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Federal Register

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DEPARTMENT OF AGRICULTURE

Farm Service Agency

Commodity Credit Corporation

7 CFR Parts 718 and 1405

RIN 0560–AG70

Disqualification for Crop Insurance Fraud

AGENCY: Farm Service Agency, Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule implements statutory provisions which render a producer ineligible for certain programs administered by the Farm Service Agency (FSA), or Commodity Credit Corporation (CCC), of the United States Department of Agriculture (USDA) if that person is found to have engaged in crop insurance fraud.

DATES: Effective: July 2, 2003.

FOR FURTHER INFORMATION CONTACT: Sandy Bryant, Branch Chief, Production, Emergencies, and Compliance Division, FSA, USDA, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517, telephone (202) 720–4380.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule was reviewed in conformance with Executive Order 12866, has been determined to be not significant, and therefore has not been reviewed by the Office of Management and Budget.

Federal Assistance Programs

This rule has a potential impact on all programs listed in the Catalog of Federal Domestic Assistance in the Agency Program Index under the Department of Agriculture, Farm Service Agency and Natural Resources Conservation Service. Other assistance programs are also impacted.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule.

Environmental Evaluation

The environmental impacts of this proposed rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA and CCC regulations for compliance with NEPA, 7 CFR part 799. After evaluating the effects of the proposed action it was determined that no extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. This final rule preempts any State law that is inconsistent with its provisions. Before any legal action may be brought concerning this rule, all administrative remedies provided must be exhausted.

Executive Order 12372

Executive Order 12372 requires consultation by Federal Agencies with State and local officials when providing funds or assistance that may require non-Federal input. The programs affected by this rule were excluded from the scope of this Executive Order in the Notice related to 7 CFR part 3015 published at 48 FR 29115 on June 24, 1983.

Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates as defined in Title II of the Unfunded Mandates Reform Act of 1995 (UMRA). Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

This rule has no effect on the information collection requirements of the Agency.

Executive Order 12612

This rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Discussion of Final Rule

This rule implements section 121(a) of the Agricultural Risk Protection Act of 2000 (ARPA) (Pub. L. 106–224), enacted June 20, 2000. ARPA amended the Federal Crop Insurance Act (7 U.S.C. 1514) to provide that a producer may be disqualified for a period of up to 5 years from receiving certain benefits under a number of programs administered by the Department of Agriculture. A proposed rule, proposing to apply the disqualification to programs administered by FSA or conducted using funds of CCC, was published on September 12, 2002 (67 FR 57759). Comments were accepted for 60 days and no comments were received. Since this rule affects programs of CCC and FSA, it has been determined that its changes should be set forth in both FSA and CCC regulations. Accordingly, the final rule is changed from the proposed to reflect that it will appear in two places in the Code of Federal Regulations. Also, the final rule adds section 1405.8 instead of section 1405.7 as indicated in the proposed rule. Section 1405.7 was added by a final rule October 21, 2002 to implement requirements of the Uruguay Round Agreements Act.

List of Subjects

7 CFR Part 718

Acreage allotments, Agricultural commodities, Marketing quotas.

7 CFR Part 1405

Loan programs—agricultural, Price support programs.

■ Accordingly, Title 7 of the Code of Federal Regulations is to be amended as follows:

PART 718—PROVISIONS APPLICABLE TO MULTIPLE PROGRAMS

■ 1. The authority for part 718 continues to read as follows:

Authority: 7 U.S.C. 1311 *et seq.*; 7 U.S.C. 1501 *et seq*; 7 U.S.C. 1921 *et seq.*; 7 U.S.C. 7201 *et seq.*; 15 U.S.C. 714b.

Subpart A—General Provisions

■ 2. Section 718.11 is added to read as follows:

§ 718.11 Disqualification due to federal crop insurance fraud.

(a) Section 515(h) of the Federal Crop Insurance Act (FCIA) provides that a person who willfully and intentionally provides any false or inaccurate information to the Federal Crop Insurance Corporation (FCIC) or to an approved insurance provider with respect to a policy or plan of FCIC insurance after notice and an opportunity for a hearing on the record, will be subject to one or more of the sanctions described in section 515(h)(3). In section 515(h)(3), the FCIA specifies that in the case of a violation committed by a producer, the producer may be disqualified for a period of up to 5 years from receiving any monetary or non-monetary benefit under a number of programs. The list includes, but is not limited to, benefits under:

(1) Title V of the FCIA.

