraisal reports.

(a) *Providing appraisals.* A creditor shall provide a copy of an appraisal report used in connection with an application for credit that is to be

secured by a lien on a dwelling. A creditor shall comply with either paragraph (a)(1) or (a)(2) of this section.

(1) *Routine delivery.* A creditor may routinely provide a copy of an appraisal report to an applicant (whether credit is granted or denied or the application is withdrawn).

(2) *Upon request.* A creditor that does not routinely provide appraisal reports shall provide a copy upon an applicant's written request.

(i) *Notice.* A creditor that provides appraisal reports only upon request shall notify an applicant in writing of the right to receive a copy of an appraisal report. The notice may be given at any time during the application process but no later than when the creditor provides notice of action taken under § 202.9 of this regulation. The notice shall specify that the applicant's request must be in writing, give the creditor's mailing address, and state the time for making the request as provided in paragraph (a)(2)(ii) of this section.

(ii) *Delivery.* A creditor shall mail or deliver a copy of the appraisal report promptly (generally within 30 days) after the creditor receives an applicant's request, receives the report, or receives reimbursement from the applicant for the report, whichever is last to occur. A creditor need not provide a copy when the applicant's request is received more than 90 days after the creditor has provided notice of action taken on the application under § 202.9 of this regulation or 90 days after the application is withdrawn.

(b) *Credit unions.* A creditor that is subject to the regulations of the National Credit Union Administration on making copies of appraisal reports available is not subject to this section.

(c) *Definitions.* For purposes of paragraph (a) of this section, the term dwelling means a residential structure that contains one to four units whether or not that structure is attached to real property. The term includes, but is not limited to, an individual condominium or cooperative unit, and a mobile or other manufactured home. The term *appraisal report* means the document(s) relied upon by a creditor in evaluating the value of the dwelling.

§ 202.15 Incentives for self-testing and self-correction.

(a) *General rules*—(1) *Voluntary self-testing and correction.* The report or results of a self-test that a creditor voluntarily conducts (or authorizes) are privileged as provided in this section. Data collection required by law or by any governmental authority is not a voluntary self-test.

(2) *Corrective action required.* The privilege in this section applies only if the creditor has taken or is taking appropriate corrective action.

(3) *Other privileges.* The privilege created by this section does not preclude the assertion of any other privilege that may also apply.

(b) *Self-test defined*—(1) *Definition.* A self-test is any program, practice, or study that:

(i) Is designed and used specifically to determine the extent or effectiveness of a creditor's compliance with the Act or this regulation; and

(ii) Creates data or factual information that is not available and cannot be derived from loan or application files or other records related to credit transactions.

(2) *Types of information privileged.* The privilege under this section applies to the report or results of the self-test, data or factual information created by the self-test, and any analysis, opinions, and conclusions pertaining to the self-test report or results. The privilege covers workpapers or draft documents as well as final documents.

(3) *Types of information not privileged.* The privilege under this section does not apply to:

(i) Information about whether a creditor conducted a self-test, the methodology used or the scope of the self-test, the time period covered by the self-test, or the dates it was conducted; or

(ii) Loan and application files or other business records related to credit transactions, and information derived from such files and records, even if the information has been aggregated, summarized, or reorganized to facilitate analysis.

(c) *Appropriate corrective action*—(1) *General requirement.* For the privilege in this section to apply, appropriate corrective action is required when the self-test shows that it is more likely than not that a violation occurred, even though no violation has been formally adjudicated.

(2) *Determining the scope of appropriate corrective action.* A creditor must take corrective action that is reasonably likely to remedy the cause and effect of a likely violation by:

(i) Identifying the policies or practices that are the likely cause of the violation; and

(ii) Assessing the extent and scope of any violation.

(3) *Types of relief.* Appropriate corrective action may include both prospective and remedial relief, except that to establish a privilege under this section:

(i) A creditor is not required to provide remedial relief to a tester used in a self-test;

(ii) A creditor is only required to provide remedial relief to an applicant identified by the self-test as one whose rights were more likely than not violated; and

(iii) A creditor is not required to provide remedial relief to a particular applicant if the statute of limitations applicable to the violation expired before the creditor obtained the results of the self-test or the applicant is otherwise ineligible for such relief.

(4) *No admission of violation.* Taking corrective action is not an admission that a violation occurred.

(d) *Scope of privilege*—(1) *General rule.* The report or results of a privileged self-test may not be obtained or used:

(i) By a government agency in any examination or investigation relating to compliance with the Act or this regulation; or

(ii) By a government agency or an applicant (including a prospective applicant who alleges a violation of § 202.4(b)) in any proceeding or civil action in which a violation of the Act or this regulation is alleged.

(2) *Loss of privilege.* The report or results of a self-test are not privileged under paragraph (d)(1) of this section if the creditor or a person with lawful access to the report or results:

(i) Voluntarily discloses any part of the report or results, or any other information privileged under this section, to an applicant or government agency or to the public;

(ii) Discloses any part of the report or results, or any other information privileged under this section, as a defense to charges that the creditor has violated the Act or regulation; or

(iii) Fails or is unable to produce written or recorded information about the self-test that is required to be retained under § 202.12(b)(6) when the information is needed to determine whether the privilege applies. This paragraph does not limit any other penalty or remedy that may be available for a violation of § 202.12.

(3) *Limited use of privileged information.* Notwithstanding paragraph (d)(1) of this section, the self-test report or results and any other information privileged under this section may be obtained and used by an applicant or government agency solely to determine a penalty or remedy after a violation of the Act or this regulation has been adjudicated or admitted. Disclosures for this limited purpose may be used only for the particular proceeding in which the adjudication or admission was made. Information disclosed under this

paragraph (d)(3) remains privileged under paragraph (d)(1) of this section.

§ 202.16 Requirements for electronic communication.

(a) *Definition. Electronic communication* means a message transmitted electronically between a creditor and an applicant in a format that allows visual text to be displayed on equipment, for example, a personal computer monitor.

(b) *General rule.* In accordance with the Electronic Signatures in Global and National Commerce Act (the E-Sign Act) (15 U.S.C. 7001 *et seq.*) and the rules set forth in this regulation, a creditor may provide by electronic communication any disclosure required by this regulation to be in writing. Disclosures provided by electronic communication must be provided in a clear and conspicuous manner and in a form the applicant may retain.

(c) *When consent is required.* For disclosures required by this regulation to be in writing, a creditor shall obtain an applicant's affirmative consent in accordance with the requirements of the E-Sign Act. Disclosures under §§ 202.9(a)(3)(i)(B), 202.13(a), and 202.14(a)(2)(i) are not subject to this requirement if provided on or with the application.

(d) *Address or location to receive electronic communication.* A creditor that uses electronic communication to provide disclosures required by this part shall:

(1) Send the disclosure to the applicant's electronic address; or

(2) Make the disclosure available at another location such as an Internet Web site; and

(i) Alert the applicant of the disclosure's availability by sending a notice to the applicant's electronic address (or to a postal address, at the creditor's option). The notice shall identify the account involved and the address of the Internet Web site or other location where the disclosure is available; and

(ii) Make the disclosure available for at least 90 days from the date the disclosure first becomes available or from the date of the notice alerting the applicant of the disclosure, whichever comes later.

(3) *Exceptions.* A creditor need not comply with paragraph (d)(2)(i) and (ii) of this section for the disclosure required by § 202.13(a).

(e) *Redelivery.* When a disclosure provided by electronic communication is returned to a creditor undelivered, the creditor shall take reasonable steps to attempt redelivery using information in its files.

(f) *Electronic signatures.* An electronic signature as defined under the E-Sign Act satisfies any requirement under this part for an applicant's signature or initials.

§ 202.17 Enforcement, penalties and liabilities.

(a) *Administrative enforcement*—(1) As set forth more fully in section 704 of the Act, administrative enforcement of the Act and this regulation regarding certain creditors is assigned to the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Board of Directors of the Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, Surface Transportation Board, Secretary of Agriculture, Farm Credit Administration, Securities and Exchange Commission, Small Business Administration, and Secretary of Transportation.

(2) Except to the extent that administrative enforcement is specifically assigned to other authorities, compliance with the requirements imposed under the Act and this regulation is enforced by the Federal Trade Commission.

(b) *Penalties and liabilities*—(1) Sections 702(g) and 706(a) and (b) of the Act provide that any creditor that fails to comply with a requirement imposed by the Act or this regulation is subject to civil liability for actual and punitive damages in individual or class actions. Pursuant to sections 702(g) and 704(b), (c), and (d) of the Act, violations of the Act or this regulation also constitute violations of other federal laws. Liability for punitive damages can apply only to nongovernmental entities and is limited to $10,000 in individual actions and the lesser of $500,000 or 1 percent of the creditor's net worth in class actions. Section 706(c) provides for equitable and declaratory relief and section 706(d) authorizes the awarding of costs and reasonable attorney's fees to an aggrieved applicant in a successful action.

(2) As provided in section 706(f), a civil action under the Act or this regulation may be brought in the appropriate United States district court without regard to the amount in controversy or in any other court of competent jurisdiction within two years after the date of the occurrence of the violation, or within one year after the commencement of an administrative enforcement proceeding or of a civil action brought by the Attorney General of the United States within two years after the alleged violation.

(3) If an agency responsible for administrative enforcement is unable to obtain compliance with the Act or this regulation, it may refer the matter to the Attorney General of the United States. If the Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the National Credit Union Administration has reason to believe that one or more creditors have engaged in a pattern or practice of discouraging or denying applications in violation of the Act or this regulation, the agency shall refer the matter to the Attorney General. If the agency has reason to believe that one or more creditors violated section 701(a) of the Act, the agency may refer a matter to the Attorney General.

(4) On referral, or whenever the Attorney General has reason to believe that one or more creditors have engaged in a pattern or practice in violation of the Act or this regulation, the Attorney General may bring a civil action for such relief as may be appropriate, including actual and punitive damages and injunctive relief.

(5) If the Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the National Credit Union Administration has reason to believe (as a result of a consumer complaint, a consumer compliance examination, or some other basis) that a violation of the Act or this regulation has occurred which is also a violation of the Fair Housing Act, and the matter is not referred to the Attorney General, the agency shall:

(i) Notify the Secretary of Housing and Urban Development; and

(ii) Inform the applicant that the Secretary of Housing and Urban Development has been notified and that remedies may be available under the Fair Housing Act.

(c) *Failure of compliance.* A creditor's failure to comply with §§ 202.6(b)(6), 202.9, 202.10, 202.12 or 202.13 is not a violation if it results from an inadvertent error. On discovering an error under §§ 202.9 and 202.10, the creditor shall correct it as soon as possible. If a creditor inadvertently obtains the monitoring information regarding the ethnicity, race, and sex of the applicant in a dwelling-related transaction not covered by § 202.13, the creditor may retain information and act on the application without violating the regulation.

Appendix A to Part 202—Federal Enforcement Agencies

The following list indicates the federal agencies that enforce Regulation B for

particular classes of creditors. Any questions concerning a particular creditor should be directed to its enforcement agency. Terms that are not defined in the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in the International Banking Act of 1978 (12 U.S.C. 3101).

National Banks, and Federal Branches and Federal Agencies of Foreign Banks: Office of the Comptroller of the Currency, Customer Assistance Group, 1301 McKinney Street, Suite 3710, Houston, Texas 77010

State Member Banks, Branches and Agencies of Foreign Banks (other than federal branches, federal agencies, and insured state branches of foreign banks), Commercial Lending Companies Owned or Controlled by Foreign Banks, and Organizations Operating under Section 25 or 25A of the Federal Reserve Act.

Federal Reserve Bank serving the district in which the institution is located.

Nonmember Insured Banks and Insured State Branches of Foreign Banks: FDIC Consumer Response Center, 2345 Grand Boulevard, Suite 100, Kansas City, Missouri 64108

Savings institutions insured under the Savings Association Insurance Fund of the FDIC and federally chartered savings banks insured under the Bank Insurance Fund of the FDIC (but not including state-chartered savings banks insured under the Bank Insurance Fund).

Office of Thrift Supervision Regional Director for the region in which the institution is located.

Federal Credit Unions: Regional office of the National Credit Union Administration serving the area in which the federal credit union is located.

Air carriers: Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590

Creditors Subject to Surface Transportation Board: Office of Proceedings, Surface Transportation Board, Department of Transportation, 1925 K Street NW., Washington, DC 20423

Creditors Subject to Packers and Stockyards Act: Nearest Packers and Stockyards Administration area supervisor.

Small Business Investment Companies: U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Brokers and Dealers: Securities and Exchange Commission, Washington, DC 20549.

Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, and Production Credit Associations: Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

Retailers, Finance Companies, and All Other Creditors Not Listed Above: FTC Regional Office for region in which the creditor operates or Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Appendix B to Part 202—Model Application Forms

1. This appendix contains five model credit application forms, each designated for use in a particular type of consumer credit transaction as indicated by the bracketed caption on each form. The first sample form is intended for use in open-end, unsecured transactions; the second for closed-end, secured transactions; the third for closed-end transactions, whether unsecured or secured; the fourth in transactions involving community property or occurring in community property states; and the fifth in residential mortgage transactions which contains a model disclosure for use in complying with § 202.13 for certain dwelling-related loans. All forms contained in this appendix are models; their use by creditors is optional.

2. The use or modification of these forms is governed by the following instructions. A creditor may change the forms: by asking for additional information not prohibited by § 202.5; by deleting any information request; or by rearranging the format without modifying the substance of the inquiries. In any of these three instances, however, the appropriate notices regarding the optional nature of courtesy titles, the option to disclose alimony, child support, or separate maintenance, and the limitation concerning marital status inquiries must be included in the appropriate places if the items to which they relate appear on the creditor's form.

3. If a creditor uses an appropriate Appendix B model form, or modifies a form in accordance with the above instructions, that creditor shall be deemed to be acting in compliance with the provisions of paragraphs (b), (c) and (d) of § 202.5 of this regulation.

BILLING CODE 6210–01–P

[Open-end, unsecured credit]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

☐ If you are applying for an individual account in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D.

☐ If you are applying for a joint account or an account that you and another person will use, complete all Sections, providing information in B about the joint applicant or user.

We intend to apply for joint credit. _____ Applicant _____ Co-Applicant

☐ If you are applying for an individual account, but are relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as the basis for repayment of the credit requested, complete all Sections to the extent possible, providing information in B about the person on whose alimony, support, or maintenance payments or income or assets you are relying.

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): _____ Birthdate: / /

Present Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Previous Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

Present net salary or commission: $ _____ per _____ No. Dependents: _____ Ages: _____

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced in the next two years?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Have you ever received credit from us? _____ When? _____ Office: _____

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of nearest relative not living with you: _____ Telephone: _____

Relationship: _____ Address: _____

SECTION B—INFORMATION REGARDING JOINT APPLICANT, USER, OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): _____ Birthdate: / /

Relationship to Applicant (if any): _____

Present Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

Present net salary or commission: $ _____ per _____ No. Dependents: _____ Ages: _____

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced in the next two years?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of nearest relative not living with Joint Applicant, User, or Other Party: _____ Telephone: _____

Relationship: _____ Address: _____

SECTION C—MARITAL STATUS
(Do not complete if this is an application for an individual account.)

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)
Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

[Open-end, unsecured credit]

SECTION D— ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant, User, or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS (Include charge accounts, installment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$ (Omit rent)	$ (Omit rent)	$	
2.						
3.						
4.						
5.						
6.						
Total Debts			$	$	$	

(Credit References) Date Paid

1. $

2.

Are you a co-maker, endorser, or guarantor on any loan or contract?	Yes ☐	No ☐	If "yes" for whom?	To whom?
Are there any unsatisfied judgments against you?	Yes ☐ No ☐	Amount $	If "yes" to whom owed?	
Have you been declared bankrupt in the last 14 years?	Yes ☐ No ☐	If "yes" where?		Year

Other Obligations—(E.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature _____ Date _____ Other Signature (Where Applicable) _____ Date _____

[Closed-end, secured credit]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

☐ If you are applying for individual credit in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete Sections A, C, D, and E, omitting B and the second part of C.

☐ If this is an application for joint credit with another person, complete all Sections, providing information in B about the joint applicant.

We intend to apply for joint credit. _____ Applicant _____ Co-Applicant

☐ If you are applying for individual credit, but are relying on income from alimony, child support, or separate maintenance or on the income or assets or another person as the basis for repayment of the credit requested, complete all Sections to the extent possible, providing information in B about the person on whose alimony, support, or maintenance payments or income or assets you are relying.

Amount Requested $ _____ Payment Date Desired _____ Proceeds of Credit To be Used For _____

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): _____ Birthdate: / /

Present Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Previous Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

Present net salary or commission: $ _____ per _____ No. Dependents: _____ Ages: _____

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Have you ever received credit from us? _____ When? _____ Office: _____

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of nearest relative not living with you: _____ Telephone: _____

Relationship: _____ Address: _____

SECTION B—INFORMATION REGARDING JOINT APPLICANT, OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): _____ Birthdate: / /

Relationship to Applicant (if any): _____

Present Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

Present net salary or commission: $ _____ per _____ No. Dependents: _____ Ages: _____

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of nearest relative not living with Joint Applicant or Other Party: _____

Relationship: _____ Address: _____

SECTION C—MARITAL STATUS
(Do not complete if this is an application for an individual account.)

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)
Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

[Closed-end, secured credit]

SECTION D— ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS (Include charge accounts, installment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$ (Omit rent)	$ (Omit rent)	$	
2.						
3.						
Total Debts			$	$	$	

(Credit References) Date Paid

1. $

2.

Are you a co-maker, endorser, or guarantor on any loan or contract? Yes ☐ No ☐ If "yes" for whom? To whom?

Are there any unsatisfied judgments against you? Yes ☐ No ☐ Amount $ If "yes" to whom owed?

Have you been declared bankrupt in the last 14 years? Yes ☐ No ☐ If "yes" where? Year

Other Obligations—(E.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

SECTION E—SECURED CREDIT (Briefly describe the property to be given as security.)

and list names and addresses of all co-owners of the property:

Name Address

If the security is real estate, give the full name of your spouse (if any):

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature Date Other Signature (Where Applicable) Date

[Closed-end, unsecured/secured credit]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

☐ If you are applying for individual credit in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D. If the requested credit is to be secured, also complete the first part of Section C and Section E.

☐ If you are applying for joint credit with another person, complete all Sections except E, providing information in B about the joint applicant. If the requested credit is to be secured, then complete Section E.

We intend to apply for joint credit. _____ Applicant _____ Co-Applicant

☐ If you are applying for individual credit, but are relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as the basis for repayment of the credit requested, complete all Sections except E to the extent possible, providing information in B about the person on whose alimony, support, or maintenance payments or income or assets you are relying. If the requested credit is to be secured, then complete Section E.

Amount Requested $ _____ Payment Date Desired _____ Proceeds of Credit To be Used For _____

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): _____ Birthdate: / /

Present Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Previous Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

Present net salary or commission: $ _____ per _____ No. Dependents: _____ Ages: _____

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Have you ever received credit from us? _____ When? _____ Office: _____

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of nearest relative not living with you: _____ Telephone: _____

Relationship: _____ Address: _____

SECTION B—INFORMATION REGARDING JOINT APPLICANT, OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): _____ Birthdate: / /

Relationship to Applicant (if any): _____

Present Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

Present net salary or commission: $ _____ per _____ No. Dependents: _____ Ages: _____

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of nearest relative not living with Joint Applicant or Other Party: _____ Telephone: _____

Relationship: _____ Address: _____

[Closed-end, unsecured/secured credit]

SECTION C—MARITAL STATUS
(Do not complete if this is an application for individual unsecured credit.)

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)
Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

SECTION D— ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS (Include charge accounts, installment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$ (Omit rent)	$ (Omit rent)	$	
2.						
3.						
Total Debts			$	$	$	

(Credit References)		Date Paid
1.	$	
2.		

Are you a co-maker, endorser, or guarantor on any loan or contract? Yes ☐ No ☐ If "yes" for whom? To whom?

Are there any unsatisfied judgments against you? Yes ☐ No ☐ Amount $ If "yes" to whom owed?

Have you been declared bankrupt in the last 14 years? Yes ☐ No ☐ If "yes" where? Year

Other Obligations—(E.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

SECTION E—SECURED CREDIT (Complete only if credit is to be secured.) Briefly describe the property to be given as security.

and list names and addresses of all co-owners of the property:

Name Address

If the security is real estate, give the full name of your spouse (if any):

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature Date Other Signature (Where Applicable) Date

[Community property]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

☐ If you are applying for individual credit in your own name, are not married, and are not relying on alimony, child support, or separate maintenance payments or on the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D. If the requested credit is to be secured, also complete Section E.

☐ In all other situations, complete all Sections except E, providing information in B about your spouse, a joint applicant or user, or the person on whose alimony, support, or maintenance payments or income or assets you are relying. If the requested credit is to be secured, also complete Section E.

If you intend to apply for joint credit, please initial here. _____ _____
Applicant Co-Applicant

Amount Requested $ _____ Payment Date Desired _____ Proceeds of Credit To be Used For _____

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): _____ Birthdate: / /

Present Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Previous Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

Present net salary or commission: $ _____ per _____ No. Dependents: _____ Ages: _____

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced in the next two years or before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Have you ever received credit from us? _____ When? _____ Office: _____

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of nearest relative not living with you: _____ Telephone: _____

Relationship: _____ Address: _____

SECTION B—INFORMATION REGARDING SPOUSE, JOINT APPLICANT, USER, OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): _____ Birthdate: / /

Relationship to Applicant (if any): _____

Present Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

Present net salary or commission: $ _____ per _____ No. Dependents: _____ Ages: _____

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced in the next two years or before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of nearest relative not living with Spouse, Joint Applicant, User, or Other Party: _____ Telephone: _____

Relationship: _____ Address: _____

[Community property]

SECTION C—MARITAL STATUS

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)
Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

SECTION D— ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Spouse, Joint Applicant, User, or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS (Include charge accounts, installment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$ (Omit rent)	$ (Omit rent)	$	
2.						
3.						
Total Debts			$	$	$	

(Credit References)		Date Paid
1.	$	
2.		

Are you a co-maker, endorser, or guarantor on any loan or contract?	Yes ☐	No ☐	If "yes" for whom?	To whom?
Are there any unsatisfied judgments against you?	Yes ☐ No ☐	Amount $	If "yes" to whom owed?	
Have you been declared bankrupt in the last 14 years?	Yes ☐ No ☐	If "yes" where?		Year

Other Obligations—(E.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

SECTION E—SECURED CREDIT (Complete only if credit is to be secured.) Briefly describe the property to be given as security.

and list names and addresses of all co-owners of the property:

Name Address

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature Date Other Signature (Where Applicable) Date

Uniform Residential Loan Application

This application is designed to be completed by the applicant(s) with the lender's assistance. Applicants should complete this form as "Borrower" or "Co-Borrower", as applicable. Co-Borrower information must also be provided (and the appropriate box checked) when ☐ the income or assets of a person other than the "Borrower" (including the Borrower's spouse) will be used as a basis for loan qualification or ☐ the income or assets of the Borrower's spouse will not be used as a basis for loan qualification, but his or her liabilities must be considered because the Borrower resides in a community property state, the security property is located in a community property state, or the Borrower is relying on other property located in a community property state as a basis for repayment of the loan.

I TYPE OF MORTGAGE AND TERMS OF LOAN

Mortgage Applied for: ☐ VA ☐ FHA ☐ Conventional ☐ FmHA ☐ Other:

Agency Case Number | Lender Case No.

Amount $ | Interest Rate % | No. of Months | Amortization Type: ☐ Fixed Rate ☐ GPM ☐ Other (explain): ☐ ARM (type):

II PROPERTY INFORMATION AND PURPOSE OF LOAN

Subject Property Address (street, city, state, & ZIP) | No. of Units

Legal Description of Subject Property (attach description if necessary) | Year Built

Purpose of Loan ☐ Purchase ☐ Construction ☐ Other (explain): ☐ Refinance ☐ Construction-Permanent

Property will be: ☐ Primary Residence ☐ Secondary Residence ☐ Investment

Complete this line if construction or construction-permanent loan.

Year Lot Acquired | Original Cost $ | Amount Existing Liens $ | (a) Present Value of Lot $ | (b) Cost of Improvements $ | Total (a + b) $

Complete this line if this is a refinance loan.

Year Acquired | Original Cost $ | Amount Existing Liens $ | Purpose of Refinance | Describe Improvements ☐ made ☐ to be made | Cost: $

Title will be held in what Name(s) | Manner in which Title will be held | Estate will be held in: ☐ Fee Simple ☐ Leasehold (show expiration date)

Source of Down Payment, Settlement Charges and/or Subordinate Financing (explain)

III BORROWER INFORMATION

Borrower	Co-Borrower
Borrower's Name (include Jr. or Sr. if applicable)	Co-Borrower's Name (include Jr. or Sr. if applicable)
Social Security Number / Home Phone (incl. area code) / Age / Yrs. School	Social Security Number / Home Phone (incl. area code) / Age / Yrs. School
☐ Married ☐ Unmarried (include single, divorced, widowed) ☐ Separated / Dependents (not listed by Co-Borrower) no. / ages	☐ Married ☐ Unmarried (include single, divorced, widowed) ☐ Separated / Dependents (not listed by Borrower) no. / ages
Present Address (street, city, state, ZIP) ☐ Own ☐ Rent No. Yrs.	Present Address (street, city, state, ZIP) ☐ Own ☐ Rent No. Yrs.

If residing at present address for less than two years, complete the following:

Former Address (street, city, state, ZIP) ☐ Own ☐ Rent No. Yrs.	Former Address (street, city, state, ZIP) ☐ Own ☐ Rent No. Yrs.
Former Address (street, city, state, ZIP) ☐ Own ☐ Rent No. Yrs.	Former Address (street, city, state, ZIP) ☐ Own ☐ Rent No. Yrs.

IV EMPLOYMENT INFORMATION

Borrower	Co-Borrower
Name & Address of Employer ☐ Self Employed / Yrs. on this job / Yrs. employed in this line of work/profession	Name & Address of Employer ☐ Self Employed / Yrs. on this job / Yrs. employed in this line of work/profession
Position/Title/Type of Business / Business Phone (incl. area code)	Position/Title/Type of Business / Business Phone (incl. area code)

If employed in current position for less than two years or if currently employed in more than one position, complete the following:

Name & Address of Employer ☐ Self Employed / Dates (from - to) / Monthly Income $	Name & Address of Employer ☐ Self Employed / Dates (from - to) / Monthly Income $
Position/Title/Type of Business / Business Phone (incl. area code)	Position/Title/Type of Business / Business Phone (incl. area code)
Name & Address of Employer ☐ Self Employed / Dates (from - to) / Monthly Income $	Name & Address of Employer ☐ Self Employed / Dates (from - to) / Monthly Income $
Position/Title/Type of Business / Business Phone (incl. area code)	Position/Title/Type of Business / Business Phone (incl. area code)

V. MONTHLY INCOME AND COMBINED HOUSING EXPENSE INFORMATION

Gross Monthly Income	Borrower	Co-Borrower	Total	Combined Monthly Housing Expense	Present	Proposed
Base Empl. Income *	$	$	$	Rent	$	[redacted]
Overtime				First Mortgage (P&I)		$
Bonuses				Other Financing (P&I)		
Commissions				Hazard Insurance		
Dividends/Interest				Real Estate Taxes		
Net Rental Income				Mortgage Insurance		
Other (before completing, see the notice in "describe other income," below)				Homeowner Assn. Dues		
				Other:		
Total	$	$	$	Total	$	$

* Self Employed Borrower(s) may be required to provide additional documentation such as tax returns and financial statements.

Describe Other Income *Notice:* **Alimony, child support, or separate maintenance income need not be revealed if the Borrower (B) or Co-Borrower (C) does not choose to have it considered for repaying this loan.**

B/C		Monthly Amount
		$

VI. ASSETS AND LIABILITIES

This Statement and any applicable supporting schedules may be completed jointly by both married and unmarried Co-Borrowers if their assets and liabilities are sufficiently joined so that the Statement can be meaningfully and fairly presented on a combined basis; otherwise separate Statements and Schedules are required. If the Co-Borrower section was completed about a spouse, this Statement and supporting schedules must be completed about that spouse also.

Completed ☐ Jointly ☐ Not Jointly

ASSETS Description	Cash or Market Value
Cash deposit toward purchase held by:	$
List checking and savings accounts below	
Name and address of Bank, S&L, or Credit Union	
Acct. no.	$
Name and address of Bank, S&L, or Credit Union	
Acct. no.	$
Name and address of Bank, S&L, or Credit Union	
Acct. no.	$
Name and address of Bank, S&L, or Credit Union	
Acct. no.	$
Stocks & Bonds (Company name/number & description)	$
Life insurance net cash value Face amount: $	$
Subtotal Liquid Assets	$
Real estate owned (enter market value from schedule of real estate owned)	$
Vested interest in retirement fund	$
Net worth of business(es) owned (attach financial statement)	$
Automobiles owned (make and year)	$
Other Assets (itemize)	$
Total Assets a.	$

Liabilities and Pledged Assets. List the creditor's name, address and account number for all outstanding debts, including automobile loans, revolving charge accounts, real estate loans, alimony, child support, stock pledges, etc. Use continuation sheet, if necessary. Indicate by (*) those liabilities which will be satisfied upon sale of real estate owned or upon refinancing of the subject property.

LIABILITIES	Monthly Payt. & Mos. Left to Pay	Unpaid Balance
Name and address of Company	$ Payt./Mos.	$
Acct. no.		
Name and address of Company	$ Payt./Mos.	$
Acct. no.		
Name and address of Company	$ Payt./Mos.	$
Acct. no.		
Name and address of Company	$ Payt./Mos.	$
Acct. no.		
Name and address of Company	$ Payt./Mos.	$
Acct. no.		
Name and address of Company	$ Payt./Mos.	$
Acct. no.		
Name and address of Company	$ Payt./Mos.	$
Acct. no.		
Alimony/Child Support/Separate Maintenance Payments Owed to:	$	[redacted]
Job Related Expense (child care, union dues, etc.)	$	
Total Monthly Payments	$	
Total Liabilities b.		$

VI ASSETS AND LIABILITIES (cont.)

Schedule of Real Estate Owned (If additional properties are owned, use continuation sheet.)

Property Address (enter S if sold, PS if pending sale or R if rental being held for income)	Type of Property	Present Market Value	Amount of Mortgages & Liens	Gross Rental Income	Mortgage Payments	Insurance, Maintenance, Taxes & Misc.	Net Rental Income
		$	$	$	$	$	$
	Totals	$	$	$	$	$	$

List any additional names under which credit has previously been received and indicate appropriate creditor name(s) and account number(s):

Alternate Name	Creditor Name	Account Number

VII DETAILS OF TRANSACTION

a. Purchase price	$
b. Alterations, improvements, repairs	
c. Land (if acquired separately)	
d. Refinance (incl. debts to be paid off)	
e. Estimated prepaid items	
f. Estimated closing costs	
g. PMI, MIP, Funding Fee	
h. Discount (if Borrower will pay)	
i. **Total costs (add items a through h)**	
j. Subordinate financing	
k. Borrower's closing costs paid by Seller	
l. Other Credits (explain)	
m. Loan amount (exclude PMI, MIP, Funding Fee financed)	
n. PMI, MIP, Funding Fee financed	
o. Loan amount (add m & n)	
p. Cash from/to Borrower (subtract j, k, l & o from i)	

VIII DECLARATIONS

If you answer "yes" to any questions a through l, please use continuation sheet for explanation.	Borrower Yes	Borrower No	Co-Borrower Yes	Co-Borrower No
a. Are there any outstanding judgments against you?	☐	☐	☐	☐
b. Have you been declared bankrupt within the past 7 years?	☐	☐	☐	☐
c. Have you had property foreclosed upon or given title or deed in lieu thereof in the last 7 years?	☐	☐	☐	☐
d. Are you a party to a lawsuit?	☐	☐	☐	☐
e. Have you directly or indirectly been obligated on any loan which resulted in foreclosure, transfer of title in lieu of foreclosure, or judgment? (This would include such loans as home mortgage loans, SBA loans, home improvement loans, educational loans, manufactured (mobile) home loans, any mortgage, financial obligation, bond, or loan guarantee. If "Yes," provide details, including date, name and address of Lender, FHA or VA case number, if any, and reasons for the action.)	☐	☐	☐	☐
f. Are you presently delinquent or in default on any Federal debt or any other loan, mortgage, financial obligation, bond, or loan guarantee? If "Yes," give details as described in the preceding question.	☐	☐	☐	☐
g. Are you obligated to pay alimony, child support, or separate maintenance?	☐	☐	☐	☐
h. Is any part of the down payment borrowed?	☐	☐	☐	☐
i. Are you a co-maker or endorser on a note?	☐	☐	☐	☐
j. Are you a U.S. citizen?	☐	☐	☐	☐
k. Are you a permanent resident alien?	☐	☐	☐	☐
l. Do you intend to occupy the property as your primary residence? If "Yes," complete question m below.	☐	☐	☐	☐
m. Have you had an ownership interest in a property in the last three years?	☐	☐	☐	☐
(1) What type of property did you own--principal residence (PR), second home (SH), or investment property (IP)?				
(2) How did you hold title to the home--solely by yourself (S), jointly with your spouse (SP), or jointly with another person (O)?				

IX ACKNOWLEDGMENT AND AGREEMENT

The undersigned specifically acknowledge(s) and agree(s) that: (1) the loan requested by this application will be secured by a first mortgage or deed of trust on the property described herein; (2) the property will not be used for any illegal or prohibited purpose or use; (3) all statements made in this application are made for the purpose of obtaining the loan indicated herein; (4) occupation of the property will be as indicated above; (5) verification or reverification of any information contained in the application may be made at any time by the Lender, its agents, successors and assigns, either directly or through a credit reporting agency, from any source named in this application, and the original copy of this application will be retained by the Lender, even if the loan is not approved; (6) the Lender, its agents, successors and assigns will rely on the information contained in the application and I/we have a continuing obligation to amend and/or supplement the information provided in this application if any of the material facts which I/we have represented herein should change prior to closing; (7) in the event my/our payments on the loan indicated in this application become delinquent, the Lender, its agents, successors and assigns, may, in addition to all their other rights and remedies, report my/our name(s) and account information to a credit reporting agency; (8) ownership of the loan may be transferred to successor or assign of the Lender without notice to me and/or the administration of the loan account may be transferred to an agent, successor or assign of the Lender with prior notice to me; (9) the Lender, its agents, successors and assigns make no representations or warranties, express or implied, to the Borrower(s) regarding the property, the condition of the property, or the value of the property.

Certification: I/We certify that the information provided in this application is true and correct as of the date set forth opposite my/our signature(s) on this application and acknowledge my/our understanding that any intentional or negligent misrepresentation(s) of the information contained in this application may result in civil liability and/or criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Section 1001, et seq. and liability for monetary damages to the Lender, its agents, successors and assigns, insurers and any other person who may suffer any loss due to reliance upon any misrepresentation which I/we have made on this application.

Borrower's Signature	Date	Co-Borrower's Signature	Date
X		X	

X INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is requested by the Federal Government for certain types of loans related to a dwelling, in order to monitor the Lender's compliance with equal credit opportunity, fair housing and home mortgage disclosure laws. You are not required to furnish this information, but are encouraged to do so. The law provides that a Lender may neither discriminate on the basis of this information, nor on whether you choose to furnish it. However, if you choose not to furnish it, under Federal regulations this Lender is required to note race and sex on the basis of visual observation or surname. If you do not wish to furnish the above information, please check the box below. (Lender must review the above material to assure that the disclosures satisfy all requirements to which the Lender is subject under applicable state law for the particular type of loan applied for.)

	BORROWER	CO-BORROWER
	☐ I do not wish to furnish this information	☐ I do not wish to furnish this information
Race/National Origin:	☐ American Indian or Alaskan Native ☐ Asian or Pacific Islander ☐ White, not of Hispanic Origin ☐ Black, not of Hispanic origin ☐ Hispanic ☐ Other (specify) _____	☐ American Indian or Alaskan Native ☐ Asian or Pacific Islander ☐ White, not of Hispanic Origin ☐ Black, not of Hispanic origin ☐ Hispanic ☐ Other (specify) _____
Sex:	☐ Female ☐ Male	☐ Female ☐ Male

To be Completed by Interviewer	Interviewer's Name (print or type)	Name and Address of Interviewer's Employer
This application was taken by: ☐ face-to-face interview ☐ by mail ☐ by telephone	Interviewer's Signature / Date	
	Interviewer's Phone Number (incl. area code)	

Continuation Sheet Residential Loan Application

Use this continuation sheet if you need more space to complete the Residential Loan Application. Mark B for Borrower or C for Co-Borrower.	Borrower:	Agency Case Number:
	Co-Borrower:	Lender Case Number:

I/We fully understand that it is a Federal crime punishable by fine or imprisonment, or both, to knowingly make any false statements concerning any of the above facts as applicable under the provisions of Title 18, United States Code, Section 1001, et seq.

Borrower's Signature:	Date	Co-Borrower's Signature:	Date
X		X	

BILLING CODE 6210–01–c

Notification Forms

1. This appendix contains ten sample notification forms. Forms C–1 through C–4 are intended for use in notifying an applicant that adverse action has been taken on an application or account under §§ 202.9(a)(1) and (2)(i) of this regulation. Form C–5 is a notice of disclosure of the right to request specific reasons for adverse action under §§ 202.9(a)(1) and (2)(ii). Form C–6 is designed for use in notifying an applicant, under § 202.9(c)(2), that an application is incomplete. Forms C–7 and C–8 are intended for use in connection with applications for business credit under § 202.9(a)(3). Form C–9 is designed for use in notifying an applicant of the right to receive a copy of an appraisal under § 202.14. Form C–10 is designed for use in notifying an applicant for nonmortgage credit that the creditor is requesting applicant characteristic information.

2. Form C–1 contains the Fair Credit Reporting Act disclosure as required by sections 615(a) and (b) of that act. Forms C–2 through C–5 contain only the section 615(a) disclosure (that a creditor obtained information from a consumer reporting agency that played a part in the credit decision). A creditor must provide the section 615(a) disclosure when adverse action is taken against a consumer based on information from a consumer reporting agency. A creditor must provide the section 615(b) disclosure when adverse action is taken based on information from an outside source other than a consumer reporting agency. In addition, a creditor must provide the section 615(b) disclosure if the creditor obtained information from an affiliate other than information in a consumer report or other than information concerning the affiliate's own transactions or experiences with the consumer. Creditors may comply with the disclosure requirements for adverse action based on information in a consumer report obtained from an affiliate by providing *either* the section 615(a) or section 615(b) disclosure.

3. The sample forms are illustrative and may not be appropriate for all creditors. They were designed to include some of the factors that creditors most commonly consider. If a creditor chooses to use the checklist of reasons provided in one of the sample forms in this appendix and if reasons commonly used by the creditor are not provided on the form, the creditor should modify the checklist by substituting or adding other reasons. For example, if ''inadequate down payment'' or ''no deposit relationship with us'' are common reasons for taking adverse action on an application, the creditor ought to add or substitute such reasons for those presently contained on the sample forms.

4. If the reasons listed on the forms are not the factors actually used, a creditor will not satisfy the notice requirement by simply checking the closest identifiable factor listed. For example, some creditors consider only references from banks or other depository institutions and disregard finance company references altogether; their statement of reasons should disclose ''insufficient bank references,'' not ''insufficient credit references.'' Similarly, a creditor that considers bank references and other credit references as distinct factors should treat the two factors separately and disclose them as appropriate. The creditor should either add such other factors to the form or check ''other'' and include the appropriate explanation. The creditor need not, however, describe how or why a factor adversely affected the application. For example, the notice may say ''length of residence'' rather than ''too short a period of residence.''

5. A creditor may design its own notification forms or use all or a portion of the forms contained in this appendix. Proper use of Forms C–1 through C–4 will satisfy the requirement of § 202.9(a)(2)(i). Proper use of Forms C–5 and C–6 constitutes full compliance with §§ 202.9(a)(2)(ii) and 202.9(c)(2), respectively. Proper use of Forms C–7 and C–8 will satisfy the requirements of § 202.9(a)(2)(i) and (ii), respectively, for applications for business credit. Proper use of Form C–9 will satisfy the requirements of § 202.14 of this part. Proper use of Form C–10 will satisfy the requirements of § 202.5(b)(1).

Form C–1—Sample Notice of Action Taken and Statement of Reasons

Statement of Credit Denial, Termination or Change

Date: _____

Applicant's Name: _____

Applicant's Address: _____

Description of Account, Transaction, or Requested Credit:

_____

Description of Action Taken:

_____

_____

Part I—Principal Reason(s) for Credit Denial, Termination, or Other Action Taken Concerning Credit

This section must be completed in all instances.

_____ Credit application incomplete
_____ Insufficient number of credit references provided
_____ Unacceptable type of credit references provided
_____ Unable to verify credit references
_____ Temporary or irregular employment
_____ Unable to verify employment
_____ Length of employment
_____ Income insufficient for amount of credit requested
_____ Excessive obligations in relation to income
_____ Unable to verify income
_____ Length of residence
_____ Temporary residence
_____ Unable to verify residence
_____ No credit file
_____ Limited credit experience
_____ Poor credit performance with us
_____ Delinquent past or present credit obligations with others
_____ Collection action or judgment
_____ Garnishment or attachment
_____ Foreclosure or repossession
_____ Bankruptcy
_____ Number of recent inquiries on credit bureau report
_____ Value or type of collateral not sufficient
_____ Other, specify: _____

Part II—Disclosure of Use of Information Obtained From an Outside Source

This section should be completed if the credit decision was based in whole or in part on information that has been obtained from an outside source.

_____ Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency listed below. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

Name: _____

Address: _____

_____

[Toll-free] Telephone number: _____

_____ Our credit decision was based in whole or in part on information obtained from an affiliate or from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request, no later than 60 days after you receive this notice, for disclosure of the nature of this information.

If you have any questions regarding this notice, you should contact:

Creditor's name: _____

Creditor's address: _____

Creditor's telephone number: _____

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A).

Form C–2—Sample Notice of Action Taken and Statement of Reasons

Date

Dear Applicant: Thank you for your recent application. Your request for [a loan/a credit card/an increase in your credit limit] was carefully considered, and we regret that we are unable to approve your application at this time, for the following reason(s):

Your Income:

_____ is below our minimum requirement.

_____ is insufficient to sustain payments on the amount of credit requested.
_____ could not be verified.

Your Employment:

_____ is not of sufficient length to qualify.
_____ could not be verified.

Your Credit History:

_____ of making payments on time was not satisfactory.
_____ could not be verified.

Your Application:

_____ lacks a sufficient number of credit references.
_____ lacks acceptable types of credit references.
_____ reveals that current obligations are excessive in relation to income.

Other: _____

The consumer reporting agency contacted that provided information that influenced our decision in whole or in part was [name, address and [toll-free] telephone number of the reporting agency]. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency. Any questions regarding such information should be directed to [consumer reporting agency]. If you have any questions regarding this letter, you should contact us at [creditor's name, address and telephone number].

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A).

Form C–3—Sample Notice of Action Taken and Statement of Reasons (Credit Scoring)

Date

Dear Applicant: Thank you for your recent application for _____. We regret that we are unable to approve your request.

Your application was processed by a credit scoring system that assigns a numerical value to the various items of information we consider in evaluating an application. These numerical values are based upon the results of analyses of repayment histories of large numbers of customers.

The information you provided in your application did not score a sufficient number of points for approval of the application. The reasons you did not score well compared with other applicants were:

- Insufficient bank references
- Type of occupation
- Insufficient credit experience
- Number of recent inquiries on credit bureau report

In evaluating your application the consumer reporting agency listed below provided us with information that in whole or in part influenced our decision. The consumer reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. It can be obtained by contacting: [name, address, and [toll-free] telephone number of the consumer reporting agency]. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

If you have any questions regarding this letter, you should contact us at

Creditor's Name: _____

Address: _____

_____

Telephone: _____

Sincerely,

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (with certain limited exceptions); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A).

Form C–4—Sample Notice of Action Taken, Statement of Reasons and Counteroffer

Date

Dear Applicant: Thank you for your application for _____. We are unable to offer you credit on the terms that you requested for the following reason(s):

_____

We can, however, offer you credit on the following terms: _____

_____

If this offer is acceptable to you, please notify us within [amount of time] at the following address: _____.

Our credit decision on your application was based in whole or in part on information obtained in a report from [name, address and [toll-free] telephone number of the consumer reporting agency]. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

You should know that the federal Equal Credit Opportunity Act prohibits creditors, such as ourselves, from discriminating against credit applicants on the basis of their race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract), because they receive income from a public assistance program, or because they may have exercised their rights under the Consumer Credit Protection Act. If you believe there has been discrimination in handling your application you should contact the [name and address of the appropriate federal enforcement agency listed in appendix A].

Sincerely,

Form C–5—Sample Disclosure of Right to Request Specific Reasons for Credit Denial

Date

Dear Applicant: Thank you for applying to us for _____.

After carefully reviewing your application, we are sorry to advise you that we cannot [open an account for you/grant a loan to you/increase your credit limit] at this time. If you would like a statement of specific reasons why your application was denied, please contact [our credit service manager] shown below within 60 days of the date of this letter. We will provide you with the statement of reasons within 30 days after receiving your request.