(2) The Agricultural Market Transition Act (7 U.S.C. 7201 *et seq.*), including the Noninsured Crop Disaster Assistance Program under section 196 of that Act (7 U.S.C. 7333).

(3) The Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*).

(4) The Commodity Credit Corporation Charter Act (15 U.S.C. 714 *et seq*).

(5) The Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 *et seq.*).

(6) Title XII of the Food Security Act of 1985 (16 U.S.C. 3801 *et seq.*).

(7) Any law that provides assistance to a producer of an agricultural commodity affected by a crop loss or a decline in prices of agricultural commodities.

(b) Violation determinations are made by FCIC. However, upon notice from FCIC to FSA that a producer has been found to have committed a violation to which paragraph (a) of this section applies, that person shall be considered ineligible for payments under the programs specified in paragraph (a) of this section that are funded by FSA for the same period of time for which, as determined by FCIC, the producer will be ineligible for crop insurance benefits of the kind referred to in paragraph (a)(1) of this section. Appeals of the determination of ineligibility will be administered under the rules set by FCIC.

(c) Other sanctions may also apply.

PART 1405—LOANS, PURCHASES AND OTHER OPERATIONS

■ 3. The authority citation for part 1405 is revised to read as follows:

Authority: 7 U.S.C. 1515; 7 U.S.C. 7991(e); 15 U.S.C. 714b and 714c.

■ 4. Section 1405.8 is added to read as follows:

§ 1405.8 Disqualification due to Federal crop insurance fraud.

(a) Section 515(h) of the Federal Crop Insurance Act (FCIA) provides that a person who willfully and intentionally provides any false or inaccurate information to the Federal Crop Insurance Corporation (FCIC) or to an approved insurance provider with respect to a policy or plan of FCIC insurance after notice and an opportunity for a hearing on the record, will be subject to one or more of the sanctions described in section 515(h)(3). In section 515(h)(3), the FCIA specifies that in the case of a violation committed by a producer, the producer may be disqualified for a period of up to 5 years from receiving any monetary or non-monetary benefit under a number of programs. The list includes, but is not limited to, benefits under:

(1) Title V of the FCIA.

(2) The Agricultural Market Transition Act (7 U.S.C. 7201 *et seq.*), including the Noninsured Crop Disaster Assistance Program under section 196 of that Act (7 U.S.C. 7333).

(3) The Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*).

(4) The Commodity Credit Corporation Charter Act (15 U.S.C. 714 *et seq*).

(5) The Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 *et seq.*).

(6) Title XII of the Food Security Act of 1985 (16 U.S.C. 3801 *et seq.*).

(7) Any law that provides assistance to a producer of an agricultural commodity affected by a crop loss or a decline in prices of agricultural commodities.

(b) Violation determinations are made by FCIC. However, upon notice from FCIC to CCC that a producer has been found to have committed a violation to which paragraph (a) of this section applies, that person shall be considered ineligible for payments under the programs specified in paragraph (a) of this section that are funded by CCC for the same period of time for which, as determined by FCIC, the producer will be ineligible for crop insurance benefits of the kind referred to in paragraph (a)(1) of this section. Appeals of the determination of ineligibility will be administered under the rules set by FCIC.

(c) Other sanctions may also apply.

Signed in Washington, DC, on June 17, 2003.

James R. Little,

Administrator, Farm Service Agency, Executive Vice President, Commodity Credit Corporation.

[FR Doc. 03–16663 Filed 7–1–03; 8:45 am]

BILLING CODE 0341–05–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Final decision to waive the nonmanufacturer rule.

SUMMARY: This document advises the public that the U.S. Small Business Administration (SBA) is establishing a waiver of the Nonmanufacturer Rule for Other Ordnances and Accessories Manufacturing. The basis for waivers is that no small business manufacturers are supplying these classes of products to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program.

EFFECTIVE DATE: July 11, 2003.

ADDRESS COMMENTS TO: Edith Butler, Program Analyst, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416, Tel: (202) 619–0422.

FOR FURTHER INFORMATI0N CONTACT: Edith Butler, Program Analyst, (202) 619–0422, FAX: (202) 205–7280.

SUPPLEMENTARY INFORMATION: Pub. L. 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small businesses or SBA's 8(a) Program must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any ''class of products'' for which there are no small business manufacturers or processors in the Federal market.

To be considered available to participate in the Federal market on

these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines ''class of products'' based on a six digit North American Industry Classification System (NAICS) and the four digit Product and Service Code established by the Federal Procurement Data System.

The U.S. Small Business Administration is currently processing a request to waive the Nonmanufacturer Rule for Other Ordnance and Accessories Manufacturing, NAICS 332995.

Linda G. Williams,

Associate Administrator for Government Contracting.

[FR Doc. 03–16717 Filed 7–1–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–21–AD; Amendment 39–13183; AD 2003–11–23]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines AG (IAE) V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, V2530–A5, and V2533–A5 Turbofan Engines; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2003–11–23 applicable to IAE V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, V2530–A5, and V2533–A5 turbofan engines that was published in the **Federal Register** on June 5, 2003 (68 FR 33621). The lists of engine models in the Airworthiness Directives title, the Summary, the Supplementary Information, and the Applicability section are incorrect. This document corrects those listings. Also, paragraph (c) of the regulatory text was incorrectly printed as run-in with the heading Applicability. In all other respects, the original document remains the same.

EFFECTIVE DATE: Effective June 20, 2003.

FOR FURTHER INFORMATION CONTACT: Glorianne Niebuhr, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7132; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule AD, FR Doc, 03–14133 applicable to IAE V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, V2530–A5, and V2533–A5 turbofan engines, was published in the **Federal Register** on June 5, 2003 (68 FR 33621). The following correction is needed:

§ 39.13 [Corrected]

On page 33621, in the third column, in the Heading Section, in the Airworthiness Directives title, ''International Aero Engines AG (IAE) V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, and V2530–A5 Turbofan Engines ''is corrected to read'' International Aero Engines AG (IAE) V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, V2530–A5, and V2533–A5 Turbofan Engines''. In the same column, in the Summary section, in the fourth and fifth lines, ''V2527E–A5, V2527M–A5, and V2530–A5 turbofan engines'' is corrected to read ''V2527E–A5, V2527M–A5, V2530–A5, and V2533–A5 turbofan engines''.

On page 33622, in the first column, in the Supplementary Information section, in third and fourth lines, change ''V2527–A5, V2527E–A5, V2527M–A5, and V2530–A5'' to ''V2527–A5, V2527E–A5, V2527M–A5, V2530–A5, and V2533–A5''. In the same column, third paragraph, fourth and fifth lines, change ''V2527–A5, V2527E–A5, V2527M–A5, and V2530–A5'' to ''V2527–A5, V2527E–A5, V2527M–A5, V2530–A5, and V2533–A5''.

Issued in Burlington, MA, on June 26, 2003.

Francis A. Favara,

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

[FR Doc. 03–16690 Filed 7–1–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–SW–17–AD; Amendment 39–13215; AD 2003–08–51]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters, Inc. Model 369A, D, E, H, HE, HM, HS, F, and FF Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 2003–08–51, which was sent previously to all known U.S. owners and operators of the specified model MD Helicopters, Inc. helicopters by individual letters. This AD requires reducing the retirement life of certain tail rotor blades, performing a one-time visual inspection of each tail rotor blade pitch horn (pitch horn) for a crack or corrosion, and replacing unairworthy tail rotor blades with airworthy tail rotor blades. This AD also requires revising the Airworthiness Limitations section of the helicopter maintenance manual to reflect the reduced retirement life, and reporting information to the FAA within 24 hours following the one-time inspection. The actions specified by this AD are intended to prevent a pitch horn from separating from the tail rotor blade, leading to an unbalanced condition, vibration, loss of tail rotor pitch control, and loss of directional control of the helicopter.

DATES: Effective July 17, 2003, to all persons except those persons to whom it was made immediately effective by Emergency AD 2003–08–51, issued on April 15, 2003, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before September 2, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2003–SW–17–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.*

FOR FURTHER INFORMATION CONTACT: Fred Guerin, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5232, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On April 15, 2003, the FAA issued Emergency AD 2003–08–51 for the specified model helicopters, which requires, before further flight, reducing the retirement life of certain tail rotor blades from 5,140, 5,200, or 10,000 hours time-in-service (TIS) to 400 hours TIS, performing a one-time visual inspection of each pitch horn for a crack or corrosion, and replacing unairworthy tail rotor blades with airworthy tail rotor blades. The Emergency AD also requires revising the Airworthiness Limitations section of the helicopter maintenance

manual to reflect the reduced retirement life, and reporting information to the FAA within 24 hours following the one-time inspection. That action was prompted by two reports of cracked pitch horns that failed during flight. In both occurrences, the pilot was able to land the helicopter without further incident. Investigation revealed that the cause of the failures was a fatigue crack in the pitch horns that developed before the tail rotor blade reached its retirement life. This condition, if not corrected, could result in a pitch horn separating from the tail rotor blade, leading to an unbalanced condition, vibration, loss of tail rotor pitch control, and loss of directional control of the helicopter.