Creditor's Name
Address
Telephone Number

If we obtained information from a consumer reporting agency as part of our consideration of your application, its name, address, and [toll-free] telephone number is shown below. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. [You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency.] You have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you received is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency. You can find out about the information contained in your file (if one was used) by contacting:

Consumer reporting agency's name
Address
[Toll-free] Telephone number

Sincerely,

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the

applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A).

Form C–6—Sample Notice of Incomplete Application and Request for Additional Information

Creditor's name
Address
Telephone number

Date

Dear Applicant: Thank you for your application for credit. The following information is needed to make a decision on your application: _____

_____

We need to receive this information by _____(date). If we do not receive it by that date, we will regrettably be unable to give further consideration to your credit request.

Sincerely,

Form C–7—Sample Notice of Action Taken and Statement of Reasons (Business Credit)

Creditor's Name
Creditor's address

Date

Dear Applicant: Thank you for applying to us for credit. We have given your request careful consideration, and regret that we are unable to extend credit to you at this time for the following reasons:

(Insert appropriate reason, such as: Value or type of collateral not sufficient; Lack of established earnings record; Slow or past due in trade or loan payments)

Sincerely,

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is [name and address as specified by the appropriate agency listed in appendix A].

Form C–8—Sample Disclosure of Right To Request Specific Reasons for Credit Denial Given at Time of Application (Business Credit)

Creditor's name
Creditor's address

If your application for business credit is denied, you have the right to a written statement of the specific reasons for the denial. To obtain the statement, please contact [name, address and telephone number of the person or office from which the statement of reasons can be obtained] within 60 days from the date you are notified of our decision. We will send you a written statement of reasons for the denial within 30 days of receiving your request for the statement.

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is [name and address as specified by the appropriate agency listed in appendix A].

Form C–9—Sample Disclosure of Right To Receive a Copy of an Appraisal

You have the right to a copy of the appraisal report used in connection with your application for credit. If you wish a copy, please write to us at the mailing address we have provided. We must hear from you no later than 90 days after we notify you about the action taken on your credit application or you withdraw your application.

[In your letter, give us the following information:]

Form C–10—Sample Disclosure About Voluntary Data Notation

We are requesting the following information to monitor our compliance with the federal Equal Credit Opportunity Act, which prohibits unlawful discrimination. You are not required to provide this information. We will not take this information (or your decision not to provide this information) into account in connection with your application or credit transaction. The law provides that a creditor may not discriminate based on this information, or based on whether or not you choose to provide it. [If you choose not to provide the information, we will note it by visual observation or surname].

Appendix D to Part 202—Issuance of Staff Interpretations

1. *Official Staff Interpretations.* Officials in the Board's Division of Consumer and Community Affairs are authorized to issue official staff interpretations of this regulation. These interpretations provide the protection afforded under section 706(e) of the Act. Except in unusual circumstances, such interpretations will not be issued separately but will be incorporated in an official commentary to the regulation, which will be amended periodically.

2. *Requests for Issuance of Official Staff Interpretations.* A request for an official staff interpretation should be in writing and addressed to the Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. The request should contain a complete statement of all relevant facts concerning the issue, including copies of all pertinent documents.

3. *Scope of Interpretations.* No staff interpretations will be issued approving creditors' forms or statements. This restriction does not apply to forms or statements whose use is required or sanctioned by a government agency.

Supplement I to Part 202—Official Staff Interpretations

Following is an official staff interpretation of Regulation B (12 CFR part 202) issued under authority delegated by the Federal Reserve Board to officials in the Division of Consumer and Community Affairs. References are to sections of the regulation or the Equal Credit Opportunity Act (15 U.S.C. 1601 *et seq.*).

Introduction

1. *Official status.* Section 706(e) of the Equal Credit Opportunity Act protects a creditor from civil liability for any act done or omitted in good faith in conformity with an interpretation issued by a duly authorized official of the Federal Reserve Board. This commentary is the means by which the Division of Consumer and Community Affairs of the Federal Reserve Board issues official staff interpretations of Regulation B. Good-faith compliance with this commentary affords a creditor protection under section 706(e) of the Act.

2. *Issuance of interpretations.* Under Appendix D to the regulation, any person may request an official staff interpretation. Interpretations will be issued at the discretion of designated officials and incorporated in this commentary following publication for comment in the **Federal Register**. Except in unusual circumstances, official staff interpretations will be issued only by means of this commentary.

3. *Status of previous interpretations.* Interpretations of Regulation B previously issued by the Federal Reserve Board and its staff have been incorporated into this commentary as appropriate. All other previous Board and staff interpretations, official and unofficial, are superseded by this commentary.

4. *Footnotes.* Footnotes in the regulation have the same legal effect as the text of the regulation, whether they are explanatory or illustrative in nature.

5. *Comment designations.* The comments are designated with as much specificity as possible according to the particular regulatory provision addressed. Each comment in the commentary is identified by a number and the regulatory section or paragraph that it interprets. For example, comments to § 202.2(c) are further divided by subparagraph, such as comment 2(c)(1)(ii)-1 and comment 2(c)(2)(ii)-1.

Section 202.1—Authority, Scope, and Purpose

1(a) *Authority and scope.*

1. *Scope.* The Equal Credit Opportunity Act and Regulation B apply to all credit—commercial as well as personal—without regard to the nature or type of the credit or the creditor. If a transaction provides for the deferral of the payment of a debt, it is credit covered by Regulation B even though it may not be a credit transaction covered by Regulation Z (Truth in Lending) (12 CFR part 226). Further, the definition of creditor is not restricted to the party or person to whom the obligation is initially payable, as is the case

under Regulation Z. Moreover, the Act and regulation apply to all methods of credit evaluation, whether performed judgmentally or by use of a credit scoring system.

2. *Foreign applicability.* Regulation B generally does not apply to lending activities that occur outside the United States. The regulation does apply to lending activities that take place within the United States (as well as the Commonwealth of Puerto Rico and any territory or possession of the United States), whether or not the applicant is a citizen.

3. *Board.* The term *Board,* as used in this regulation, means the Board of Governors of the Federal Reserve System.

Section 202.2—Definitions

2(c) *Adverse action.*

Paragraph 2(c)(1)(i)

1. *Application for credit.* If the applicant applied in accordance with the creditor's procedures, a refusal to refinance or extend the term of a business or other loan is adverse action.

Paragraph 2(c)(1)(ii)

1. *Move from service area.* If a credit card issuer terminates the open-end account of a customer because the customer has moved out of the card issuer's service area, the termination is adverse action unless termination on this ground was explicitly provided for in the credit agreement between the parties. In cases where termination is adverse action, notification is required under § 202.9.

2. *Termination based on credit limit.* If a creditor terminates credit accounts that have low credit limits (for example, under $400) but keeps open accounts with higher credit limits, the termination is adverse action and notification is required under § 202.9.

Paragraph 2(c)(2)(ii)

1. *Default—exercise of due-on-sale clause.* If a mortgagor sells or transfers mortgaged property without the consent of the mortgagee, and the mortgagee exercises its contractual right to accelerate the mortgage loan, the mortgagee may treat the mortgagor as being in default. An adverse action notice need not be given to the mortgagor or the transferee. (See comment 2(e)-1 for treatment of a purchaser who requests to assume the loan.)

2. *Current delinquency or default.* The term adverse action does not include a creditor's termination of an account when the accountholder is currently in default or delinquent on that account. Notification in accordance with § 202.9 of the regulation generally is required, however, if the creditor's action is based on a past delinquency or default on the account.

Paragraph 2(c)(2)(iii)

1. *Point-of-sale transactions.* Denial of credit at point of sale is not adverse action except under those circumstances specified in the regulation. For example, denial at point of sale is not adverse action in the following situations:

i. A credit cardholder presents an expired card or a card that has been reported to the card issuer as lost or stolen.

ii. The amount of a transaction exceeds a cash advance or credit limit.

iii. The circumstances (such as excessive use of a credit card in a short period of time) suggest that fraud is involved.

iv. The authorization facilities are not functioning.

v. Billing statements have been returned to the creditor for lack of a forwarding address.

2. *Application for increase in available credit.* A refusal or failure to authorize an account transaction at the point of sale or loan is not adverse action except when the refusal is a denial of an application, submitted in accordance with the creditor's procedures, for an increase in the amount of credit.

Paragraph 2(c)(2)(v)

1. *Terms of credit versus type of credit offered.* When an applicant applies for credit and the creditor does not offer the credit terms requested by the applicant (for example, the interest rate, length of maturity, collateral, or amount of downpayment), a denial of the application for that reason is adverse action (unless the creditor makes a counteroffer that is accepted by the applicant) and the applicant is entitled to notification under § 202.9.

2(e) *Applicant.*

1. *Request to assume loan.* If a mortgagor sells or transfers the mortgaged property and the buyer makes an application to the creditor to assume the mortgage loan, the mortgagee must treat the buyer as an applicant unless its policy is not to permit assumptions.

2(f) *Application.*

1. *General.* A creditor has the latitude under the regulation to establish its own application process and to decide the type and amount of information it will require from credit applicants.

2. *Procedures used.* The term ''procedures'' refers to the actual practices followed by a creditor for making credit decisions as well as its stated application procedures. For example, if a creditor's stated policy is to require all applications to be in writing on the creditor's application form, but the creditor also makes credit decisions based on oral requests, the creditor's procedures are to accept both oral and written applications.

3. *When an inquiry or prequalification request becomes an application.* A creditor is encouraged to provide consumers with information about loan terms. However, if in giving information to the consumer the creditor also evaluates information about the consumer, decides to decline the request, and communicates this to the consumer, the creditor has treated the inquiry or prequalification request as an application and must then comply with the notification requirements under § 202.9. Whether the inquiry or prequalification request becomes an application depends on how the creditor responds to the consumer, not on what the consumer says or asks. (See comment 9–5 for further discussion of prequalification requests; see comment 2(f)–5 for a discussion of preapproval requests.)

4. *Examples of inquiries that are not applications.* The following examples illustrate situations in which only an inquiry has taken place:

i. A consumer calls to ask about loan terms and an employee explains the creditor's basic loan terms, such as interest rates, loan-to-value ratio, and debt-to-income ratio.

ii. A consumer calls to ask about interest rates for car loans, and, in order to quote the appropriate rate, the loan officer asks for the make and sales price of the car and the amount of the downpayment, then gives the consumer the rate.

iii. A consumer asks about terms for a loan to purchase a home and tells the loan officer her income and intended downpayment, but the loan officer only explains the creditor's loan-to-value ratio policy and other basic lending policies, without telling the consumer whether she qualifies for the loan.

iv. A consumer calls to ask about terms for a loan to purchase vacant land and states his income and the sales price of the property to be financed, and asks whether he qualifies for a loan; the employee responds by describing the general lending policies, explaining that he would need to look at all of the consumer's qualifications before making a decision, and offering to send an application form to the consumer.

5. *Examples of an application.* An application for credit includes the following situations:

i. A person asks a financial institution to ''preapprove'' her for a loan (for example, to finance a house or a vehicle she plans to buy) and the institution reviews the request under a program in which the institution, after a comprehensive analysis of her creditworthiness, issues a written commitment valid for a designated period of time to extend a loan up to a specified amount. The written commitment may not be subject to conditions other than conditions that require the identification of adequate collateral, conditions that require no material change in the applicant's financial condition or creditworthiness prior to funding the loan, and limited conditions that are not related to the financial condition or creditworthiness of the applicant that the lender ordinarily attaches to a traditional application (such as certification of a clear termite inspection for a home purchase loan, or a maximum mileage requirement for a used car loan). But if the creditor's program does not provide for giving written commitments, requests for preapprovals are treated as prequalification requests for purposes of the regulation.

ii. Under the same facts as above, the financial institution evaluates the person's creditworthiness and determines that she does not qualify for a preapproval.

6. *Completed application—diligence requirement.* The regulation defines a completed application in terms that give a creditor the latitude to establish its own information requirements. Nevertheless, the creditor must act with reasonable diligence to collect information needed to complete the application. For example, the creditor should request information from third parties, such as a credit report, promptly after receiving the application. If additional information is needed from the applicant, such as an address or a telephone number to verify employment, the creditor should contact the applicant promptly. (But see comment 9(a)(1)–3, which discusses the creditor's option to deny an application on the basis of incompleteness.)

2(g) *Business credit.*

1. *Definition.* The test for deciding whether a transaction qualifies as business credit is one of primary purpose. For example, an open-end credit account used for both personal and business purposes is not business credit unless the primary purpose of the account is business-related. A creditor may rely on an applicant's statement of the purpose for the credit requested.

2(j) *Credit.*

1. *General.* Regulation B covers a wider range of credit transactions than Regulation Z (Truth in Lending). Under Regulation B, a transaction is credit if there is a right to defer payment of a debt—regardless of whether the credit is for personal or commercial purposes, the number of installments required for repayment, or whether the transaction is subject to a finance charge.

2(l) *Creditor.*

1. *Assignees.* The term creditor includes all persons participating in the credit decision. This may include an assignee or a potential purchaser of the obligation who influences the credit decision by indicating whether or not it will purchase the obligation if the transaction is consummated.

2. *Referrals to creditors.* For certain purposes, the term creditor includes persons such as real estate brokers, automobile dealers, home builders, and home-improvement contractors who do not participate in credit decisions but who only accept applications and refer applicants to creditors, or select or offer to select creditors to whom credit requests can be made. These persons must comply with § 202.4(a), the general rule prohibiting discrimination, and with § 202.4(b), the general rule against discouraging applications.

2(p) *Empirically derived and other credit scoring systems.*

1. *Purpose of definition.* The definition under § 202.2(p)(1)(i) through (iv) sets the criteria that a credit system must meet in order to use age as a predictive factor. Credit systems that do not meet these criteria are judgmental systems and may consider age only for the purpose of determining a ''pertinent element of creditworthiness.'' (Both types of systems may favor an elderly applicant. See § 202.6(b)(2).)

2. *Periodic revalidation.* The regulation does not specify how often credit scoring systems must be revalidated. The credit scoring system must be revalidated frequently enough to ensure that it continues to meet recognized professional statistical standards for statistical soundness. To ensure that predictive ability is being maintained, the creditor must periodically review the performance of the system. This could be done, for example, by analyzing the loan portfolio to determine the delinquency rate for each score interval, or by analyzing population stability over time to detect deviations of recent applications from the applicant population used to validate the system. If this analysis indicates that the system no longer predicts risk with statistical soundness, the system must be adjusted as necessary to reestablish its predictive ability. A creditor is responsible for ensuring its system is validated and revalidated based on the creditor's own data.

3. *Pooled data scoring systems.* A scoring system or the data from which to develop such a system may be obtained from either a single credit grantor or multiple credit grantors. The resulting system will qualify as an empirically derived, demonstrably and statistically sound, credit scoring system provided the criteria set forth in paragraph (p)(1)(i) through (iv) of this section are met. A creditor is responsible for ensuring its system is validated and revalidated based on the creditor's own data when it becomes available.

4. *Effects test and disparate treatment.* An empirically derived, demonstrably and statistically sound, credit scoring system may include age as a predictive factor (provided that the age of an elderly applicant is not assigned a negative factor or value). Besides age, no other prohibited basis may be used as a variable. Generally, credit scoring systems treat all applicants objectively and thus avoid problems of disparate treatment. In cases where a credit scoring system is used in conjunction with individual discretion, disparate treatment could conceivably occur in the evaluation process. In addition, neutral factors used in credit scoring systems could nonetheless be subject to challenge under the effects test. (See comment 6(a)–2 for a discussion of the effects test).

2(w) *Open-end credit.*

1. *Open-end real estate mortgages.* The term ''open-end credit'' does not include negotiated advances under an open-end real estate mortgage or a letter of credit.

2(z) *Prohibited basis.*

1. *Persons associated with applicant.* As used in this regulation, prohibited basis refers not only to characteristics—the race, color, religion, national origin, sex, marital status, or age—of an applicant (or officers of an applicant in the case of a corporation) but also to the characteristics of individuals with whom an applicant is affiliated or with whom the applicant associates. This means, for example, that under the general rule stated in § 202.4(a), a creditor may not discriminate against an applicant because of that person's personal or business dealings with members of a certain religion, because of the national origin of any persons associated with the extension of credit (such as the tenants in the apartment complex being financed), or because of the race of other residents in the neighborhood where the property offered as collateral is located.

2. *National origin.* A creditor may not refuse to grant credit because an applicant comes from a particular country but may take the applicant's immigration status into account. A creditor may also take into account any applicable law, regulation, or executive order restricting dealings with citizens (or the government) of a particular country or imposing limitations regarding credit extended for their use.

3. *Public assistance program.* Any federal, state, or local governmental assistance program that provides a continuing, periodic income supplement, whether premised on entitlement or need, is ''public assistance'' for purposes of the regulation. The term includes (but is not limited to) Temporary Aid to Needy Families, food stamps, rent and mortgage supplement or assistance programs, social security and supplemental security income, and unemployment compensation. Only physicians, hospitals, and others to whom the benefits are payable need consider Medicare and Medicaid as public assistance.

Section 202.3—Limited Exceptions for Certain Classes of Transactions

1. *Scope.* Under this section, procedural requirements of the regulation do not apply to certain types of credit. All classes of transactions remain subject to § 202.4(a), the general rule barring discrimination on a prohibited basis, and to any other provision not specifically excepted.

3(a) *Public-utilities credit.*

1. *Definition.* This definition applies only to credit for the purchase of a utility service, such as electricity, gas, or telephone service. Credit provided or offered by a public utility for some other purpose—such as for financing the purchase of a gas dryer, telephone equipment, or other durable goods, or for insulation or other home improvements—is not excepted.

2. *Security deposits.* A utility company is a creditor when it supplies utility service and bills the user after the service has been provided. Thus, any credit term (such as a requirement for a security deposit) is subject to the regulation's bar against discrimination on a prohibited basis.

3. *Telephone companies.* A telephone company's credit transactions qualify for the exceptions provided in § 202.3(a)(2) only if the company is regulated by a government unit or files the charges for service, delayed payment, or any discount for prompt payment with a government unit.

3(c) *Incidental credit.*

1. *Examples.* If a service provider (such as a hospital, doctor, lawyer, or merchant) allows the client or customer to defer the payment of a bill, this deferral of debt is credit for purposes of the regulation, even though there is no finance charge and no agreement for payment in installments. Because of the exceptions provided by this section, however, these particular credit extensions are excepted from compliance with certain procedural requirements as specified in § 202.3(c).

3(d) *Government credit.*

1. *Credit to governments.* The exception relates to credit extended to (not by) governmental entities. For example, credit extended to a local government is covered by this exception, but credit extended to consumers by a federal or state housing agency does not qualify for special treatment under this category.

Section 202.4—General Rules

Paragraph 4(a)

1. *Scope of rule.* The general rule stated in § 202.4(a) covers all dealings, without exception, between an applicant and a creditor, whether or not addressed by other provisions of the regulation. Other provisions of the regulation identify specific practices that the Board has decided are impermissible because they could result in credit discrimination on a basis prohibited by the Act. The general rule covers, for example, application procedures, criteria used to evaluate creditworthiness, administration of

accounts, and treatment of delinquent or slow accounts. Thus, whether or not specifically prohibited elsewhere in the regulation, a credit practice that treats applicants differently on a prohibited basis violates the law because it violates the general rule. Disparate treatment on a prohibited basis is illegal whether or not it results from a conscious intent to discriminate.

2. *Examples.*

i. Disparate treatment would exist, for example, in the following situations:

A. A creditor provides information only on ''subprime'' and similar products to minority applicants who request information about the creditor's mortgage products, but provides information on a wider variety of mortgage products to similarly situated nonminority applicants.

B. A creditor provides more comprehensive information to men than to similarly situated women.

C. A creditor requires a minority applicant to provide greater documentation to obtain a loan than a similarly situated nonminority applicant.

D. A creditor waives or relaxes credit standards for a nonminority applicant but not for a similarly situated minority applicant.

ii. Treating applicants differently on a prohibited basis is unlawful if the creditor lacks a legitimate nondiscriminatory reason for its action, or if the asserted reason is found to be a pretext for discrimination.

Paragraph 4(b)

1. *Prospective applicants.* Generally, the regulation's protections apply only to persons who have requested or received an extension of credit. In keeping with the purpose of the Act—to promote the availability of credit on a nondiscriminatory basis—§ 202.4(b) covers acts or practices directed at prospective applicants that could discourage a reasonable person, on a prohibited basis, from applying for credit. Practices prohibited by this section include:

i. A statement that the applicant should not bother to apply, after the applicant states that he is retired.

ii. The use of words, symbols, models or other forms of communication in advertising that express, imply, or suggest a discriminatory preference or a policy of exclusion in violation of the Act.

iii. The use of interview scripts that discourage applications on a prohibited basis.

2. *Affirmative advertising.* A creditor may affirmatively solicit or encourage members of traditionally disadvantaged groups to apply for credit, especially groups that might not normally seek credit from that creditor.

Paragraph 4(c)

1. *Requirement for written applications.* Model application forms are provided in Appendix B to the regulation, although use of a printed form is not required. A creditor will satisfy the requirement by writing down the information that it normally considers in making a credit decision. The creditor may complete an application on behalf of an applicant and need not require the applicant to sign the application.

2. *Telephone applications.* A creditor that accepts applications by telephone for dwelling-related credit covered by § 202.13 can meet the requirement for written applications by writing down pertinent information that is provided by the applicant.

3. *Computerized entry.* Information entered directly into and retained by a computerized system qualifies as a written application under this paragraph. (See the commentary to § 202.13(b), *Applications through electronic media* and *Applications through video.*)

Paragraph 4(d)

1. *Clear and conspicuous.* This standard requires that disclosures be presented in a reasonably understandable format in a way that does not obscure the required information. No minimum type size is mandated, but the disclosures must be legible, whether typewritten, handwritten, or printed by computer.

Section 202.5—Rules Concerning Requests for Information

5(a) General rules.

Paragraph 5(a)(1)

1. *Requests for information.* This section governs the types of information that a creditor may gather. Section 202.6 governs how information may be used.

Paragraph 5(a)(2)

1. *Local laws.* Information that a creditor is allowed to collect pursuant to a ''state'' statute or regulation includes information required by a local statute, regulation, or ordinance.

2. *Information required by Regulation C.* Regulation C generally requires creditors covered by the Home Mortgage Disclosure Act (HMDA) to collect and report information about the race, ethnicity, and sex of applicants for home-improvement loans and home-purchase loans, including some types of loans not covered by § 202.13.

3. *Collecting information on behalf of creditors.* Persons such as loan brokers and correspondents do not violate the ECOA or Regulation B if they collect information that they are otherwise prohibited from collecting, where the purpose of collecting the information is to provide it to a creditor that is subject to the Home Mortgage Disclosure Act or another federal or state statute or regulation requiring data collection.