Since the unsafe condition described is likely to exist or develop on other MD Helicopters, Inc. Model 369A, D, E, H, HE, HM, HS, F, and FF helicopters of the same type designs, the FAA issued Emergency AD 2003–08–51 to prevent a pitch horn from separating from the tail rotor blade, leading to an unbalanced condition, vibration, loss of tail rotor pitch control, and loss of directional control of the helicopter. The AD requires, before further flight, reducing the retirement life of certain tail rotor blades from 5,140, 5,200, or 10,000 hours TIS to 400 hours TIS, performing a one-time visual inspection of each pitch horn for a crack or corrosion, and replacing unairworthy tail rotor blades with airworthy tail rotor blades. The AD also requires revising the Airworthiness Limitations section of the helicopter maintenance manual to reflect the reduced retirement life, and reporting information to the FAA within 24 hours following the one-time inspection. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity of the helicopter. Therefore, reducing the retirement life of certain tail rotor blades; performing a one-time visual inspection of each pitch horn; replacing unairworthy tail rotor blades; and revising the Airworthiness Limitations section of the helicopter maintenance manual to reflect the reduced retirement life are required before further flight, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on April 15, 2003, to all known U.S. owners and operators of MD Helicopters, Inc. Model 369A, D, E, H, HE, HM, HS, F, and FF helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to 14 CFR 39.13 to make it effective to all persons.

The Emergency AD contained two typographical errors that are corrected in this AD. Paragraph (c) of the Emergency AD stated ''400 hours TIS'' twice, and the ''or'' in the listing of part numbers should have been ''and''.

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, we no longer need to include it in each individual AD.

The FAA estimates that this AD will affect 213 helicopters of U.S. registry, and replacing the tail rotor blades will take approximately 2 work hours per helicopter to accomplish at an average labor rate of $60 per work hour. Required parts will cost approximately $2,000 per helicopter. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $2,120 per helicopter, or $451,560 to replace all the blades in the fleet.

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 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 mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2003–SW–17–AD.'' The postcard will be date stamped and returned to the commenter.

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 a new airworthiness directive to read as follows:

2003–08–51 MD Helicopters, Inc.: Amendment 39–13215. Docket No. 2003–SW–17–AD.

Applicability: Model 369A, D, E, H, HE, HM, HS, F, and FF helicopters, with tail rotor blades, part number (P/N) 369D21640–501, 369D21641–501, 369D21642–501, 369D21643–501, 500P3100–101, 500P3100–301, 500P3300–501, or 500P3500–701, installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a tail rotor blade pitch horn (pitch horn) from separating from the tail rotor blade, leading to an unbalanced condition, vibration, loss of tail rotor pitch control, and loss of directional control of the helicopter, accomplish the following:

(a) This airworthiness directive (AD) establishes a new retirement life of 400 hours time-in-service (TIS) for the tail rotor blades listed in the Applicability section. For helicopters with an affected tail rotor blade installed that has 390 through 700 hours TIS, remove and replace the tail rotor blade with an airworthy tail rotor blade within 10 hours TIS.

(b) Before further flight, perform a one-time visual inspection of each pitch horn for a crack or corrosion in the area indicated by Note 2 in Figure 1 of this AD. Paint removal in accordance with Note 1 of Figure 1 of this AD is not required for the visual inspection.

BILLING CODE 4910–13–P

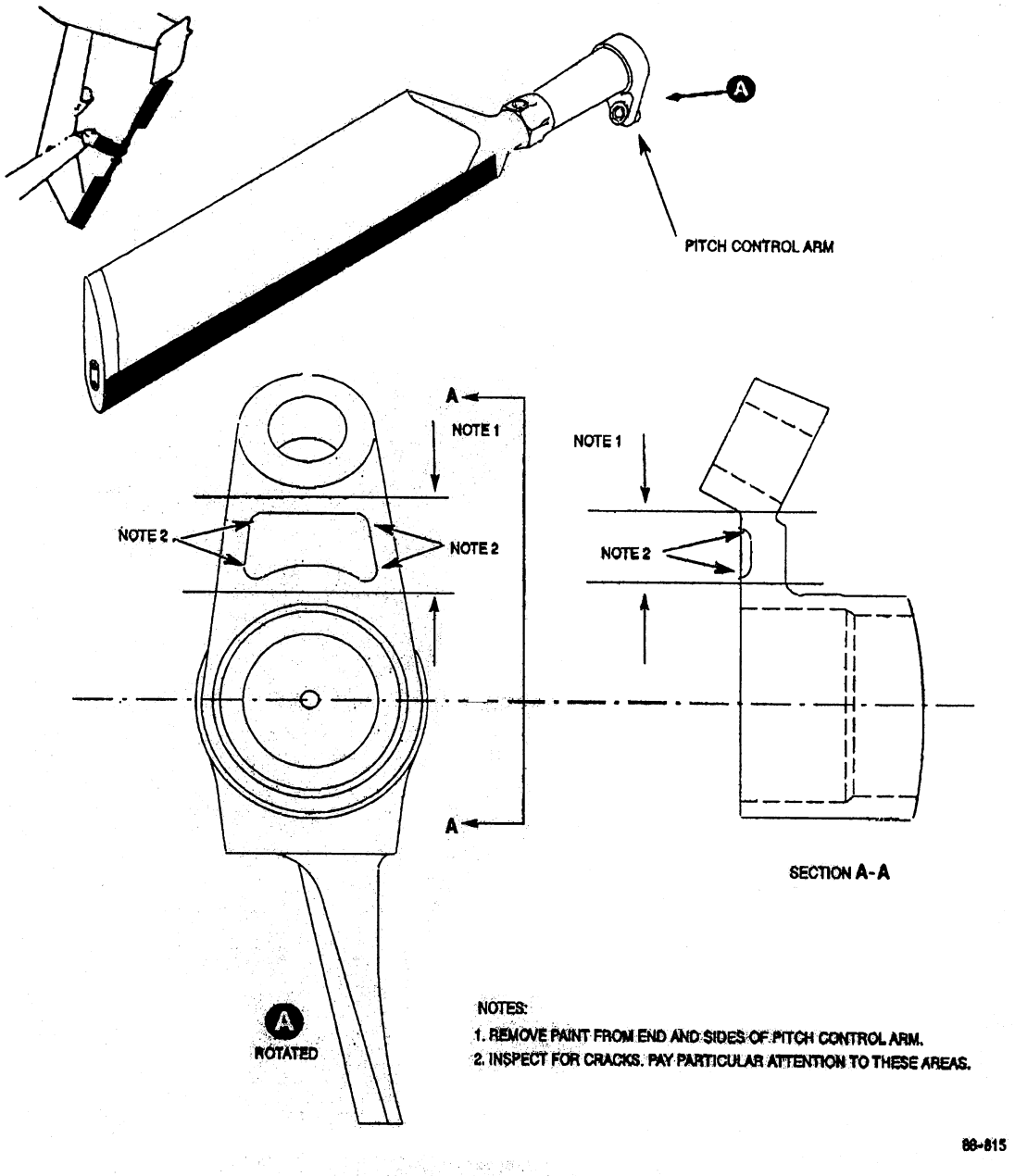

Figure 1. Tail Rotor Blade Assembly Inspection

BILLING CODE 4910–13–C

(c) Revise the helicopter Airworthiness Limitations section of the maintenance manual by making pen-and-ink changes to indicate the new retirement life of 400 hours TIS for the tail rotor blades, P/N 369D21640–501, 369D21641–501, 369D21642–501, 369D21643–501, 500P3100–101, 500P3100–301, 500P3300–501, and 500P3500–70.

(d) For helicopters with a tail rotor blade installed that has more than 700 hours TIS, a one-time special flight permit to fly it to a repair facility may be issued only upon completion of an eddy current surface scan of each affected pitch horn (*see* Figure 1 of this AD). Paint removal in accordance with Note 1 of the Figure 1 of this AD IS required for the surface scan. If a crack is found,

remove the tail rotor blade and replace it with an airworthy tail rotor blade before further flight.