5(d) *Other limitations on information requests.*

Paragraph 5(d)(1)

1. *Indirect disclosure of prohibited information.* The fact that certain credit-related information may indirectly disclose marital status does not bar a creditor from seeking such information. For example, the creditor may ask about:

i. The applicant's obligation to pay alimony, child support, or separate maintenance income.

ii. The source of income to be used as the basis for repaying the credit requested, which could disclose that it is the income of a spouse.

iii. Whether any obligation disclosed by the applicant has a co-obligor, which could disclose that the co-obligor is a spouse or former spouse.

iv. The ownership of assets, which could disclose the interest of a spouse.

Paragraph 5(d)(2)

1. *Disclosure about income.* The sample application forms in appendix B to the regulation illustrate how a creditor may inform an applicant of the right not to disclose alimony, child support, or separate maintenance income.

2. *General inquiry about source of income.* Since a general inquiry about the source of income may lead an applicant to disclose alimony, child support, or separate maintenance income, a creditor making such an inquiry on an application form should preface the request with the disclosure required by this paragraph.

3. *Specific inquiry about sources of income.* A creditor need not give the disclosure if the inquiry about income is specific and worded in a way that is unlikely to lead the applicant to disclose the fact that income is derived from alimony, child support, or separate maintenance payments. For example, an application form that asks about specific types of income such as salary, wages, or investment income need not include the disclosure.

Section 202.6—Rules Concerning Evaluation of Applications

6(a) *General rule concerning use of information.*

1. *General.* When evaluating an application for credit, a creditor generally may consider any information obtained. However, a creditor may not consider in its evaluation of creditworthiness any information that it is barred by § 202.5 from obtaining or from using for any purpose other than to conduct a self-test under § 202.15.

2. *Effects test.* The effects test is a judicial doctrine that was developed in a series of employment cases decided by the U.S. Supreme Court under Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*), and the burdens of proof for such employment cases were codified by Congress in the Civil Rights Act of 1991 (42 U.S.C. 2000e–2). Congressional intent that this doctrine apply to the credit area is documented in the Senate Report that accompanied H.R. 6516, No. 94–589, pp. 4–5; and in the House Report that accompanied H.R. 6516, No. 94–210, p.5. The Act and regulation may prohibit a creditor practice that is discriminatory in effect because it has a disproportionately negative impact on a prohibited basis, even though the creditor has no intent to discriminate and the practice appears neutral on its face, unless the creditor practice meets a legitimate business need that cannot reasonably be achieved as well by means that are less disparate in their impact. For example, requiring that applicants have income in excess of a certain amount to qualify for an overdraft line of credit could mean that women and minority applicants will be rejected at a higher rate than men and nonminority applicants. If there is a demonstrable relationship between the income requirement and creditworthiness for the level of credit involved, however, use of the income standard would likely be permissible.

6(b) *Specific rules concerning use of information.*

Paragraph 6(b)(1)

1. *Prohibited basis—special purpose credit.* In a special purpose credit program, a creditor may consider a prohibited basis to determine whether the applicant possesses a characteristic needed for eligibility. (See § 202.8.)

Paragraph 6(b)(2)

1. *Favoring the elderly.* Any system of evaluating creditworthiness may favor a credit applicant who is age 62 or older. A credit program that offers more favorable credit terms to applicants age 62 or older is also permissible; a program that offers more favorable credit terms to applicants at an age lower than 62 is permissible only if it meets the special-purpose credit requirements of § 202.8.

2. *Consideration of age in a credit scoring system.* Age may be taken directly into account in a credit scoring system that is ''demonstrably and statistically sound,'' as defined in § 202.2(p), with one limitation: applicants age 62 years or older must be treated at least as favorably as applicants who are under age 62. If age is scored by assigning points to an applicant's age category, elderly applicants must receive the same or a greater number of points as the most favored class of nonelderly applicants.

i. *Age-split scorecards.* Some credit systems segment the population and use different scorecards based on the age of an applicant. In such a system, one card may cover a narrow age range (for example, applicants in their twenties or younger) who are evaluated under attributes predictive for that age group. A second card may cover all other applicants, who are evaluated under the attributes predictive for that broader class. When a system uses a card covering a wide age range that encompasses elderly applicants, the credit scoring system is not deemed to score age. Thus, the system does not raise the issue of assigning a negative factor or value to the age of elderly applicants. But if a system segments the population by age into multiple scorecards, and includes elderly applicants in a narrower age range, the credit scoring system does score age. To comply with the Act and regulation in such a case, the creditor must ensure that the system does not assign a negative factor or value to the age of elderly applicants as a class.

3. *Consideration of age in a judgmental system.* In a judgmental system, defined in § 202.2(t), a creditor may not decide whether to extend credit or set the terms and conditions of credit based on age or information related exclusively to age. Age or age-related information may be considered only in evaluating other ''pertinent elements of creditworthiness'' that are drawn from the particular facts and circumstances concerning the applicant. For example, a creditor may not reject an application or terminate an account because the applicant is 60 years old. But a creditor that uses a judgmental system may relate the applicant's age to other information about the applicant that the creditor considers in evaluating creditworthiness. As the following examples illustrate, the evaluation must be made in an individualized, case-by-case manner:

i. A creditor may consider the applicant's occupation and length of time to retirement to ascertain whether the applicant's income (including retirement income) will support the extension of credit to its maturity.

ii. A creditor may consider the adequacy of any security offered when the term of the credit extension exceeds the life expectancy of the applicant and the cost of realizing on the collateral could exceed the applicant's equity. An elderly applicant might not qualify for a 5 percent down, 30-year mortgage loan but might qualify with a larger downpayment or a shorter loan maturity.

iii. A creditor may consider the applicant's age to assess the significance of length of employment (a young applicant may have just entered the job market) or length of time at an address (an elderly applicant may recently have retired and moved from a long-term residence).

4. *Consideration of age in a reverse mortgage.* A reverse mortgage is a home-secured loan in which the borrower receives payments from the creditor, and does not become obligated to repay these amounts (other than in the case of default) until the borrower dies, moves permanently from the home, or transfers title to the home, or upon a specified maturity date. Disbursements to the borrower under a reverse mortgage typically are determined by considering the value of the borrower's home, the current interest rate, and the borrower's life expectancy. A reverse mortgage program that requires borrowers to be age 62 or older is permissible under § 202.6(b)(2)(iv). In addition, under § 202.6(b)(2)(iii), a creditor may consider a borrower's age to evaluate a pertinent element of creditworthiness, such as the amount of the credit or monthly payments that the borrower will receive, or the estimated repayment date.

5. *Consideration of age in a combined system.* A creditor using a credit scoring system that qualifies as ''empirically derived'' under § 202.2(p) may consider other factors (such as a credit report or the applicant's cash flow) on a judgmental basis. Doing so will not negate the classification of the credit scoring component of the combined system as ''demonstrably and statistically sound.'' While age could be used in the credit scoring portion, however, in the judgmental portion age may not be considered directly. It may be used only for the purpose of determining a ''pertinent element of creditworthiness.'' (See comment 6(b)(2)–3.)

6. *Consideration of public assistance.* When considering income derived from a public assistance program, a creditor may take into account, for example:

i. The length of time an applicant will likely remain eligible to receive such income.

ii. Whether the applicant will continue to qualify for benefits based on the status of the applicant's dependents (as in the case of Temporary Aid to Needy Families, or social security payments to a minor).

iii. Whether the creditor can attach or garnish the income to assure payment of the debt in the event of default.

Paragraph 6(b)(5)

1. *Consideration of an individual applicant.* A creditor must evaluate income derived from part-time employment, alimony, child support, separate maintenance payments, retirement benefits, or public assistance on an individual basis, not on the basis of aggregate statistics; and must assess its reliability or unreliability by analyzing the applicant's actual circumstances, not by analyzing statistical measures derived from a group.

2. *Payments consistently made.* In determining the likelihood of consistent payments of alimony, child support, or separate maintenance, a creditor may consider factors such as whether payments are received pursuant to a written agreement or court decree; the length of time that the payments have been received; whether the payments are regularly received by the applicant; the availability of court or other procedures to compel payment; and the creditworthiness of the payor, including the credit history of the payor when it is available to the creditor.

3. *Consideration of income.*

i. A creditor need not consider income at all in evaluating creditworthiness. If a creditor does consider income, there are several acceptable methods, whether in a credit scoring or a judgmental system:

A. A creditor may score or take into account the total sum of all income stated by the applicant without taking steps to evaluate the income for reliability.

B. A creditor may evaluate each component of the applicant's income, and then score or take into account income determined to be reliable separately from other income; or the creditor may disregard that portion of income that is not reliable when it aggregates reliable income.

C. A creditor that does not evaluate all income components for reliability must treat as reliable any component of protected income that is not evaluated.

ii. In considering the separate components of an applicant's income, the creditor may not automatically discount or exclude from consideration any protected income. Any discounting or exclusion must be based on the applicant's actual circumstances.

4. *Part-time employment, sources of income.* A creditor may score or take into account the fact that an applicant has more than one source of earned income—a full-time and a part-time job or two part-time jobs. A creditor may also score or treat earned income from a secondary source differently than earned income from a primary source. The creditor may not, however, score or otherwise take into account the number of sources for income such as retirement income, social security, supplemental security income, and alimony. Nor may the creditor treat negatively the fact that an applicant's only earned income is derived from, for example, a part-time job.

Paragraph 6(b)(6)

1. *Types of credit references.* A creditor may restrict the types of credit history and credit references that it will consider, provided that the restrictions are applied to all credit applicants without regard to sex, marital status, or any other prohibited basis. On the applicant's request, however, a creditor must consider credit information not reported through a credit bureau when the

information relates to the same types of credit references and history that the creditor would consider if reported through a credit bureau.

Paragraph 6(b)(7)

1. *National origin—immigration status.* The applicant's immigration status and ties to the community (such as employment and continued residence in the area) could have a bearing on a creditor's ability to obtain repayment. Accordingly, the creditor may consider immigration status and differentiate, for example, between a noncitizen who is a long-time resident with permanent resident status and a noncitizen who is temporarily in this country on a student visa.

2. *National origin—citizenship.* A denial of credit on the ground that an applicant is not a United States citizen is not per se discrimination based on national origin.

Paragraph 6(b)(8)

1. *Prohibited basis—marital status.* A creditor may consider the marital status of an applicant or joint applicant for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit. For example, in a secured transaction involving real property, a creditor could take into account whether state law gives the applicant's spouse an interest in the property being offered as collateral.

Section 202.7—Rules Concerning Extensions of Credit

7(a) *Individual accounts.*

1. *Open-end credit—authorized user.* A creditor may not require a creditworthy applicant seeking an individual credit account to provide additional signatures. But the creditor may condition the designation of an authorized user by the account holder on the authorized user's becoming contractually liable for the account, as long as the creditor does not differentiate on any prohibited basis in imposing this requirement.

2. *Open-end credit—choice of authorized user.* A creditor that permits an account holder to designate an authorized user may not restrict this designation on a prohibited basis. For example, if the creditor allows the designation of spouses as authorized users, the creditor may not refuse to accept a nonspouse as an authorized user.

3. *Overdraft authority on transaction accounts.* If a transaction account (such as a checking account or NOW account) includes an overdraft line of credit, the creditor may require that all persons authorized to draw on the transaction account assume liability for any overdraft.

7(b) *Designation of name.*

1. *Single name on account.* A creditor may require that joint applicants on an account designate a single name for purposes of administering the account and that a single name be embossed on any credit cards issued on the account. But the creditor may not require that the name be the husband's name. (See § 202.10 for rules governing the furnishing of credit history on accounts held by spouses.)

7(c) *Action concerning existing open-end accounts.*

Paragraph 7(c)(1)

1. *Termination coincidental with marital status change.* When an account holder's marital status changes, a creditor generally may not terminate the account unless it has evidence that the account holder is now unable or unwilling to repay. But the creditor may terminate an account on which both spouses are jointly liable, even if the action coincides with a change in marital status, when one or both spouses:

i. Repudiate responsibility for future charges on the joint account.

ii. Request separate accounts in their own names.

iii. Request that the joint account be closed.

2. *Updating information.* A creditor may periodically request updated information from applicants but may not use events related to a prohibited basis—such as an applicant's retirement or reaching a particular age, or a change in name or marital status—to trigger such a request.

Paragraph 7(c)(2)

1. *Procedure pending reapplication.* A creditor may require a reapplication from an account holder, even when there is no evidence of unwillingness or inability to repay, if (1) the credit was based on the qualifications of a person who is no longer available to support the credit and (2) the creditor has information indicating that the account holder's income may be insufficient to support the credit. While a reapplication is pending, the creditor must allow the account holder full access to the account under the existing contract terms. The creditor may specify a reasonable time period within which the account holder must submit the required information.

7(d) *Signature of spouse or other person.*

1. *Qualified applicant.* The signature rules ensure that qualified applicants are able to obtain credit in their own names. Thus, when an applicant requests individual credit, a creditor generally may not require the signature of another person unless the creditor has first determined that the applicant alone does not qualify for the credit requested.

2. *Unqualified applicant.* When an applicant requests individual credit but does not meet a creditor's standards, the creditor may require a cosigner, guarantor, endorser, or similar partie—but cannot require that it be the spouse. (See commentary to § 202.7(d)(5) and (6).)

Paragraph 7(d)(1)

1. *Signature of another person.* It is impermissible for a creditor to require an applicant who is individually creditworthy to provide a cosigner—even if the creditor applies the requirement without regard to sex, marital status, or any other prohibited basis. (But see comment 7(d)(6)–1 concerning guarantors of closely held corporations.)

2. *Joint applicant.* The term ''joint applicant'' refers to someone who applies contemporaneously with the applicant for shared or joint credit. It does not refer to someone whose signature is required by the creditor as a condition for granting the credit requested.

3. *Evidence of joint application.* A person's intent to be a joint applicant must be evidenced at the time of application. Signatures on a promissory note may not be used to show intent to apply for joint credit. On the other hand, signatures or initials on a credit application affirming applicants' intent to apply for joint credit may be used to establish intent to apply for joint credit. (See Appendix B). The method used to establish intent must be distinct from the means used by individuals to affirm the accuracy of information. For example, signatures on a joint financial statement affirming the veracity of information are not sufficient to establish intent to apply for joint credit.

Paragraph 7(d)(2)

1. *Jointly owned property.* If an applicant requests unsecured credit, does not own sufficient separate property, and relies on joint property to establish creditworthiness, the creditor must value the applicant's interest in the jointly owned property. A creditor may not request that a nonapplicant joint owner sign any instrument as a condition of the credit extension unless the applicant's interest does not support the amount and terms of the credit sought.

i. *Valuation of applicant's interest.* In determining the value of an applicant's interest in jointly owned property, a creditor may consider factors such as the form of ownership and the property's susceptibility to attachment, execution, severance, or partition; the value of the applicant's interest after such action; and the cost associated with the action. This determination must be based on the existing form of ownership, and not on the possibility of a subsequent change. For example, in determining whether a married applicant's interest in jointly owned property is sufficient to satisfy the creditor's standards of creditworthiness for individual credit, a creditor may not consider that the applicant's separate property could be transferred into tenancy by the entirety after consummation. Similarly, a creditor may not consider the possibility that the couple may divorce. Accordingly, a creditor may not require the signature of the nonapplicant spouse in these or similar circumstances.

ii. *Other options to support credit.* If the applicant's interest in jointly owned property does not support the amount and terms of credit sought, the creditor may offer the applicant other options to qualify for the extension of credit. For example:

A. Providing a co-signer or other party (§ 202.7(d)(5));

B. Requesting that the credit be granted on a secured basis (§ 202.7(d)(4)); or

C. Providing the signature of the joint owner on an instrument that ensures access to the property in the event of the applicant's death or default, but does not impose personal liability unless necessary under state law (such as a limited guarantee). A creditor may not routinely require, however, that a joint owner sign an instrument (such as a quitclaim deed) that would result in the forfeiture of the joint owner's interest in the property.

2. *Need for signature—reasonable belief.* A creditor's reasonable belief as to what instruments need to be signed by a person

other than the applicant should be supported by a thorough review of pertinent statutory and decisional law or an opinion of the state attorney general.

Paragraph 7(d)(3)

1. *Residency.* In assessing the creditworthiness of a person who applies for credit in a community property state, a creditor may assume that the applicant is a resident of the state unless the applicant indicates otherwise.

Paragraph 7(d)(4)

1. *Creation of enforceable lien.* Some state laws require that both spouses join in executing any instrument by which real property is encumbered. If an applicant offers such property as security for credit, a creditor may require the applicant's spouse to sign the instruments necessary to create a valid security interest in the property. The creditor may not require the spouse to sign the note evidencing the credit obligation if signing only the mortgage or other security agreement is sufficient to make the property available to satisfy the debt in the event of default. However, if under state law both spouses must sign the note to create an enforceable lien, the creditor may require the signatures.

2. *Need for signature—reasonable belief.* Generally, a signature to make the secured property available will only be needed on a security agreement. A creditor's reasonable belief that, to ensure access to the property, the spouse's signature is needed on an instrument that imposes personal liability should be supported by a thorough review of pertinent statutory and decisional law or an opinion of the state attorney general.

3. *Integrated instruments.* When a creditor uses an integrated instrument that combines the note and the security agreement, the spouse cannot be asked to sign the integrated instrument if the signature is only needed to grant a security interest. But the spouse could be asked to sign an integrated instrument that makes clear—for example, by a legend placed next to the spouse's signature—that the spouse's signature is only to grant a security interest and that signing the instrument does not impose personal liability.

Paragraph 7(d)(5)

1. *Qualifications of additional parties.* In establishing guidelines for eligibility of guarantors, cosigners, or similar additional parties, a creditor may restrict the applicant's choice of additional parties but may not discriminate on the basis of sex, marital status, or any other prohibited basis. For example, the creditor could require that the additional party live in the creditor's market area.

2. *Reliance on income of another person—individual credit.* An applicant who requests individual credit relying on the income of another person (including a spouse in a non-community property state) may be required to provide the signature of the other person to make the income available to pay the debt. In community property states, the signature of a spouse may be required if the applicant relies on the spouse's separate income. If the applicant relies on the spouse's future earnings that as a matter of state law cannot be characterized as community property until earned, the creditor may require the spouse's signature, but need not do so—even if it is the creditor's practice to require the signature when an applicant relies on the future earnings of a person other than a spouse. (See § 202.6(c) on consideration of state property laws.)

3. *Renewals.* If the borrower's creditworthiness is reevaluated when a credit obligation is renewed, the creditor must determine whether an additional party is still warranted and, if not warranted, release the additional party.

Paragraph 7(d)(6)

1. *Guarantees.* A guarantee on an extension of credit is part of a credit transaction and therefore subject to the regulation. A creditor may require the personal guarantee of the partners, directors, or officers of a business, and the shareholders of a closely held corporation, even if the business or corporation is creditworthy. The requirement must be based on the guarantor's relationship with the business or corporation, however, and not on a prohibited basis. For example, a creditor may not require guarantees only for women-owned or minority-owned businesses. Similarly, a creditor may not require guarantees only of the married officers of a business or the married shareholders of a closely held corporation.

2. *Spousal guarantees.* The rules in § 202.7(d) bar a creditor from requiring the signature of a guarantor's spouse just as they bar the creditor from requiring the signature of an applicant's spouse. For example, although a creditor may require all officers of a closely held corporation to personally guarantee a corporate loan, the creditor may not automatically require that spouses of married officers also sign the guarantee. If an evaluation of the financial circumstances of an officer indicates that an additional signature is necessary, however, the creditor may require the signature of another person in appropriate circumstances in accordance with § 202.7(d)(2).

7(e) *Insurance.*

1. *Differences in terms.* Differences in the availability, rates, and other terms on which credit-related casualty insurance or credit life, health, accident, or disability insurance is offered or provided to an applicant does not violate Regulation B.

2. *Insurance information.* A creditor may obtain information about an applicant's age, sex, or marital status for insurance purposes. The information may only be used for determining eligibility and premium rates for insurance, however, and not in making the credit decision.

Section 202.8—Special Purpose Credit Programs

8(a) *Standards for programs.*

1. *Determining qualified programs.* The Board does not determine whether individual programs qualify for special purpose credit status, or whether a particular program benefits an ''economically disadvantaged class of persons.'' The agency or creditor administering or offering the loan program must make these decisions regarding the status of its program.

2. *Compliance with a program authorized by federal or state law.* A creditor does not violate Regulation B when it complies in good faith with a regulation promulgated by a government agency implementing a special purpose credit program under § 202.8(a)(1). It is the agency's responsibility to promulgate a regulation that is consistent with federal and state law.

3. *Expressly authorized.* Credit programs authorized by federal or state law include programs offered pursuant to federal, state, or local statute, regulation or ordinance, or pursuant to judicial or administrative order.

4. *Creditor liability.* A refusal to grant credit to an applicant is not a violation of the Act or regulation if the applicant does not meet the eligibility requirements under a special purpose credit program.

5. *Determining need.* In designing a special purpose credit program under § 202.8(a), a for-profit organization must determine that the program will benefit a class of people who would otherwise be denied credit or would receive it on less favorable terms. This determination can be based on a broad analysis using the organization's own research or data from outside sources, including governmental reports and studies. For example, a creditor might design new products to reach consumers who would not meet, or have not met, its traditional standards of creditworthiness due to such factors as credit inexperience or the use of credit sources that may not report to consumer reporting agencies. Or, a bank could review Home Mortgage Disclosure Act data along with demographic data for its assessment area and conclude that there is a need for a special purpose credit program for low-income minority borrowers.

6. *Elements of the program.* The written plan must contain information that supports the need for the particular program. The plan also must either state a specific period of time for which the program will last, or contain a statement regarding when the program will be reevaluated to determine if there is a continuing need for it.

8(b) *Rules in other sections.*

1. *Applicability of rules.* A creditor that rejects an application because the applicant does not meet the eligibility requirements (common characteristic or financial need, for example) must nevertheless notify the applicant of action taken as required by § 202.9.

8(c) *Special rule concerning requests and use of information.*

1. *Request of prohibited basis information.* This section permits a creditor to request and consider certain information that would otherwise be prohibited by §§ 202.5 and 202.6 to determine an applicant's eligibility for a particular program.

2. *Examples.* Examples of programs under which the creditor can ask for and consider information about a prohibited basis are:

i. Energy conservation programs to assist the elderly, for which the creditor must consider the applicant's age.

ii. Programs under a Minority Enterprise Small Business Investment Corporation, for which a creditor must consider the applicant's minority status.

8(d) *Special rule in the case of financial need.*

1. *Request of prohibited basis information.* This section permits a creditor to request and

consider certain information that would otherwise be prohibited by §§ 202.5 and 202.6, and to require signatures that would otherwise be prohibited by § 202.7(d).

2. *Examples.* Examples of programs in which financial need is a criterion are:

i. Subsidized housing programs for low- to moderate-income households, for which a creditor may have to consider the applicant's receipt of alimony or child support, the spouse's or parents' income, etc.

ii. Student loan programs based on the family's financial need, for which a creditor may have to consider the spouse's or parents' financial resources.

3. *Student loans.* In a guaranteed student loan program, a creditor may obtain the signature of a parent as a guarantor when required by federal or state law or agency regulation, or when the student does not meet the creditor's standards of creditworthiness. (See § 202.7(d)(1) and (5).) The creditor may not require an additional signature when a student has a work or credit history that satisfies the creditor's standards.

Section 202.9—Notifications

1. *Use of the term adverse action.* The regulation does not require that a creditor use the term adverse action in communicating to an applicant that a request for an extension of credit has not been approved. In notifying an applicant of adverse action as defined by § 202.2(c)(1), a creditor may use any words or phrases that describe the action taken on the application.

2. *Expressly withdrawn applications.* When an applicant expressly withdraws a credit application, the creditor is not required to comply with the notification requirements under § 202.9. (The creditor must comply, however, with the record retention requirements of the regulation. See § 202.12(b)(3).)

3. *When notification occurs.* Notification occurs when a creditor delivers or mails a notice to the applicant's last known address or, in the case of an oral notification, when the creditor communicates the credit decision to the applicant.

4. *Location of notice.* The notifications required under § 202.9 may appear on either or both sides of a form or letter.

5. *Prequalification requests.* Whether a creditor must provide a notice of action taken for a prequalification request depends on the creditor's response to the request, as discussed in comment 2(f)–3. For instance, a creditor may treat the request as an inquiry if the creditor evaluates specific information about the consumer and tells the consumer the loan amount, rate, and other terms of credit the consumer could qualify for under various loan programs, explaining the process the consumer must follow to submit a mortgage application and the information the creditor will analyze in reaching a credit decision. On the other hand, a creditor has treated a request as an application, and is subject to the adverse action notice requirements of § 202.9 if, after evaluating information, the creditor decides that it will not approve the request and communicates that decision to the consumer. For example, if the creditor tells the consumer that it would not approve an application for a mortgage because of a bankruptcy in the consumer's record, the creditor has denied an application for credit.

9(a) *Notification of action taken, ECOA notice, and statement of specific reasons.*

Paragraph 9(a)(1)

1. *Timing of notice—when an application is complete.* Once a creditor has obtained all the information it normally considers in making a credit decision, the application is complete and the creditor has 30 days in which to notify the applicant of the credit decision. (See also comment 2(f)–6.)

2. *Notification of approval.* Notification of approval may be express or by implication. For example, the creditor will satisfy the notification requirement when it gives the applicant the credit card, money, property, or services requested.

3. *Incomplete application—denial for incompleteness.* When an application is incomplete regarding information that the applicant can provide and the creditor lacks sufficient data for a credit decision, the creditor may deny the application giving as the reason for denial that the application is incomplete. The creditor has the option, alternatively, of providing a notice of incompleteness under § 202.9(c).

4. *Incomplete application—denial for reasons other than incompleteness.* When an application is missing information but provides sufficient data for a credit decision, the creditor may evaluate the application, make its credit decision, and notify the applicant accordingly. If credit is denied, the applicant must be given the specific reasons for the credit denial (or notice of the right to receive the reasons); in this instance missing information or ''incomplete application'' cannot be given as the reason for the denial.

5. *Length of counteroffer.* Section 202.9(a)(1)(iv) does not require a creditor to hold a counteroffer open for 90 days or any other particular length of time.

6. *Counteroffer combined with adverse action notice.* A creditor that gives the applicant a combined counteroffer and adverse action notice that complies with § 202.9(a)(2) need not send a second adverse action notice if the applicant does not accept the counteroffer. A sample of a combined notice is contained in form C–4 of Appendix C to the regulation.

7. *Denial of a telephone application.* When an application is made by telephone and adverse action is taken, the creditor must request the applicant's name and address in order to provide written notification under this section. If the applicant declines to provide that information, then the creditor has no further notification responsibility.

Paragraph 9(a)(3)

1. *Coverage.* In determining which rules in this paragraph apply to a given business credit application, a creditor may rely on the applicant's assertion about the revenue size of the business. (Applications to start a business are governed by the rules in § 202.9(a)(3)(i).) If an applicant applies for credit as a sole proprietor, the revenues of the sole proprietorship will determine which rules govern the application. However, if an applicant applies for business credit as an individual, the rules in § 202.9(a)(3)(i) apply unless the application is for trade or similar credit.

2. *Trade credit.* The term trade credit generally is limited to a financing arrangement that involves a buyer and a seller—such as a supplier who finances the sale of equipment, supplies, or inventory; it does not apply to an extension of credit by a bank or other financial institution for the financing of such items.

3. *Factoring.* Factoring refers to a purchase of accounts receivable, and thus is not subject to the Act or regulation. If there is a credit extension incident to the factoring arrangement, the notification rules in § 202.9(a)(3)(ii) apply, as do other relevant sections of the Act and regulation.

4. *Manner of compliance.* In complying with the notice provisions of the Act and regulation, creditors offering business credit may follow the rules governing consumer credit. Similarly, creditors may elect to treat all business credit the same (irrespective of revenue size) by providing notice in accordance with § 202.9(a)(3)(i).

5. *Timing of notification.* A creditor subject to § 202.9(a)(3)(ii)(A) is required to notify a business credit applicant, orally or in writing, of action taken on an application within a reasonable time of receiving a completed application. Notice provided in accordance with the timing requirements of § 202.9(a)(1) is deemed reasonable in all instances.

9(b) *Form of ECOA notice and statement of specific reasons.*

Paragraph 9(b)(1)

1. *Substantially similar notice.* The ECOA notice sent with a notification of a credit denial or other adverse action will comply with the regulation if it is ''substantially similar'' to the notice contained in § 202.9(b)(1). For example, a creditor may add a reference to the fact that the ECOA permits age to be considered in certain credit scoring systems, or add a reference to a similar state statute or regulation and to a state enforcement agency.

Paragraph 9(b)(2)

1. *Number of specific reasons.* A creditor must disclose the principal reasons for denying an application or taking other adverse action. The regulation does not mandate that a specific number of reasons be disclosed, but disclosure of more than four reasons is not likely to be helpful to the applicant.

2. *Source of specific reasons.* The specific reasons disclosed under §§ 202.9(a)(2) and (b)(2) must relate to and accurately describe the factors actually considered or scored by a creditor.

3. *Description of reasons.* A creditor need not describe how or why a factor adversely affected an applicant. For example, the notice may say ''length of residence'' rather than ''too short a period of residence.''

4. *Credit scoring system.* If a creditor bases the denial or other adverse action on a credit scoring system, the reasons disclosed must relate only to those factors actually scored in the system. Moreover, no factor that was a principal reason for adverse action may be excluded from disclosure. The creditor must disclose the actual reasons for denial (for example, ''age of automobile'') even if the relationship of that factor to predicting

creditworthiness may not be clear to the applicant.

5. *Credit scoring—method for selecting reasons.* The regulation does not require that any one method be used for selecting reasons for a credit denial or other adverse action that is based on a credit scoring system. Various methods will meet the requirements of the regulation. One method is to identify the factors for which the applicant's score fell furthest below the average score for each of those factors achieved by applicants whose total score was at or slightly above the minimum passing score. Another method is to identify the factors for which the applicant's score fell furthest below the average score for each of those factors achieved by all applicants. These average scores could be calculated during the development or use of the system. Any other method that produces results substantially similar to either of these methods is also acceptable under the regulation.

6. *Judgmental system.* If a creditor uses a judgmental system, the reasons for the denial or other adverse action must relate to those factors in the applicant's record actually reviewed by the person making the decision.

7. *Combined credit scoring and judgmental system.* If a creditor denies an application based on a credit evaluation system that employs both credit scoring and judgmental components, the reasons for the denial must come from the component of the system that the applicant failed. For example, if a creditor initially credit scores an application and denies the credit request as a result of that scoring, the reasons disclosed to the applicant must relate to the factors scored in the system. If the application passes the credit scoring stage but the creditor then denies the credit request based on a judgmental assessment of the applicant's record, the reasons disclosed must relate to the factors reviewed judgmentally, even if the factors were also considered in the credit scoring component. If the application is not approved or denied as a result of the credit scoring, but falls into a gray band, and the creditor performs a judgmental assessment and denies the credit after that assessment, the reasons disclosed must come from both components of the system. The same result applies where a judgmental assessment is the first component of the combined system. As provided in comment 9(b)(2)–1, disclosure of more than a combined total of four reasons is not likely to be helpful to the applicant.

8. *Automatic denial.* Some credit decision methods contain features that call for automatic denial because of one or more negative factors in the applicant's record (such as the applicant's previous bad credit history with that creditor, the applicant's declaration of bankruptcy, or the fact that the applicant is a minor). When a creditor denies the credit request because of an automatic-denial factor, the creditor must disclose that specific factor.

9. *Combined ECOA–FCRA disclosures.* The ECOA requires disclosure of the principal reasons for denying or taking other adverse action on an application for an extension of credit. The Fair Credit Reporting Act (FCRA) requires a creditor to disclose when it has based its decision in whole or in part on information from a source other than the applicant or its own files. Disclosing that a credit report was obtained and used in the denial of the application, as the FCRA requires, does not satisfy the ECOA requirement to disclose specific reasons. For example, if the applicant's credit history reveals delinquent credit obligations and the application is denied for that reason, to satisfy § 202.9(b)(2) the creditor must disclose that the application was denied because of the applicant's delinquent credit obligations. To satisfy the FCRA requirement, the creditor must also disclose that a credit report was obtained and used in the denial of the application. Sample forms C–1 through C–5 of Appendix C of the regulation provide for the two disclosures.

9(c) *Incomplete applications.*

Paragraph 9(c)(1)

1. *Exception for preapprovals.* The requirement to provide a notice of incompleteness does not apply to preapprovals that constitute applications under § 202.2(f).

Paragraph 9(c)(2)

1. *Reapplication.* If information requested by a creditor is submitted by an applicant after the expiration of the time period designated by the creditor, the creditor may require the applicant to make a new application.

Paragraph 9(c)(3)

1. *Oral inquiries for additional information.* If an applicant fails to provide the information in response to an oral request, a creditor must send a written notice to the applicant within the 30-day period specified in § 202.9(c)(1) and (2). If the applicant provides the information, the creditor must take action on the application and notify the applicant in accordance with § 202.9(a).

9(g) *Applications submitted through a third party.*

1. *Third parties.* The notification of adverse action may be given by one of the creditors to whom an application was submitted, or by a noncreditor third party. If one notification is provided on behalf of multiple creditors, the notice must contain the name and address of each creditor. The notice must either disclose the applicant's right to a statement of specific reasons within 30 days, or give the primary reasons each creditor relied upon in taking the adverse action—clearly indicating which reasons relate to which creditor.

2. *Third party notice—enforcement agency.* If a single adverse action notice is being provided to an applicant on behalf of several creditors and they are under the jurisdiction of different federal enforcement agencies, the notice need not name each agency; disclosure of any one of them will suffice.

3. *Third-party notice—liability.* When a notice is to be provided through a third party, a creditor is not liable for an act or omission of the third party that constitutes a violation of the regulation if the creditor accurately and in a timely manner provided the third party with the information necessary for the notification and maintains reasonable procedures adapted to prevent such violations.

Section 202.10—Furnishing of Credit Information

1. *Scope.* The requirements of § 202.10 for designating and reporting credit information apply only to consumer credit transactions. Moreover, they apply only to creditors that opt to furnish credit information to credit bureaus or to other creditors; there is no requirement that a creditor furnish credit information on its accounts.

2. *Reporting on all accounts.* The requirements of § 202.10 apply only to accounts held or used by spouses. However, a creditor has the option to designate all joint accounts (or all accounts with an authorized user) to reflect the participation of both parties, whether or not the accounts are held by persons married to each other.

3. *Designating accounts.* In designating accounts and reporting credit information, a creditor need not distinguish between accounts on which the spouse is an authorized user and accounts on which the spouse is a contractually liable party.

4. *File and index systems.* The regulation does not require the creation or maintenance of separate files in the name of each participant on a joint or user account, or require any other particular system of recordkeeping or indexing. It requires only that a creditor be able to report information in the name of each spouse on accounts covered by § 202.10. Thus, if a creditor receives a credit inquiry about the wife, it should be able to locate her credit file without asking the husband's name.

10(a) *Designation of accounts.*

1. *New parties.* When new parties who are spouses undertake a legal obligation on an account, as in the case of a mortgage loan assumption, the creditor must change the designation on the account to reflect the new parties and must furnish subsequent credit information on the account in the new names.

2. *Request to change designation of account.* A request to change the manner in which information concerning an account is furnished does not alter the legal liability of either spouse on the account and does not require a creditor to change the name in which the account is maintained.

Section 202.11—Relation to State Law

11(a) Inconsistent state laws.

1. *Preemption determination—New York.* The Board has determined that the following provisions in the state law of New York are preempted by the federal law, effective November 11, 1988:

i. Article 15, section 296a(1)(b)—Unlawful discriminatory practices in relation to credit on the basis of race, creed, color, national origin, age, sex, marital status, or disability. This provision is preempted to the extent that it bars taking a prohibited basis into account when establishing eligibility for certain special-purpose credit programs.

ii. Article 15, section 296a(1)(c)'Unlawful discriminatory practice to make any record or inquiry based on race, creed, color, national origin, age, sex, marital status, or disability. This provision is preempted to the extent that it bars a creditor from requesting and considering information regarding the particular characteristics (for example, race,

national origin, or sex) required for eligibility for special-purpose credit programs.

2. *Preemption determination—Ohio.* The Board has determined that the following provision in the state law of Ohio is preempted by the federal law, effective July 23, 1990:

i. Section 4112.021(B)(1)—Unlawful discriminatory practices in credit transactions. This provision is preempted to the extent that it bars asking or favorably considering the age of an elderly applicant; prohibits the consideration of age in a credit scoring system; permits without limitation the consideration of age in real estate transactions; and limits the consideration of age in special-purpose credit programs to certain government-sponsored programs identified in the state law.

Section 202.12—Record Retention

12(a) *Retention of prohibited information.*

1. *Receipt of prohibited information.* Unless the creditor specifically requested such information, a creditor does not violate this section when it receives prohibited information from a consumer reporting agency.

2. *Use of retained information.* Although a creditor may keep in its files prohibited information as provided in § 202.12(a), the creditor may use the information in evaluating credit applications only if permitted to do so by § 202.6.

12(b) *Preservation of records.*

1. *Copies.* Copies of the original record include carbon copies, photocopies, microfilm or microfiche copies, or copies produced by any other accurate retrieval system, such as documents stored and reproduced by computer. A creditor that uses a computerized or mechanized system need not keep a paper copy of a document (for example, of an adverse action notice) if it can regenerate all pertinent information in a timely manner for examination or other purposes.

2. *Computerized decisions.* A creditor that enters information items from a written application into a computerized or mechanized system and makes the credit decision mechanically, based only on the items of information entered into the system, may comply with § 202.12(b) by retaining the information actually entered. It is not required to store the complete written application, nor is it required to enter the remaining items of information into the system. If the transaction is subject to § 202.13, however, the creditor is required to enter and retain the data on personal characteristics in order to comply with the requirements of that section.

Paragraph 12(b)(3)

1. *Withdrawn and brokered applications.* In most cases, the 25-month retention period for applications runs from the date a notification is sent to the applicant granting or denying the credit requested. In certain transactions, a creditor is not obligated to provide a notice of the action taken. (See, for example, comment 9–2.) In such cases, the 25-month requirement runs from the date of application, as when:

i. An application is withdrawn by the applicant.

ii. An application is submitted to more than one creditor on behalf of the applicant, and the application is approved by one of the other creditors.

12(b)(6) *Self-tests*

1. The rule requires all written or recorded information about a self-test to be retained for 25 months after a self-test has been completed. For this purpose, a self-test is completed after the creditor has obtained the results and made a determination about what corrective action, if any, is appropriate. Creditors are required to retain information about the scope of the self-test, the methodology used and time period covered by the self-test, the report or results of the self-test including any analysis or conclusions, and any corrective action taken in response to the self-test.

12(b)(7) *Preapplication marketing information.*

1. *Prescreened credit solicitations.* The rule requires creditors to retain copies of prescreened credit solicitations. For purposes of this regulation, a prescreened solicitation is an ''offer of credit'' as described in 15 U.S.C. 1681a(1) of the Fair Credit Reporting Act. A creditor complies with this rule if it retains a copy of each solicitation mailing that contains different terms, such as the amount of credit offered, annual percentage rate, or annual fee.

2. *List of criteria.* A creditor must retain the list of criteria used to select potential recipients. This includes the criteria used by the creditor both to determine the potential recipients of the particular solicitation and to determine who will actually be offered credit.

3. *Correspondence.* A creditor may retain correspondence relating to consumers' complaints about prescreened solicitations in any manner that is reasonably accessible and is understandable to examiners. There is no requirement to establish a separate database or set of files for such correspondence, or to match consumer complaints with specific solicitation programs.

Section 202.13—Information for Monitoring Purposes

13(a) *Information to be requested.*

1. *Natural person.* Section 202.13 applies only to applications from natural persons.

2. *Principal residence.* The requirements of § 202.13 apply only if an application relates to a dwelling that is or will be occupied by the applicant as the principal residence. A credit application related to a vacation home or a rental unit is not covered. In the case of a two- to four-unit dwelling, the application is covered if the applicant intends to occupy one of the units as a principal residence.

3. *Temporary financing.* An application for temporary financing to construct a dwelling is not subject to § 202.13. But an application for both a temporary loan to finance construction of a dwelling and a permanent mortgage loan to take effect upon the completion of construction is subject to § 202.13.

4. *New principal residence.* A person can have only one principal residence at a time. However, if a person buys or builds a new dwelling that will become that person's principal residence within a year or upon completion of construction, the new dwelling is considered the principal residence for purposes of § 202.13.

5. *Transactions not covered.* The information-collection requirements of this section apply to applications for credit primarily for the purchase or refinancing of a dwelling that is or will become the applicant's principal residence. Therefore, applications for credit secured by the applicant's principal residence but made primarily for a purpose other than the purchase or refinancing of the principal residence (such as loans for home improvement and debt consolidation) are not subject to the information-collection requirements. An application for an open-end home equity line of credit is not subject to this section unless it is readily apparent to the creditor when the application is taken that the primary purpose of the line is for the purchase or refinancing of a principal dwelling.

6. *Refinancings.* A refinancing occurs when an existing obligation is satisfied and replaced by a new obligation undertaken by the same borrower. A creditor that receives an application to refinance an existing extension of credit made by that creditor for the purchase of the applicant's dwelling may request the monitoring information again but is not required to do so if it was obtained in the earlier transaction.

7. *Data collection under Regulation C.* See comment 5(a)(2)–2.

13(b) *Obtaining of information.*

1. *Forms for collecting data.* A creditor may collect the information specified in § 202.13(a) either on an application form or on a separate form referring to the application. The applicant must be offered the option to select more than one racial designation.

2. *Written applications.* The regulation requires written applications for the types of credit covered by § 202.13. A creditor can satisfy this requirement by recording on paper or by means of computer the information that the applicant provides orally and that the creditor normally considers in a credit decision.

3. *Telephone, mail applications.*

i. A creditor that accepts an application by telephone or mail must request the monitoring information.

ii. A creditor that accepts an application by mail need not make a special request for the monitoring information if the applicant has failed to provide it on the application form returned to the creditor.

iii. If it is not evident on the face of an application that it was received by mail, telephone, or via an electronic medium, the creditor should indicate on the form or other application record how the application was received.

4. *Video and other electronic-application processes.*

i. If a creditor takes an application through an electronic medium that allows the creditor to see the applicant, the creditor must treat the application as taken in person. The creditor must note the monitoring information on the basis of visual observation or surname, if the applicant chooses not to provide the information.

ii. If an applicant applies through an electronic medium without video capability,

the creditor treats the application as if it were received by mail.

5. *Applications through loan-shopping services.* When a creditor receives an application through an unaffiliated loan-shopping service, it does not have to request the monitoring information for purposes of the ECOA or Regulation B. Creditors subject to the Home Mortgage Disclosure Act should be aware, however, that data collection may be called for under Regulation C (12 CFR part 203), which generally requires creditors to report, among other things, the sex and race of an applicant on brokered applications or applications received through a correspondent.

6. *Inadvertent notation.* If a creditor inadvertently obtains the monitoring information in a dwelling-related transaction not covered by § 202.13, the creditor may process and retain the application without violating the regulation.

13(c) *Disclosure to applicants.*

1. *Procedures for providing disclosures.* The disclosure to an applicant regarding the monitoring information may be provided in writing. Appendix B contains a sample disclosure. A creditor may devise its own disclosure so long as it is substantially similar. The creditor need not orally request the monitoring information if it is requested in writing.

13(d) *Substitute monitoring program.*

1. *Substitute program.* An enforcement agency may adopt, under its established rulemaking or enforcement procedures, a program requiring creditors under its jurisdiction to collect information in addition to information required by this section.

Section 202.14—Rules on Providing Appraisal Reports

14(a) *Providing appraisals.*

1. *Coverage.* This section covers applications for credit to be secured by a lien on a dwelling, as that term is defined in § 202.14(c), whether the credit is for a business purpose (for example, a loan to start a business) or a consumer purpose (for example, a loan to finance a child's education).

2. *Renewals.* This section applies when an applicant requests the renewal of an existing extension of credit and the creditor obtains a new appraisal report. This section does not apply when a creditor uses the appraisal report previously obtained to evaluate the renewal request.

14(a)(2)(i) *Notice.*

1. *Multiple applicants.* When an application that is subject to this section involves more than one applicant, the notice about the appraisal report need only be given to one applicant, but it must be given to the primary applicant where one is readily apparent.

14(a)(2)(ii) *Delivery.*

1. *Reimbursement.* Creditors may charge for photocopy and postage costs incurred in providing a copy of the appraisal report, unless prohibited by state or other law. If the consumer has already paid for the report—for example, as part of an application fee—the creditor may not require additional fees for the appraisal (other than photocopy and postage costs).

14(c) *Definitions.*

1. *Appraisal reports.* Examples of appraisal reports are:

i. A report prepared by an appraiser (whether or not licensed or certified), including written comments and other documents submitted to the creditor in support of the appraiser's estimate or opinion of the property's value.

ii. A document prepared by the creditor's staff that assigns value to the property, if a third-party appraisal report has not been used.

iii. An internal review document reflecting that the creditor's valuation is different from a valuation in a third party's appraisal report (or different from valuations that are publicly available or valuations such as manufacturers' invoices for mobile homes).

2. *Other reports.* The term ''appraisal report'' does not cover all documents relating to the value of the applicant's property. Examples of reports not covered are:

i. Internal documents, if a third-party appraisal report was used to establish the value of the property.

ii. Governmental agency statements of appraised value.

iii. Valuations lists that are publicly available (such as published sales prices or mortgage amounts, tax assessments, and retail price ranges) and valuations such as manufacturers' invoices for mobile homes.

Section 202.15—Incentives for Self-Testing and Self-Correction

15(a) *General rules.*

15(a)(1) *Voluntary self-testing and correction.*

1. Activities required by any governmental authority are not voluntary self-tests. A governmental authority includes both administrative and judicial authorities for federal, state, and local governments.

15(a)(2) *Corrective action required.*

1. To qualify for the privilege, appropriate corrective action is required when the results of a self-test show that it is more likely than not that there has been a violation of the ECOA or this regulation. A self-test is also privileged when it identifies no violations.

2. In some cases, the issue of whether certain information is privileged may arise before the self-test is complete or corrective actions are fully under way. This would not necessarily prevent a creditor from asserting the privilege. In situations where the self-test is not complete, for the privilege to apply the lender must satisfy the regulation's requirements within a reasonable period of time. To assert the privilege where the self-test shows a likely violation, the rule requires, at a minimum, that the creditor establish a plan for corrective action and a method to demonstrate progress in implementing the plan. Creditors must take appropriate corrective action on a timely basis after the results of the self-test are known.

3. A creditor's determination about the type of corrective action needed, or a finding that no corrective action is required, is not conclusive in determining whether the requirements of this paragraph have been satisfied. If a creditor's claim of privilege is challenged, an assessment of the need for corrective action or the type of corrective action that is appropriate must be based on a review of the self-testing results, which may require an *in camera* inspection of the privileged documents.

15(a)(3) Other privileges.

1. A creditor may assert the privilege established under this section in addition to asserting any other privilege that may apply, such as the attorney-client privilege or the work-product privilege. Self-testing data may be privileged under this section whether or not the creditor's assertion of another privilege is upheld.

15(b) *Self-test defined.*

15(b)(1) *Definition.*

Paragraph 15(b)(1)(i)

1. To qualify for the privilege, a self-test must be sufficient to constitute a determination of the extent or effectiveness of the creditor's compliance with the Act and Regulation B. Accordingly, a self-test is only privileged if it was designed and used for that purpose. A self-test that is designed or used to determine compliance with other laws or regulations or for other purposes is not privileged under this rule. For example, a self-test designed to evaluate employee efficiency or customers' satisfaction with the level of service provided by the creditor is not privileged even if evidence of discrimination is uncovered incidentally. If a self-test is designed for multiple purposes, only the portion designed to determine compliance with the ECOA is eligible for the privilege.

Paragraph 15(b)(1)(ii)

1. The principal attribute of self-testing is that it constitutes a voluntary undertaking by the creditor to produce new data or factual information that otherwise would not be available and could not be derived from loan or application files or other records related to credit transactions. Self-testing includes, but is not limited to, the practice of using fictitious applicants for credit (testers), either with or without the use of matched pairs. A creditor may elect to test a defined segment of its business, for example, loan applications processed by a specific branch or loan officer, or applications made for a particular type of credit or loan program. A creditor also may use other methods of generating information that is not available in loan and application files, such as surveying mortgage loan applicants. To the extent permitted by law, creditors might also develop new methods that go beyond traditional pre-application testing, such as hiring testers to submit fictitious loan applications for processing.

2. The privilege does not protect a creditor's analysis performed as part of processing or underwriting a credit application. A creditor's evaluation or analysis of its loan files, Home Mortgage Disclosure Act data, or similar types of records (such as broker or loan officer compensation records) does not produce new information about a creditor's compliance and is not a self-test for purposes of this section. Similarly, a statistical analysis of data derived from existing loan files is not privileged.

15(b)(3) *Types of information not privileged.*

Paragraph 15(b)(3)(i)

1. The information listed in this paragraph is not privileged and may be used to determine whether the prerequisites for the privilege have been satisfied. Accordingly, a creditor might be asked to identify the self-testing method, for example, whether preapplication testers were used or data were compiled by surveying loan applicants. Information about the scope of the self-test (such as the types of credit transactions examined, or the geographic area covered by the test) also is not privileged.

Paragraph 15(b)(3)(ii)

1. Property appraisal reports, minutes of loan committee meetings or other documents reflecting the basis for a decision to approve or deny an application, loan policies or procedures, underwriting standards, and broker compensation records are examples of the types of records that are not privileged. If a creditor arranges for testers to submit loan applications for processing, the records are not related to actual credit transactions for purposes of this paragraph and may be privileged self-testing records.

15(c) *Appropriate corrective action.*

1. The rule only addresses the corrective actions required for a creditor to take advantage of the privilege in this section. A creditor may be required to take other actions or provide additional relief if a formal finding of discrimination is made.

15(c)(1) *General requirement.*

1. Appropriate corrective action is required even though no violation has been formally adjudicated or admitted by the creditor. In determining whether it is more likely than not that a violation occurred, a creditor must treat testers as if they are actual applicants for credit. A creditor may not refuse to take appropriate corrective action under this section because the self-test used fictitious loan applicants. The fact that a tester's agreement with the creditor waives the tester's legal right to assert a violation does not eliminate the requirement for the creditor to take corrective action, although no remedial relief for the tester is required under paragraph 15(c)(3).

15(c)(2) *Determining the scope of appropriate corrective action.*

1. Whether a creditor has taken or is taking corrective action that is appropriate will be determined on a case-by-case basis. Generally, the scope of the corrective action that is needed to preserve the privilege is governed by the scope of the self-test. For example, a creditor that self-tests mortgage loans and discovers evidence of discrimination may focus its corrective actions on mortgage loans, and is not required to expand its testing to other types of loans.

2. In identifying the policies or practices that are a likely cause of the violation, a creditor might identify inadequate or improper lending policies, failure to implement established policies, employee conduct, or other causes. The extent and scope of a likely violation may be assessed by determining which areas of operations are likely to be affected by those policies and practices, for example, by determining the types of loans and stages of the application process involved and the branches or offices where the violations may have occurred.

3. Depending on the method and scope of the self-test and the results of the test, appropriate corrective action may include one or more of the following:

i. If the self-test identifies individuals whose applications were inappropriately processed, offering to extend credit if the application was improperly denied and compensating such persons for out-of-pocket costs and other compensatory damages;

ii. Correcting institutional policies or procedures that may have contributed to the likely violation, and adopting new policies as appropriate;

iii. Identifying and then training and/or disciplining the employees involved;

iv. Developing outreach programs, marketing strategies, or loan products to serve more effectively segments of the lender's markets that may have been affected by the likely discrimination; and

v. Improving audit and oversight systems to avoid a recurrence of the likely violations.

15(c)(3) *Types of relief.*

Paragraph 15(c)(3)(ii)

1. The use of pre-application testers to identify policies and practices that illegally discriminate does not require creditors to review existing loan files for the purpose of identifying and compensating applicants who might have been adversely affected.

2. If a self-test identifies a specific applicant who was discriminated against on a prohibited basis, to qualify for the privilege in this section the creditor must provide appropriate remedial relief to that applicant; the creditor is not required to identify other applicants who might also have been adversely affected.

Paragraph 15(c)(3)(iii)

1. A creditor is not required to provide remedial relief to an applicant that would not be available by law. An applicant might also be ineligible for certain types of relief due to changed circumstances. For example, a creditor is not required to offer credit to a denied applicant if the applicant no longer qualifies for the credit due to a change in financial circumstances, although some other type of relief might be appropriate.

15(d)(1) *Scope of privilege.*

1. The privilege applies with respect to any examination, investigation or proceeding by federal, state, or local government agencies relating to compliance with the Act or this regulation. Accordingly, in a case brought under the ECOA, the privilege established under this section preempts any inconsistent laws or court rules to the extent they might require disclosure of privileged self-testing data. The privilege does not apply in other cases (such as in litigation filed solely under a state's fair lending statute). In such cases, if a court orders a creditor to disclose self-test results, the disclosure is not a voluntary disclosure or waiver of the privilege for purposes of paragraph 15(d)(2); a creditor may protect the information by seeking a protective order to limit availability and use of the self-testing data and prevent dissemination beyond what is necessary in that case. Paragraph 15(d)(1) precludes a party who has obtained privileged information from using it in a case brought under the ECOA, provided the creditor has not lost the privilege through voluntary disclosure under paragraph 15(d)(2).

15(d)(2) Loss of privilege.

Paragraph 15(d)(2)(i)

1. A creditor's corrective action, by itself, is not considered a voluntary disclosure of the self-test report or results. For example, a creditor does not disclose the results of a self-test merely by offering to extend credit to a denied applicant or by inviting the applicant to reapply for credit. Voluntary disclosure could occur under this paragraph, however, if the creditor disclosed the self-test results in connection with a new offer of credit.

2. The disclosure of self-testing results to an independent contractor acting as an auditor or consultant for the creditor on compliance matters does not result in loss of the privilege.

Paragraph 15(d)(2)(ii)

1. The privilege is lost if the creditor discloses privileged information, such as the results of the self-test. The privilege is not lost if the creditor merely reveals or refers to the existence of the self-test.

Paragraph 15(d)(2)(iii)

1. A creditor's claim of privilege may be challenged in a court or administrative law proceeding with appropriate jurisdiction. In resolving the issue, the presiding officer may require the creditor to produce privileged information about the self-test.

Paragraph 15(d)(3) *Limited use of privileged information*

1. A creditor may be required to produce privileged documents for the purpose of determining a penalty or remedy after a violation of the ECOA or Regulation B has been formally adjudicated or admitted. A creditor's compliance with such a requirement does not evidence the creditor's intent to forfeit the privilege.

Section 202.16—Requirements for Electronic Communication.

16(b) General Rule.

1. *Relationship to the E-Sign Act.* The E-Sign Act authorizes the use of electronic disclosures. It does not affect any requirement imposed under this part other than a provision that requires disclosures to be in paper form, and it does not affect the content or timing of disclosures. Electronic disclosures are subject to the regulation's format, timing, and retainability rules and the clear and conspicuous standard. For example, to satisfy the clear and conspicuous standard for disclosures, electronic disclosures must use visual text. The clear and conspicuous standard and retainability requirements apply to all disclosures provided electronically—those expressly required by the Act and regulation to be in writing, and those provided in writing where the creditor has the option to give the disclosure orally or in writing.

2. *Clear and conspicuous standard.* A creditor must provide electronic disclosures using a clear and conspicuous format. Also, in accordance with the E-Sign Act:

i. The creditor must disclose the requirements for accessing and retaining disclosures in that format;

ii. The applicant must demonstrate the ability to access the information electronically and affirmatively consent to electronic delivery; and

iii. The creditor must provide the disclosures in accordance with the specified requirements.

3. *Timing and effective delivery.* i. *When an applicant applies for credit on-line.* When a creditor permits an applicant to apply for credit on-line, the applicant must be required to access the disclosures required at application before submitting the application. A link to the disclosures satisfies the timing rule if the applicant cannot bypass the disclosures before submitting the application. Or the disclosures must automatically appear on the screen, even if multiple screens are required to view all of the information. The creditor is not required to confirm that the applicant has read the disclosures.

ii. *Appraisals and adverse action.* Disclosures provided by e-mail are timely based on when the disclosures are sent. Disclosures posted at an Internet Web site, such as adverse action notices or copies of appraisals, are timely when the creditor has both made the disclosures available and sent a notice alerting the applicant that the disclosures have been posted. For example, under § 202.9, a creditor must provide a notice of action taken within 30 days of receiving a completed application. For an adverse action notice posted on the Internet, a creditor must post the notice and notify the applicant of its availability within 30 days of receiving the applicant's completed application.

4. *Retainability of disclosures.* Creditors satisfy the requirement that disclosures be in a form that the applicant may keep if electronic disclosures are delivered in a format that is capable of being retained (such as by printing or storing electronically). The format must also be consistent with the information required to be provided under section 101(c)(1)(C)(i) of the E-Sign Act (15 U.S.C. 7001(c)(1)(C)(i)) about the hardware and software requirements for accessing and retaining electronic disclosures.

5. *Disclosures provided on creditor's equipment.* A creditor that controls the equipment providing electronic disclosures to applicants (for example, a computer terminal in a creditor's lobby or an automated loan machine at a public kiosk) must ensure that the equipment satisfies the regulation's requirements to provide timely disclosures in a clear and conspicuous format and in a form that the applicant may keep. For example, if disclosures are required at the time of an on-line application, the disclosures must be sent to the applicant's e-mail address or must be made available at another location such as the creditor's Internet Web site, unless the creditor provides a printer that automatically prints the disclosures.

16(d) *Address or Location to Receive Electronic Communication.*

Paragraph 16(d)(1)

1. *Electronic address.* An applicant's electronic address is an e-mail address that is not limited to receiving communication transmitted solely by the creditor.

Paragraph 16(d)(2)

1. *Identifying account involved.* A creditor may identify a specific account in a variety of ways and is not required to identify an account by reference to the account number. For example, where the applicant has only one credit card account, and no confusion would result, the creditor may refer to ''your credit card account.'' If the applicant has two credit card accounts, the creditor may, for example, differentiate accounts based on the card program or by using a truncated account number.

2. *90-day rule.* The actual disclosures provided to an applicant must be available for at least 90 days, but the creditor has discretion to determine whether they should be available at the same location for the entire period.

16(e) *Redelivery.*

1. *E-mail returned as undeliverable.* If an e-mail to the applicant (containing an alert notice or other disclosure) is returned as undeliverable, the redelivery requirement is satisfied if, for example, the creditor sends the disclosure to a different e-mail address or postal address that the creditor has on file for the applicant. Sending the disclosures a second time to the same electronic address is not sufficient if the creditor has a different address for the applicant on file.

16(f) *Electronic Signatures.*

1. *Relationship to the E-Sign Act.* The E-Sign Act provides that electronic signatures have the same validity as handwritten signatures. Section 106 of the E-Sign Act (15 U.S.C. 7006) defines an electronic signature. To comply with the E-Sign Act, an electronic signature must be executed or adopted by an applicant with the intent to sign the record. Accordingly, regardless of the technology used to meet this requirement, the process must evidence the applicant's identity.

Section 202.17—Enforcement, Penalties, and Liabilities

17(c) *Failure of compliance.*

1. *Inadvertent errors.* Inadvertent errors include, but are not limited to, clerical mistake, calculation error, computer malfunction, and printing error. An error of legal judgment is not an inadvertent error under the regulation.

2. *Correction of error.* For inadvertent errors that occur under §§ 202.12 and 202.13, this section requires that they be corrected prospectively.

Appendix B—Model Application Forms

1. *Freddie Mac/Fannie Mae form—residential loan application.* The uniform residential loan application form (Freddie Mac 65/Fannie Mae 1003), including supplemental form (Freddie Mac 65A/Fannie Mae 1003A), prepared by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association and dated October 1992 may be used by creditors without violating this regulation. Creditors that are governed by the monitoring requirements of this regulation (which limits collection to applications primarily for the purchase or refinancing of the applicant's principal residence) should delete, strike, or modify the data-collection section on the form when using it for transactions not covered by § 202.13(a) to ensure that they do not collect the information. Creditors that are subject to more extensive collection requirements by a substitute monitoring program under § 202.13(d) or by the Home Mortgage Disclosure Act (HMDA) may use the form as issued, in compliance with the substitute program or HMDA.

2. *FHLMC/FNMA form—home improvement loan application.* The home-improvement and energy loan application form (FHLMC 703/FNMA 1012), prepared by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association and dated October 1986, complies with the requirements of the regulation for some creditors but not others because of the form's section ''Information for Government Monitoring Purposes.'' Creditors that are governed by § 202.13(a) of the regulation (which limits collection to applications primarily for the purchase or refinancing of the applicant's principal residence) should delete, strike, or modify the data-collection section on the form when using it for transactions not covered by § 202.13(a) to ensure that they do not collect the information. Creditors that are subject to more extensive collection requirements by a substitute monitoring program under § 202.13(d) may use the form as issued, in compliance with that substitute program.

Appendix C—Sample Notification Forms

1. *Form C–9.* Creditors may design their own form, add to, or modify the model form to reflect their individual policies and procedures. For example, a creditor may want to add:

i. A telephone number that applicants may call to leave their name and the address to which an appraisal report should be sent.

ii. A notice of the cost the applicant will be required to pay the creditor for the appraisal or a copy of the report.

By order of the Board of Governors of the Federal Reserve System, March 5, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–5666 Filed 3–17–03; 8:45 am]

BILLING CODE 6210–01–P

Federal Register

Tuesday,
March 18, 2003

Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1, et al.

Federal Acquisition Regulations; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 2001–13; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2001–13. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.arnet.gov/far*.

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules.

For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2001–13 and specific FAR case number(s). Interested parties may also visit our Web site at *http://www.arnet.gov/far*.

Item	Subject	FAR case	Analyst
I	Contract Types for Commercial Item Acquisitions	2000–013	Moss
II	Preference for U.S.-Flag Vessels—Subcontracts for Commercial Items	1999–024	Klein
III	Federal, State, and Local Taxes	2000–016	De Stefano
IV	Progress Payment Requests	2001–006	De Stefano

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2001–13 amends the FAR as specified below:

Item I—Contract Types for Commercial Item Acquisitions (FAR Case 2000–013)

This final rule amends FAR 12.207, 16.202–1, and 16.203–1 to indicate that award fee and performance or delivery incentives based solely on factors other than cost may be used in conjunction with firm-fixed-price (FFP) contracts and fixed-price contracts with economic price adjustment (FP/EPA) without changing the FFP or FP/EPA nature of the contract. A cross reference to these sections is added to FAR 12.207 to ensure clarity of the revisions relative to commercial item acquisitions.

Item II—Preference for U.S.-Flag Vessels—Subcontracts for Commercial Items (FAR Case 1999–024)

This final rule amends FAR Parts 12, 32, 47, and associated clauses to limit the types of subcontracts for which the waiver of cargo preference statutes is applicable. The rule is intended to ensure compliance with cargo preference statutes if ocean cargoes are clearly destined for Government use, while avoiding disruption of commercial delivery systems. This final rule also amends FAR Part 12 by adding 10 U.S.C. 2631, Transportation of Supplies by Sea, to the list of laws inapplicable to subcontracts for the acquisition of commercial items (except for certain subcontracts). FAR Subpart 47.5 and the clause at FAR 52.247–64 do not generally apply to acquisitions by the Department of Defense.

Item III—Federal, State, and Local Taxes (FAR Case 2000–016)

This final rule amends the FAR to clarify the prescriptions at FAR 29.401 for use of FAR clauses pertaining to Federal, State, and local taxes. These clauses, 52.229–3, Federal, State, and Local Taxes; and 52.229–4, Federal, State, and Local Taxes (State and Local Adjustments), are also updated to reflect information previously contained in the clause at FAR 52.229–5, Taxes—Contracts Performed in U.S. Possessions or Puerto Rico. FAR clause 52.229–5 is removed.

Item IV—Progress Payment Requests Under Indefinite-Delivery Contracts (FAR Case 2001–006)

This final rule amends the Federal Acquisition Regulation (FAR) to require, under indefinite-delivery contracts, the contractor to account for and submit progress payment requests under individual orders as if each order constitutes a separate contract, unless otherwise specified in the contract. The rule is of special interest to contracting officers that administer indefinite-delivery contracts.

Dated: March 12, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001–13 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2001–13 are effective April 17, 2003.

Dated: March 10, 2003.

Deidre A. Lee,

Director, Defense Procurement and Acqusition Policy.

Dated: March 3, 2003.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: February 28, 2003.

Tom Luedtke,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 03–6371 Filed 3–17–03; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12 and 16

[FAC 2001–13; FAR Case 2000–013; Item I]

RIN 9000–AJ03

Federal Acquisition Regulation; Contract Types for Commercial Item Acquisitions

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify the use of award fees and performance or delivery incentives in firm-fixed-price contracts and fixed-price with economic price adjustment contracts. These changes are intended to clarify how award fees and performance or delivery incentives may be used in commercial item acquisitions where statute prohibits use of cost-type contracts and requires use of firm-fixed-price contracts and fixed-price contracts with economic price adjustment to the maximum extent practicable.

DATES: *Effective Date:* April 17, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 2001–13, FAR case 2000–013.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 83292, December 29, 2000, that proposed to amend FAR 12.207 and Subpart 16.2 to clarify the contract-type requirements for commercial item acquisitions derived from Section 8002(d) of the Federal Acquisition Streamlining Act (FASA) (Pub. L. 103–355). FASA states that agencies must use firm-fixed-price (FFP) contracts and fixed-price contracts with economic price adjustments (FP/EPA) to the maximum extent practicable for commercial item acquisitions. FASA also prohibits the use of cost-type contracts.

The proposed rule would have amended Part 12 to address pricing mechanisms for acquiring commercial services available on a time-and-materials or labor-hour basis within FAR Part 12 contract-type restrictions. Additionally, the proposed rule contained revisions to FAR 16.202–1 and 16.203–1 to indicate that award fee and performance or delivery incentives based solely on factors other than cost may be used in conjunction with FFP and FP/EPA contracts without changing the FFP or FP/EPA nature of the contract.

The 60-day comment period for the proposed rule ended February 27, 2001. Ten sources submitted comments on the proposed rule. All comments received were considered in the formulation of this final rule. The comments indicated significant confusion concerning the proposed revisions to Part 12 regarding the intended application of the proposed time-and-materials and labor-hour pricing mechanism coverage. Consequently, the FAR Council decided that only the changes associated with using non-cost based award fee and delivery or schedule incentives in conjunction with FFP and FP/EPA contracts should be finalized.

Although this rule does not address the use of time-and-materials and labor-hour contracts for commercial item acquisitions, the Administrator, Office of Federal Procurement Policy, intends to work with the other FAR Council members to develop appropriate revisions to current FAR coverage to address their use, including safeguards that are needed to effectively protect taxpayer interests when these contractual arrangements are used under Part 12.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Parts 12 and 16 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2001–13, FAR case 2000–013), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq*.

List of Subjects in 48 CFR Parts 12 and 16

Government procurement.

Dated: March 12, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 12 and 16 as set forth below:

1. The authority citation for 48 CFR parts 12 and 16 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 12—ACQUISITION OF COMMERCIAL ITEMS

2. In section 12.207, add the following sentence to the end of the paragraph to read as follows:

12.207 Contract type.

* * * These contract types may be used in conjunction with an award fee and performance or delivery incentives when the award fee or incentive is based solely on factors other than cost (*see* 16.202–1 and 16.203–1).

PART 16—TYPES OF CONTRACTS

3. In section 16.202–1, add the following sentences to the end of the paragraph to read as follows:

16.202–1 Description.

* * * The contracting officer may use a firm-fixed-price contract in conjunction with an award-fee incentive (see 16.404) and performance or delivery incentives (see 16.402–2 and 16.402–3) when the award fee or incentive is based solely on factors other than cost. The contract type remains firm-fixed-price when used with these incentives.

4. In section 16.203–1, redesignate the introductory text as paragraph (a), and paragraphs (a) through (c) as (1) through (3), respectively; and add paragraph (b) to read as follows:

16.203–1 Description.

* * * * *

(b) The contracting officer may use a fixed-price contract with economic

price adjustment in conjunction with an award-fee incentive (see 16.404) and performance or delivery incentives (see 16.402–2 and 16.402–3) when the award fee or incentive is based solely on factors other than cost. The contract type remains fixed-price with economic price adjustment when used with these incentives.

[FR Doc. 03–6372 Filed 3–17–03; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12, 32, 47, and 52

[FAC 2001–13; FAR Case 1999–024; Item II]

RIN 9000–AI97

Federal Acquisition Regulation; Preference for U.S.-Flag Vessels—Subcontracts for Commercial Items

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) regarding the applicability of statutory requirements for use of U.S.-flag vessels in the transportation of supplies by sea. The FAR presently waives these requirements for subcontracts for the acquisition of commercial items. This rule would require the use of U.S.-flag vessels under certain subcontracts for commercial items.

DATES: *Effective Date:* April 17, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501–3775. Please cite FAC 2001–13, FAR case 1999–024.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Parts 12, 32, 47, and associated clauses to limit the types of subcontracts for which the waiver of cargo preference statutes is applicable. The rule is intended to ensure compliance with cargo preference statutes if ocean cargoes are clearly destined for Government use, while avoiding disruption of commercial delivery systems. This final rule also amends FAR Part 12 by adding 10 U.S.C. 2631 to the list of laws inapplicable to subcontracts for the acquisition of commercial items, except for certain subcontracts, since civilian agencies may buy supplies for use of military departments.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 66920, November 7, 2000. Four respondents submitted public comments during the comment period. These comments were considered in the formulation of the final rule. A summary of the comments and their respective disposition is as follows:

1. One respondent voiced opposition to the rule indicating that (1) neither the statute nor the legislative history grants authority to create an administrative deviation from the explicit requirement to use U.S.-flag vessels in the transportation of supplies bought for the Department of Defense (DoD) either by DoD or a civilian agency; (2) the rule should be considered a major rule under 5 U.S.C. 804; and (3) this rule will have a significant impact on a substantial number of small entities. The Councils did not concur. 41 U.S.C. 430(b), as added by the Federal Acquisition Streamlining Act (FASA) of 1994 (Pub. L. 103–355, Section 8003), requires that the FAR list those laws inapplicable to subcontracts for commercial items, and requires that covered laws as defined in 41 U.S.C. 430(c) be included on that list unless the FAR Council makes a written determination that it would not be in the best interest of the Federal Government to exempt commercial subcontracts from the applicability of the provision (see comment 2). In accordance with this statute, FAR 12.504(a)(10) currently lists 46 U.S.C. 1241(b), with the inapplicability effective May 1, 1996. This rule adds 10 U.S.C. 2631 to the FAR list, because civilian agencies may buy supplies for use of military departments. 10 U.S.C. 2631 is currently listed as inapplicable to commercial items at DFARS 212.504(a)(xxii), with the same exceptions now being incorporated in the FAR. This rule clarifies existing policy and limits the number of allowable waivers. The rule strengthens the Government support for the Cargo Preference statutes. The Office of Information and Regulatory Affairs reviewed the proposed rule before publication and did not declare it to be a major rule under 5 U.S.C. 804.

2. One respondent expressed opposition to the rule considering it to be inconsistent with FASA with respect to commercial item procurements. The respondent states that 10 U.S.C. Sec. 2631 is not specifically enumerated to remain unaffected by Title VIII of FASA, it does not provide for criminal or civil penalties, or contain any provisions that would override the provisions in Title VIII of FASA and, therefore, a written determination of the FAR Council is required to not exempt all commercial item subcontracts from the provisions of 10 U.S.C. Sec 2631. The FAR Council has made a determination in writing as required by the OFPP Act, 41 U.S.C. 430(b).

3. One respondent expressed concern regarding deletion of contracts awarded using the simplified acquisition procedures in Part 13 from the current list of exceptions to the preference for U.S.-flag vessels. This change was accomplished under FAR case 98–604, and is outside the scope of this case.

4. One respondent expressed concern that the rule does not waive Cargo Preference for commercial subcontracts if the prime contractor is redistributing or reselling without adding value. The Council did not concur. FASA specifically prohibits waiver of laws for subcontracts where the prime does not add value; the subcontractor then is held to all laws applicable to a prime contractor. The rule merely clarifies this portion of the law.

5. One respondent expressed concern regarding the difference between the requirements outlined in the statutes covering DoD and non-DoD cargo. The concern is that extension of the rule to civilian agency acquisitions places an insurmountable burden on Government contractors and subcontractors. The Councils did not concur as FAR 47.503(b)(2) already states that 10 U.S.C. 2631 is applicable if supplies being shipped are for use of military departments. This rule does not expand that applicability of 10 U.S.C. 2631 to other non-DoD cargo, but actually limits application of Cargo Preference, by providing waiver of 10 U.S.C. 2631, if it would otherwise be applicable.

6. One respondent contends that if the proposed rule is not withdrawn, it should be modified to require prime contractors to advise their subcontractors when the statutes apply. The Councils did not concur because the FAR currently requires the prime contractor to notify the subcontractors of any flow-down statutes.

7. Two respondents were concerned that the rule could be read to omit one major exception to cargo preference waivers for subcontracts for commercial

items—''non-commercial component parts'' and requests clarification. The Councils did not concur because the rule only relates to commercial component parts.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most ocean transportation companies are large business concerns. FAR Subpart 47.5 and the clause at FAR 52.247–64 do not generally apply to acquisitions by the Department of Defense.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the final rule will increase the flow down of FAR clause 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels, to certain commercial subcontracts. This information collection requirement is currently approved by the Office of Management and Budget under OMB Control Number 9000–0061, Transportation Requirements, which also covers other transportation related information collection requirements. We estimate an increase of 9000 responses per year as a result of this final rule, and a corresponding increase of 900 burden hours per year. We received no comments on the information collection requirements published in the proposed rule.

List of Subjects in 48 CFR Parts 12, 32, 47, and 52

Government procurement.

Dated: March 12, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 12, 32, 47, and 52 as set forth below:

1. The authority citation for 48 CFR parts 12, 32, 47, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 12—ACQUISITION OF COMMERCIAL ITEMS

2. In section 12.504, amend paragraph (a) by redesignating paragraphs (a)(1) through (a)(11) as (a)(2) through (a)(12), respectively; by adding a new paragraph (a)(1); and by revising the newly designated paragraph (a)(11) to read as follows:

12.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

(a) * * *

(1) 10 U.S.C. 2631, Transportation of Supplies by Sea (except for the types of subcontracts listed at 47.504(d)).

* * * * *

(11) 46 U.S.C. Appx 1241(b), Transportation in American Vessels of Government Personnel and Certain Cargo (see Subpart 47.5) (except for the types of subcontracts listed at 47.504(d)).

* * * * *

PART 32—CONTRACT FINANCING

32.1103 [Amended]

3. Amend section 32.1103 in the introductory text of paragraph (e) by removing ''10 U.S.C. 101(a)(13)'' and adding ''2.101'' in its place.

PART 47—TRANSPORTATION

4. Amend section 47.504 by revising paragraph (d) to read as follows:

47.504 Exceptions.

* * * * *

(d) Subcontracts for the acquisition of commercial items or commercial components (see 12.504(a)(1) and (a)(11)). This exception does not apply to—

(1) Grants-in-aid shipments, such as agricultural and food-aid shipments;

(2) Shipments covered under 46 U.S.C. Appx 1241–1, such as those generated by Export-Import Bank loans or guarantees;

(3) Subcontracts under—

(i) Government contracts or agreements for ocean transportation services; or

(ii) Construction contracts; or

(4) Shipments of commercial items that are—

(i) Items the contractor is reselling or distributing to the Government without adding value (see FAR 12.501(b)). Generally, the contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment; or

(ii) Shipped in direct support of U.S. military—

(A) Contingency operations;

(B) Exercises; or

(C) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

5. Revise section 47.507 to read as follows:

47.507 Contract clauses.

(a)(1) Insert the clause at 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels, in solicitations and contracts that may involve ocean transportation of supplies subject to the Cargo Preference Act of 1954. (For application of the Cargo Preference Act of 1954, see 47.502(a)(3), 47.503(a), and 47.504.)

(2) If an applicable statute requires, or if it has been determined under agency procedures, that the supplies to be furnished under the contracts must be transported exclusively in privately owned U.S.-flag commercial vessels (see 47.502(a)(1) and 47.503(b)), use the clause with its Alternate I.

(3) Except for contracts or agreements for ocean transportation services or construction contracts, use the clause with its Alternate II if any of the supplies to be transported are commercial items that are shipped in direct support of U.S. military—

(i) Contingency operations;

(ii) Exercises; or

(iii) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

(b) The contracting officer may insert in solicitations and contracts, under agency procedures, additional appropriate clauses concerning the vessels to be used.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Amend section 52.212–5 by revising the date of the clause and paragraph (e)(4) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (Apr. 2003)

* * * * *

(e) * * *

(4) 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels (46 U.S.C. Appx 1241 and 10 U.S.C. 2631) (flow down required in accordance with paragraph (d) of FAR clause 52.247–64); and

* * * * *

7. Amend section 52.213–4 by revising the date of the clause and paragraph (b)(1)(xi) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (Apr. 2003)

* * * * *

(b)(1) * * *

(xi) 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003) (46 U.S.C. Appx 1241). (Applies to supplies transported by ocean vessels (except for the types of subcontracts listed at 47.504(d).)

* * * * *

8. Amend section 52.244–6 by revising the section and clause heading, the date of the clause, and paragraph (c)(1)(v) to read as follows:

§ 52.244–6 Subcontracts for Commercial Items and Commercial Components.

* * * * *

Subcontracts for Commercial Items and Commercial Components (Apr. 2003)

* * * * *

(c)(1) * * *

(v) 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631) (flow down required in accordance with paragraph (d) of FAR clause 52.247–64).

* * * * *

9. Amend section 52.247–64 by—

a. Revising the date of the clause;

b. Removing ''The'' from the beginning of the introductory text of paragraph (a) and adding ''Except as provided in paragraph (e) of this clause, the'' in its place;

c. Removing the period at the end of paragraph (d) and adding '', except those described in paragraph (e)(4).'' in its place;

d. Removing ''and'' at the end of paragraph (e)(2);

e. Removing the period at the end of paragraph (e)(3) and adding ''; and'' in its place;

f. Adding paragraph (e)(4);

g. Revising the date, introductory text, and paragraph (a) of Alternate I; and

h. Revising Alternate II to read as follows:

52.247–64 Preference for Privately Owned U.S.-Flag Commercial Vessels.

* * * * *

Preference for Privately Owned U.S.-Flag Commercial Vessels (Apr 2003)

* * * * *

(e) * * *

(4) Subcontracts or purchase orders for the acquisition of commercial items unless—

(i) This contract is—

(A) A contract or agreement for ocean transportation services; or

(B) A construction contract; or

(ii) The supplies being transported are—

(A) Items the Contractor is reselling or distributing to the Government without adding value. (Generally, the Contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment); or

(B) Shipped in direct support of U.S. military—

(*1*) Contingency operations;

(*2*) Exercises; or

(*3*) Forces deployed in connection with United Nations or

North Atlantic Treaty Organization humanitarian or peacekeeping operations.

* * * * *

Alternate I (*Apr 2003*). As prescribed in 47.507(a)(2), substitute the following paragraphs (a) and (b) for paragraphs (a) and (b) of the basic clause:

(a) Except as provided in paragraphs (b) and (e) of this clause, the Contractor shall use privately owned U.S.-flag commercial vessels, and no others, in the ocean transportation of any supplies to be furnished under this contract.

* * * * *

Alternate II (*Apr 2003*). As prescribed in 47.507(a)(3), substitute the following paragraph (e) for paragraph (e) of the basic clause:

(e) The requirement in paragraph (a) does not apply to—

(1) Cargoes carried in vessels of the Panama Canal

Commission or as required or authorized by law or treaty;

(2) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353); and

(3) Shipments of classified supplies when the classification prohibits the use of non-Government vessels.

(4) Subcontracts or purchase orders under this contract for the acquisition of commercial items unless the supplies being transported are—

(i) Items the Contractor is reselling or distributing to the Government without adding value. (Generally, the Contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment); or

(ii) Shipments in direct support of U.S. military—

(A) Contingency operations;

(B) Exercises; or

(C) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations. (*Note:* This contract requires shipment of commercial items in direct support of U.S. military contingency operations, exercises, or forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.)

[FR Doc. 03–6373 Filed 3–17–03; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 29 and 52

[FAC 2001–13; FAR Case 2000–016; Item III]

RIN 9000–AJ39

Federal Acquisition Regulation; Federal, State, and Local Taxes

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify the prescriptions for use of clauses relating to Federal, State, and local taxes. In addition, the rule deletes the clause at FAR 52.229–5, Taxes—Contracts Performed in U.S. Possessions or Puerto Rico, and updates and moves the definition of ''local taxes.''

DATES: Effective Date: April 17, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501–1758. Please cite FAC 2001–13, FAR case 2000–016.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the FAR to clarify the prescriptions at FAR 29.401 for use of FAR clauses 52.229–3, Federal, State, and Local Taxes; 52.229–4, Federal, State, and Local Taxes (State and Local Adjustments). In addition, the rule deletes the clause at 52.229–5, Taxes—Contracts Performed in U.S. Possessions or Puerto Rico, and moves the definition of ''local taxes'' from the clause at 52.229–5 to the clauses at 52.229–3 and 52.229–4, and updates the definition by adding U.S. territories and the Commonwealth of the Northern Mariana Islands, which are no longer considered possessions of the United States.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 67 FR 38552, June 4, 2002. Two sources

submitted comments in response to the proposed rule. The first respondent recommended adding the word ''contingency'' in 29.401–3(b) for clarity. The Councils adopted the intent of the respondent's recommendation for paragraph (b) for clarity and consistency with the clause language at 52.229–4(c). Another commenter recommended that the FAR be further amended to address payment of property tax on equipment rented or leased by the Government. That comment was outside the scope of the case and no action was taken.

This is not a significant regulatory action, and therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely clarifies existing language.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 29 and 52

Government procurement.

Dated: March 12, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 29 and 52 as set forth below:

1. The authority citation for 48 CFR parts 29 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 29—TAXES

2. In section 29.305, revise paragraph (b)(1) to read as follows:

29.305 State and local tax exemptions.

* * * * *

(b) * * *

(1) Under a contract containing the clause at 52.229–3, Federal, State, and Local Taxes, or at 52.229–4, Federal, State, and Local Taxes (State and Local Adjustments), in accordance with the terms of those clauses.

* * * * *

3. Revise the heading and text of section 29.401–3 to read as follows:

29.401–3 Federal, State, and local taxes.

(a) Except as provided in paragraph (b) of this section, insert the clause at 52.229–3, Federal, State, and Local Taxes, in solicitations and contracts if—

(1) The contract is to be performed wholly or partly within the United States, its possessions or territories, Puerto Rico, or the Northern Mariana Islands;

(2) A fixed-price contract is contemplated; and

(3) The contract is expected to exceed the simplified acquisition threshold.

(b) In a noncompetitive contract that meets all the conditions in paragraph (a) of this section, the contracting officer may insert the clause at 52.229–4, Federal, State, and Local Taxes (State and Local Adjustments), instead of the clause at 52.229–3, if the price would otherwise include an inappropriate contingency for potential postaward change(s) in State or local taxes.

29.401–4 and 29.401–5 [Removed]

29.401–6 [Redesignated as 29.401–4]

4. Remove sections 29.401–4 and 29.401–5, and redesignate section 29.401–6 as 29.401–4.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Amend section 52.229–3 as follows:

a. Revise the date of the clause;

b. Revise paragraph (a) introductory text; and

c. In paragraph (a), amend the definitions ''Contract date'', ''All applicable Federal, State, and local taxes and duties'', ''After-imposed Federal tax'', and ''After-relieved Federal tax'' by removing '', as used in this clause,'' and placing these definitions in alphabetical order; and add, in alphabetical order, the definition ''Local taxes''.

The revised and added text read as follows:

52.229–3 Federal, State, and Local Taxes.

* * * * *

Federal, State, and Local Taxes (April 2003)

(a) As used in this clause—

* * * * *

Local taxes includes taxes imposed by a possession or territory of the United States, Puerto Rico, or the Northern Mariana Islands, if the contract is performed wholly or partly in any of those areas.

* * * * *

(End of clause)

6. Amend section 52.229–4 as follows:

(a) Revise the section and clause headings; and the introductory paragraph;

(b) Revise paragraph (a) introductory text;

(c) In paragraph (a), place the definitions ''Contract date'', ''All applicable Federal, State, and local taxes and duties'', ''After-imposed tax'', ''After-relieved tax'', and ''Excepted tax'' in alphabetical order and amend by removing '', as used in this clause;'' and add, in alphabetical order, the definition ''Local taxes''.

The revised and added text read as follows:

52.229–4 Federal, State, and Local Taxes (State and Local Adjustments).

As prescribed in 29.401–3, insert the following clause:

Federal, State, and Local Taxes (State and Local Adjustments) (April 2003)

(a) As used in this clause—

* * * * *

Local taxes includes taxes imposed by a possession or territory of the United States, Puerto Rico, or the Northern Mariana Islands, if the contract is performed wholly or partly in any of those areas.

* * * * *

52.229–5 [Removed and reserved]

7. Remove and reserve section 52.229–5.

8. Amend section 52.229–10 as follows: a. Amend the introductory text by removing ''29.401–6(b)'' and adding ''29.401–4(b)'' in its place; b. Revise the date of the clause; and c. Amend paragraph (h) by removing ''29.401–6(b)(1)'' and adding ''29.401–4(b)(1)'' in its place.

The revised text reads as follows:

52.229–10 State of New Mexico Gross Receipts and Compensating Tax.

* * * * *

State of New Mexico Gross Receipts and Compensating Tax (April 2003)

* * * * *

[FR Doc. 03–6374 Filed 3–17–03; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 32 and 52

[FAC 2001–13; FAR Case 2001–006; Item IV]

RIN 9000–AJ23

Federal Acquisition Regulation; Progress Payment Requests Under Indefinite-Delivery Contracts

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to require, under indefinite-delivery contracts, the contractor to account for and submit progress payment requests under individual orders as if each order constitutes a separate contract, unless otherwise specified in the contract.

DATES: Effective Date: April 17, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, at (202) 501–1758. Please cite FAC 2001–13, FAR case 2001–006.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils have agreed to amend the Federal Acquisition Regulation (FAR) to require, under indefinite-delivery contracts, the contractor to account for and submit progress payment requests under individual orders as if each order constitutes a separate contract, unless otherwise specified in the contract.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 66 FR 57294, November 14, 2001. Eight respondents submitted public comments. These comments are discussed below. The Councils concluded that the proposed rule should be converted to a final rule, with only minor editorial changes made to the proposed rule.

1. *Time requirement.* One respondent asked if the proposed rule change would have a time requirement other than 60 days, and if so, how that change would effect outside agencies. This question referenced an existing policy addressing progress schedules and reports.

Councils' response: No change. The proposed change focuses on how progress payments will be billed and processed on delivery orders under indefinite-delivery type contracts. It does not impact any existing timeframes.

2. *Statement of work.* One respondent asserted that the proposed change would increase the difficulty in preparing a statement of work to quantify a technical assistance contract.

Councils' response: No change. The proposed change would not impact the preparation of statements of work.

3. *Effect on costs.* Two respondents disagreed with the proposed change on the basis that existing FAR language contains the necessary flexibility, and that the proposed language would reduce latitude of the contracting officer, increase the costs of doing business with the government, and generate more paper. Other points made were that the inconsistency between FAR 32.503–5(c) and FAR 52.232–16 does not obtain the desired effect because many offices follow single billing for each task order, and that single billing for the entire contract is preferable to keep costs lower.

Councils' response: No change. The proposed change would have minimal impact on efficiency. The FAR currently requires that contracting officers administer indefinite-delivery type contracts on a delivery order basis. The vast majority of contractors comply with this guidance; so adding this requirement to the clause will simply eliminate an inconsistency between FAR guidance to contracting officers and the contract clause. Furthermore, the existing requirement for administering progress payments on a delivery-order basis is necessary to maintain proper control over payment processing and liquidations. Permitting progress payments on a whole contract basis would create inefficiencies in payment approval and processing, making it more difficult to ensure that progress payments are paid from the proper appropriations, and add complexity to surveillance.

4. *No inconsistency.* One respondent stated that there is not an inconsistency in the FAR between the coverage in FAR 32.503–5(c) and FAR 52.232–16; that if there is a perceived inconsistency it does not merit a revision to the Progress Payment clause; and that if any revision to the FAR is necessary to resolve this perceived inconsistency, then the FAR should be revised to delete all references that imply that individual orders (under a contract) are to be treated as separate contracts.

Councils' response: No change. The inconsistency between the coverage in FAR 32.503–5(c) and the Progress Payment clause is clear. FAR 32.503–5(c) provides that under indefinite delivery contracts the contracting officer should administer progress payments made under each individual order as if the order constituted a separate contract, unless agency procedures provide otherwise. However, there is no related language in the clause at FAR 52.232–16, so the contractor is not currently required by contract to request progress payments on a delivery order basis. Although contractors almost always comply with the contracting officer's instructions regarding separation of progress payments by order, a contractor may erroneously contend that it incurred additional costs in complying with direction to prepare progress payments on an indefinite-delivery contract as if each delivery order were a separate contract. The Councils recommend adding the proposed language to the clause to preclude future misunderstandings.

With regard to the comment that FAR references implying that individual orders should be treated as separate contracts should be deleted, the Councils regard the existing requirements as necessary. The necessity is borne of the need to recognize that funds are typically obligated on the individual orders, and that individual orders must be treated as if they were separate contracts in order to effectively administer progress payments; and monitor production, payment requests, delivery payments and liquidations.

5. *Invoices.* One respondent expressed concern that the proposed changes would require submission of individual requests for payment of invoices on indefinite-delivery service contracts. Currently, some contractors submit single requests for payment under several task orders.

Councils' response: No change. The proposed rule addresses progress payment requests, not invoices. The rule does not address the submission of invoices and does not prohibit agencies from permitting their contractors to submit single invoices for multiple tasks. To the extent that progress payments are involved, existing contract coverage at 52.232–16, Progress Payments, acts to protect the Government's interests.

6. *Agency procedures.* One respondent submitted the following comments:

a. The need for the rule is not evident, since the prescription in FAR 32.502–4(e) directs contracting officers to provide special contract instructions for severable work, where accounting segregation is needed, and furthermore, FAR 32.503–5(c) provides guidance to treat task orders under existing indefinite-delivery contracts as if they were separate contracts.

Councils' response: No change. Although the prescription at FAR 32.502–4(c) directs that special contract instructions be provided for severable work, the existing language at FAR 32.503–5(c) establishes a default requirement for separate administration of progress payments on delivery orders. There is a need for accompanying standard language in the clause at FAR 52.232–16, rather than requiring that special provisions be constructed for each occurrence of a fairly common situation. If special instructions were determined to be the solution to this inconsistency and those provisions were not written into a contract through an oversight, then the inconsistency would be incorporated into the contract. This would result in complications in the administration and payment of progress payments under the affected contract.

b. To fully implement the policy changes of the proposed rule, the first sentence of existing coverage in FAR 32.503(c) should be revised to add the phrase ''or the contract'' after the phrase ''unless agency procedures.''

Councils' response: No change. The recommended language is redundant because a provision should not be in the contract if it does not comply with the procedures of the awarding agency.

c. In the second sentence of FAR 32.503(c), recommend changing ''if the awarding agency wants the administration* * *'' to ''when the awarding agency's procedures, the contract administration office's procedures, or the contract* * *'' require the contract administration to be on a basis other than order-by-order.

Councils' response: No change. The recommended language contains potential conflicts, *e.g.*, if the awarding agency procedures and the contract administration office procedures are not in step. Furthermore, the Councils regard referencing the contract in this sentence as redundant, since an alternate procedure should not be in the contract unless it complies with the awarding agency procedures. The central point of the sentence under discussion is that progress payments will be administered on an order-by-order basis if the contract is administered by an agency other than the awarding agency, unless the awarding agency has previously coordinated that alternate arrangement with the administering agency. This point is diluted if an alternate procedure can be established simply by putting it in the contract.

d. In FAR 52.232–16(l), the FAR Council recognizes the appropriateness of special attention to the terms of the contract, but fails to take into account special agency procedures that may exist, and that are covered under existing FAR 32.503–5(c). To fully implement the policy and maintain consistency within the FAR, we recommend revising the phrase ''unless otherwise specified in the contract'' to ''unless agency procedures or the contract provide otherwise.''

Councils' response: No change. The Councils believe that the language in the proposed rule for FAR 52.232–16 obtains the desired affect, is consistent with the language in the proposed rule for FAR 32.503–5, and does effectively implement the policy. Specifically, by limiting the exceptions in FAR 52.232–16(l) to other contractual provisions, this language eliminates the potential for a requirement to be expressed in agency procedures, but not executed in the contract itself. This existing proposed rule enforces consistency between regulation and contract.

7. *Concurrence of the CAO.* The respondent recommended that the case be revised to require that the contracting officer obtain the concurrence of the contract administration office if the awarding agency wants the administration of progress payments to be on a basis other than order-by-order. This change would remove any ambiguity with regard to whether coordination with the contract administration office constitutes concurrence.

Councils' response: No change. The Councils recognize that the term ''coordination'' may not always be construed to mean that the awarding office will obtain the agreement of the administering office prior to deciding that progress payments will be administered on a basis other than order-by-order. However, the term ''coordinate'' provides more flexibility, which may be appropriate at certain times.

8. *Performance-based payments.* One respondent stated that the FAR should be revised to include a similar concept for performance-based payments. Specifically, language should be inserted into FAR part 32.10 and FAR 52.323–32, Performance-Based Payments, to provide that, under indefinite-delivery contracts, the performance-based payments would be administered under each individual order as if the order constituted a separate contract, unless agency procedures provide otherwise. In addition to the language proposed for FAR 32.1007, this recommendation includes accompanying proposed language to be inserted in the Performance Based Payments clause at FAR 32.232–32. In addition, the FAR should be revised to provide that, for indefinite-delivery contracts, that performance-based payments be used only on individual delivery orders or task orders, and not on the basic contract.

Councils' response: The Councils believe that these recommendations are beyond the scope of the subject case.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities have a dollar value less than the simplified acquisition threshold and, therefore, do not have the progress payment type of financing.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 32 and 52

Government procurement.

Dated: March 12, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 32 and 52 as set forth below:

1. The authority citation for 48 CFR parts 32 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 32—CONTRACT FINANCING

2. Amend section 32.503–5 by adding a sentence to the end of paragraph (c) to read as follows:

32.503–5 Administration of progress payments.

* * * * *

(c) * * * When the contract will be administered by an agency other than the awarding agency, the contracting officer shall coordinate with the contract administration office if the awarding agency wants the administration of progress payments to be on a basis other than order—by—order.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Amend section 52.232–16 by—

a. Revising the date of the clause;

b. Adding paragraph (m);

c. Revising the date and introductory text of Alternate II;

d. Redesignating paragraphs (m) and (n) of Alternate II as (n) and (o), respectively;

e. Revising the introductory text of the newly designated paragraph (n), and paragraph (n)(3);

f. Revising the date and the introductory text of Alternate III; and

g. Redesignating paragraph (m) of Alternate III as paragraph (n).

52.232–16 Progress Payments.

* * * * *

Progress Payments (April 2003)

* * * * *

(m) *Progress payments under indefinite—delivery contracts.* The Contractor shall account for and submit progress payment requests under individual orders as if the order constituted a separate contract, unless otherwise specified in this contract.

(End of clause)

* * * * *

Alternate II (*Apr 2003*). If the contract is a letter contract, add paragraphs (n) and (o). The amount specified in paragraph (o) shall not exceed 80 percent of the maximum liability of the Government under the letter contract. The contracting officer may specify separate limits for separate parts of the work.

(n) The Contracting Officer will liquidate progress payments made under this letter contract, unless previously liquidated under paragraph (b) of this clause, using the following procedures:

(1) * * *

(2) * * *

(3) If this letter contract is partly terminated and partly superseded by a contract, the Government will allocate the unliquidated progress payments to the terminated and unterminated portions as the Government deems equitable, and will liquidate each portion under the relevant procedure in paragraphs (n)(1) and (n)(2) of this clause.

* * * * *

Alternate III (*Apr 2003*). As prescribed in 32.502–4(d), add the following paragraph (n) to the basic clause. If Alternate II is also being used, redesignate the following paragraph as paragraph (p):

* * * * *

[FR Doc. 03–6375 Filed 3–17–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121). It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 2001–13 which amends the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 2001–13 which precedes this document. These documents are also available via the Internet at *http://www.arnet.gov/far.*

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2001–13

Item	Subject	FAR case	Analyst
I	Contract Types for Commercial Item Acquisitions	2000–013	Moss
II	Preference for U.S.-Flag Vessels—Subcontracts for Commercial Items	1999–024	Klein
III	Federal, State, and Local Taxes	2000–016	De Stefano
IV	Progress Payment Requests	2001–006	De Stefano

Item I—Contract Types for Commercial Item Acquisitions (FAR Case 2000–013)

This final rule amends FAR 12.207, 16.202–1, and 16.203–1 to indicate that award fee and performance or delivery incentives based solely on factors other than cost may be used in conjunction with firm-fixed-price (FFP) contracts and fixed-price contracts with economic price adjustment (FP/EPA) without changing the FFP or FP/EPA nature of the contract. A cross reference to these sections is added to FAR 12.207 to ensure clarity of the revisions relative to commercial item acquisitions.

Item II—Preference for U.S.-Flag Vessels—Subcontracts for Commercial Items (FAR Case 1999–024)

This final rule amends FAR parts 12, 32, 47, and associated clauses to limit the types of subcontracts for which the waiver of cargo preference statutes is applicable. The rule is intended to ensure compliance with cargo preference statutes if ocean cargoes are clearly destined for Government use, while avoiding disruption of commercial delivery systems. This final rule also amends FAR part 12 by adding 10 U.S.C. 2631, Transportation of Supplies by Sea, to the list of laws inapplicable to subcontracts for the

acquisition of commercial items (except for certain subcontracts). FAR subpart 47.5 and the clause at FAR 52.247–64 do not generally apply to acquisitions by the Department of Defense.

Item III—Federal, State, and Local Taxes (FAR Case 2000–016)

This final rule amends the FAR to clarify the prescriptions at FAR 29.401 for use of FAR clauses pertaining to Federal, State, and local taxes. These clauses, 52.229–3, Federal, State, and Local Taxes; and 52.229–4, Federal, State, and Local Taxes (State and Local Adjustments), are also updated to reflect information previously contained in the clause at FAR 52.229–5, Taxes—Contracts Performed in U.S. Possessions or Puerto Rico. FAR clause 52.229–5 is removed.

Item IV—Progress Payment Requests Under Indefinite-Delivery Contracts (FAR Case 2001–006)

This final rule amends the Federal Acquisition Regulation (FAR) to require, under indefinite-delivery contracts, the contractor to account for and submit progress payment requests under individual orders as if each order constitutes a separate contract, unless otherwise specified in the contract. The rule is of special interest to contracting officers that administer indefinite-delivery contracts.

Dated: March 12, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

[FR Doc. 03–6376 Filed 3–17–03; 8:45 am]

BILLING CODE 6820–EP–P

Federal Register

Tuesday,
March 18, 2003

Part V

General Services Administration

48 CFR Parts 501, 538, and 552
General Services Administration Acquisition Regulation; Consolidation of Industrial Funding Fee and Sales Reporting Clauses; Reduction in Amount of Industrial Funding Fee; Proposed Rule

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 538, and 552

[GSAR Case 2002–G507]

RIN 3090–AH79

General Services Administration Acquisition Regulation; Consolidation of Industrial Funding Fee and Sales Reporting Clauses; Reduction in Amount of Industrial Funding Fee

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to give GSA the unilateral right to change the percentage rate of the Industrial Funding Fee (IFF) in Multiple Award Schedule (MAS) contracts. The proposed rule also sets forth GSA's intent to modify and combine two existing General Services Administration (GSA) clauses that implement collection of the IFF by the Federal Supply Service (FSS) on sales from all Federal Supply Schedule contracts. These clauses are Industrial Funding Fee and Contractor's Report of Sales. Additionally, the proposed rule provides notice of the method FSS intends to utilize to modify each contract subject to the IFF. While the GSAR does not specify the percentage rate of the IFF, GSA intends to lower the current IFF rate from 1.0 percent to 0.75 percent of reported sales, effective January 1, 2004. The Administrator of GSA has the authority to change the IFF; GSA will consult with OMB prior to effecting any future changes to the IFF.

DATES: Interested parties should submit comments in writing on or before April 17, 2003, to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, Regulatory Secretariat (MVA), 1800 F Street, NW., Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—*gsarcase.2002-g507@gsa.gov*.

Please submit comments only and cite GSAR case 2002–G507 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Vonda J. Sines, Procurement Analyst, at (703) 305–7542, or Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite GSAR Case 2002–G507. The TTY Federal Relay Number for further information is 1–800–877–8973.

SUPPLEMENTARY INFORMATION:

A. Background

On April 18, 1995, GSA implemented an Industrial Funding Fee (IFF) for Federal Supply Schedules. Two clauses, 552.238–76, Industrial Funding Fee, and 552.238–74, Contractor's Report of Sales, are included in the solicitation for each Federal Supply Schedule contract and provide instructions for the submission of quarterly sales reported by contractors.

GSA utilizes the IFF to fund the cost of providing supplies and services through the Federal Supply Schedule program, eliminating operating expenses formerly funded with appropriated monies.

Fees are included in the Schedule prices charged to ordering activities; all contract award prices include the total amounts charged. Federal Supply Schedule contractors remit fees to GSA based on quarterly contract sales. GSA recoups its costs from the ordering activities through the contractor's quarterly remittance to FSS. The GSAR does not specify the percentage rate of the IFF. Rather, the initial 1 percent IFF rate was set via Acquisition Letter and has not changed since its inception.

GSA proposes to change the GSAR to provide that effective January 1, 2004, GSA will have the unilateral right to change the IFF rate.

The agency also proposes consolidation of the two foregoing clauses into a single clause, Industrial Funding Fee and Sales Reporting, under the number 552.238–74. The number 552.238–76 will become ''reserved.'' The new clause eliminates duplicative information in the two current clauses, clarifies sales reporting procedures, and describes the procedures FSS will utilize to unilaterally effect future IFF rate changes.

GSA also intends to reduce the IFF from its current rate of 1 percent of sales to 0.75 percent effective January 1, 2004. GSA proposes to implement this change by means of a bilateral contract modification to be executed electronically. As consideration to Federal Supply Schedule contractors for any potential costs incurred as the direct result of this change, GSA proposes to allow these vendors to continue to include the 1 percent IFF in their contract prices until December 31, 2003, but to forward to FSS an IFF of 0.75 percent for reported sales for the period of October 1, 2003, through December 31, 2003. Examples of the type of costs GSA anticipates contractors could incur include reprinting price lists and modifying accounting systems. The Administrator of GSA has the authority to change the IFF; GSA will consult with OMB prior to effecting any future changes to the IFF.

B. Executive Order 12866

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

The General Services Administration does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the purpose of the proposed rule is to assign to GSA the sole discretion to set the rate of the IFF and to clarify for contractors how to handle changes in the IFF. The rule also proposes to modify and consolidate the provisions of two existing GSAR clauses in terms of sales reporting and procedural changes when the IFF rate changes. While some 78 percent of the Federal Supply Schedule contracts represent small business concerns, all contractors holding Federal Supply Schedules are already required to report quarterly sales and to periodically submit the Industrial Funding Fee to FSS. The proposed rule does not change these two requirements. It does require both small and large businesses to execute appropriate bilateral contract modifications and to make changes to existing price lists and accounting systems. GSA intends to mitigate the anticipated cost to contractors for these changes via offering consideration as described under paragraph A. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. GSA will consider comments from small entities concerning the affected GSAR parts 501, 538, and 552 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (GSAR 2002–G507), in correspondence.

D. Paperwork Reduction Act

The current clause, 552.238–74, Contractor's Report of Sales, contains an

information collection requirement that is subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) that has been previously approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act and assigned control number 3090–0121. Current clause 552.238–76, Industrial Funding Fee, also contains an information collection requirement that is subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). However, the estimated burden for this clause has been determined to be zero, and GSA has a blanket approval under control number 3090–0250 from OMB for information collections with a zero burden estimate.

The consolidation of information from these two clauses into a single clause results in no additional burden and, therefore, no additional approval from OMB is required.

List of Subjects in 48 CFR Parts 501, 538, and 552

Government procurement.

Dated: March 12, 2003.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy.

Therefore, GSA proposes amending 48 CFR parts 501, 538, and 552 as set forth below:

1. The authority citation for 48 CFR parts 501, 538, and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

501.106 [Amended]

2. In section 501.106 at GSAR reference 552.238–74, remove the OMB Control Number ''3090–0121'' and add ''3090— 0121 & 3090–0250'' in its place.

PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING

3. Amend section 538.273 by revising paragraph (b)(1); and by removing paragraph (b)(3). The revised text reads as follows:

538.273 Contract clauses.

* * * * *

(b) * * *

(1) 552.238–74, Industrial Funding Fee and Sales Reporting.

* * * * *

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Amend section 552.212–71 by revising the date of the clause; and in paragraph (b) by revising entry 552.238–74 to read as follows:

552.212–71 Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items.

* * * * *

Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items (Date)

(b) *Clauses.*

* * * * *

__552.238–74 Industrial Funding Fee and Sales Reporting

* * * * *

552.212–72 [Amended]

5. Amend section 552.212–72 by revising the date of the clause to read ''(Date)''; and by removing from the end of paragraph (b) '' __552.238–76 Industrial Funding Fee''.

6. Revise section 552.238–74 to read as follows:

552.238–74 Industrial Funding Fee and Sales Reporting.

As prescribed in 538.273(b)(1), insert the following clause:

Industrial Funding Fee and Sales Reporting (Date)

(a) *Reporting of Federal Supply Schedule Sales.* The Contractor shall report all contract sales under this contract as follows:

(1) The Contractor shall accurately report the dollar value, in U.S. dollars and rounded to the nearest whole dollar, of all sales under this contract by calendar quarter (January 1—March 31, April 1—June 30, July 1—September 30, and October 1—December 31). The dollar value of a sale is the price paid by the Schedule user for products and services on a Schedule task or delivery order. The reported contract sales value shall include the Industrial Funding Fee (IFF). The Contractor shall maintain a consistent accounting method for sales reporting, based on the Contractor's established commercial accounting practice. The acceptable points at which sales may be reported include—

(i) Receipt of order;

(ii) Shipment or delivery, as applicable;

(iii) Issuance of an invoice; or

(iv) Payment.

(2) Reportable sales under the contract are those resulting from sales of contract items to authorized users unless the purchase was conducted pursuant to a separate contracting authority such as a Governmentwide Acquisition Contract (GWAC), or a separately awarded FAR Part 12, FAR Part 13, or FAR Part 15 procurement.

(3) The Contractor shall electronically report the quarterly dollar value of sales, including ''zero'' sales, by utilizing the automated reporting system at an Internet website designated by the Federal Supply Service (FSS). Prior to using this automated system, the Contractor shall complete contract registration with the FSS Vendor Support Center (VSC). The website address, as well as registration instructions and reporting procedures, will be provided at the time of award. The Contractor shall report sales separately for each National Stock Number (NSN), Special Item Number (SIN), or sub-item.

(4) The Contractor shall convert the total value of sales made in foreign currency to U.S. dollars using the ''Treasury Reporting Rates of Exchange'' issued by the U.S. Department of Treasury, Financial Management Service. The Contractor shall use the issue of the Treasury report in effect on the last day of the calendar quarter. The report is available from—Financial Management Service, International Funds Branch, Telephone: (202) 874–7994, Internet: *http://www.fms.treas.gov/intn.html.*

(5) Contract sales shall be reported to FSS within 30 calendar days following the completion of each reporting quarter. The Contractor shall continue to furnish quarterly reports, including ''zero'' sales, until physical completion of the last outstanding task order or delivery order.

(b) The Contractor shall remit the IFF at the rate set by FSS.

(1) The Contractor shall remit the IFF to FSS in U.S. dollars within 30 calendar days after the end of the reporting quarter; final payment shall be remitted within 30 days after physical completion of the last outstanding task order or delivery order of the contract.

(2) The IFF represents a percentage of the total quarterly sales reported. This percentage is set at the discretion of the General Services Administration (GSA). The Commissioner of GSA's Federal Supply Service, or the Commissioner's delegated representative, has the unilateral right to change the percentage at any time, but not more than once per year. FSS will provide reasonable notice prior to the effective date of the change. The statutorily based IFF reimburses FSS for the costs of operating the Federal Supply Schedules Program and recoups its operating costs from ordering activities. Offerors must include the IFF in their prices. The fee is included in the award price(s) and reflected in the total amount charged to ordering activities. FSS will post notice of the current IFF at *http://72a.fss.gsa.gov/* or successor website as appropriate.

(c) Within 60 days of award, an FSS representative will provide the Contractor with specific written procedural instructions on remitting the IFF. FSS reserves the unilateral right to change such instructions from time to time, following notification to the Contractor.

(d) Failure to remit the full amount of the IFF within 30 calendar days after the end of the applicable reporting period constitutes a contract debt to the United States Government under the terms of FAR 32.6. The Government may exercise all rights under the Debt Collection Act of 1982, including withholding or setting off payments and interest on the debt (see FAR 52.232–17, Interest). Should the Contractor

fail to submit the required sales reports, falsify them, or fail to timely pay the IFF, this is sufficient cause for the Government to terminate the contract for cause.

(End of clause)

552.238–76 [Reserved]

7. Remove and reserve section 552.238–76.

[FR Doc. 03–6458 Filed 3–17–03; 8:45 am]

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Federal Register

Tuesday,
March 18, 2003

Part VI

The President

Proclamation 7653—National Poison Prevention Week, 2003

Federal Register
Vol. 68, No. 52
Tuesday, March 18, 2003

Presidential Documents

Title 3—

The President

Proclamation 7653 of March 14, 2003

National Poison Prevention Week, 2003

By the President of the United States of America

A Proclamation

More than 40 years ago, President John F. Kennedy signed into law National Poison Prevention Week. The annual observance of this week continues to help American families learn how to protect their children from accidental poisonings.

Every year more than one million children under 5 years of age are exposed to poisonous household chemicals and medicines, and an estimated 30 children die as a result of these accidental poisonings. Almost every child poisoning could be prevented. The death of even one child from poisoning is too many and for this reason, Poison Prevention Week Council members representing 37 national organizations coordinate events each year to raise awareness of childhood poisonings and to encourage preventative steps that all Americans can take to protect the lives of our children.

The theme of this year's National Poison Prevention Week, ''Children Act Fast . . . So Do Poisons!'' reminds parents that they always must be watchful when household chemicals or drugs are stored and used. Many incidents occur when adults are using a product and are distracted for only a brief time. Unfortunately, it only takes a moment for a small child to grab and swallow something that could be poisonous. To guard against these accidents, we must keep medicines and household chemicals locked up, out of sight and reach of young children at all times. The Consumer Product Safety Commission requires child-resistant packaging for certain toxic medicines and chemicals, but it is vital we recognize that the packaging is not ''child-proof,'' and must be monitored with great care.

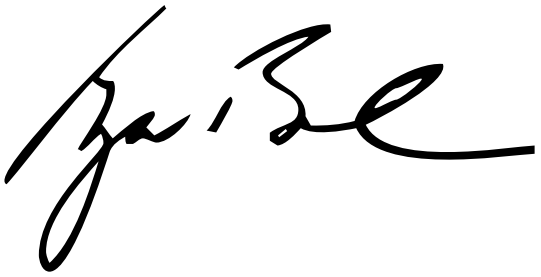
When poisoning is suspected, individuals should immediately call the national toll-free number, 1–800–222–1222 to speak to the nearest poison control center. This telephone number and local poison control centers are available 24 hours a day, 7 days a week, and can provide life-saving emergency advice. Regional Poison Control Centers in the United States provide information on recommended treatment for the ingestion of household products and medicines, and parents and those responsible for taking care of children are encouraged to keep the national toll-free number on their telephones. In cases of an emergency, callers should remain calm and provide the Poison Control Center expert with essential information about the victim's age, weight, existing health conditions, and details about the substance that was inhaled, swallowed, or absorbed by the victim. Through our vigilance, we can work together to help stop child poisonings and give every child an opportunity for a bright future.

To encourage Americans to learn more about the dangers of accidental poisonings and to take more preventive measures, the Congress, by joint resolution approved September 26, 1961, as amended (75 Stat. 681), has authorized and requested the President to issue a proclamation designating the third week of March each year as ''National Poison Prevention Week.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim March 16 through 22, 2003, as National Poison Prevention Week. I call upon all Americans to observe this week

by participating in appropriate ceremonies and activities and by learning how to prevent poisonings among children.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of March, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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H.R. 395/P.L. 108–10

Do-Not-Call Implementation Act (Mar. 11, 2003; 117 Stat. 557)

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