(e) Within 24 hours after completing the requirements of this Emergency AD, report the information requested in Appendix A for all tail rotor blades listed in the Applicability section, including the tail rotor blades that were removed as a result of this AD. Report the information to: Manager, Los Angeles Aircraft Certification Office, ATTN: Fred Guerin, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5232. Reports may also be faxed to (562) 627–5210 or emailed to *fred.guerin@faa.gov.*

(f) Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(g) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Los Angeles Aircraft Certification Office, Transport Airplane Directorate, FAA, for information about previously approved alternative methods of compliance.

(h) This amendment becomes effective on July 17, 2003, to all persons except those persons to whom it was made immediately effective by Emergency AD 2003–08–51, issued April 15, 2003, which contained the requirements of this amendment.

Appendix A—Tail Rotor Blade Inspection (Sample Format)

Send within 24 hours to:

Manager, Los Angeles Aircraft Certification Office, ATTN: Fred Guerin, 3960 Paramount Blvd., Lakewood, California 90712.

Fax: (562) 627–5210.

Email: *fred.guerin@faa.gov.*

Date:

Operator or Company Name:

Name of Contact Person:

Address:

Telephone:

Fax:

Aircraft Serial Number:

Aircraft Registration Number:

Estimated average flight hours per year:

T/R Blade Part Number: Serial Number: Total Time:

Crack found? (Yes/No): Corrosion Found? (Yes/No)

T/R Blade Part Number: Serial Number: Total Time:

Crack found? (Yes/No): Corrosion Found? (Yes/No)

T/R Blade Part Number: Serial Number: Total Time:

Crack found? (Yes/No): Corrosion Found? (Yes/No)

T/R Blade Part Number: Serial Number: Total Time:

Crack found? (Yes/No): Corrosion Found? (Yes/No)

Comments/Additional Information:

Issued in Fort Worth, Texas, on June 3, 2003.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–16687 Filed 7–1–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9066]

RIN 1545–BA79

Outbound Liquidations Into Foreign Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance regarding the application of section 367(e)(2) to certain outbound liquidations. The regulations amend the anti-abuse rule by narrowing the scope of the rule to apply only to outbound transfers to a foreign corporation in a complete liquidation of a domestic corporation in which a principal purpose of the liquidation is the avoidance of U.S. tax. The regulations also clarify the application of the anti-abuse rule.

DATES: Effective Date: July 2, 2003.

Applicability Date: These regulations apply to distributions occurring on or after September 7, 1999, or, if the taxpayer has elected to apply the final regulations issued pursuant to TD 8834 to such distributions, to distributions in taxable years ending after August 8, 1999.

FOR FURTHER INFORMATION CONTACT: Milton M. Cahn, (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On August 9, 1999, the IRS and Treasury published final regulations (TD 8834 in the **Federal Register** at 64 FR 43072) under section 367(e)(2) regarding distributions of property in a complete liquidation under section 332 by a domestic corporation to a foreign parent corporation (outbound liquidation) and by a foreign corporation to a foreign parent corporation (foreign-to-foreign liquidations). On November 20, 2002, the IRS and Treasury published a notice of proposed rulemaking (REG–127380–02 in the **Federal Register** at 67 FR 70031) that would amend an anti-abuse rule in the final regulations to limit its application only to outbound liquidations of domestic corporations, and to clarify what constitutes a principal purpose of tax avoidance for purposes of the anti-abuse rule.

Explanation of Provisions

The final regulations published in 1999 included an anti-abuse rule providing that the Commissioner may require a foreign or domestic liquidating corporation to recognize gain (or treat the liquidating corporation as if it had recognized a loss) on a liquidating distribution if a principal purpose of the liquidation is the avoidance of U.S. tax. § 1.367(e)–2(d). The notice of proposed rulemaking proposed amending the anti-abuse rule under § 1.367(e)–2(d) to limit the application of this rule to outbound liquidations of domestic corporations. The notice of proposed rulemaking also proposed clarifying what constitutes a principal purpose for purposes of the anti-abuse rules in § 1.367(e)–2(d) and § 1.367(e)–2(b)(2)(iii)(C)(*1*). One written comment responding to the notice of proposed rulemaking was received, but this comment did not request any changes. The public hearing was canceled because no requests were received to speak at the hearing. Accordingly, the proposed regulations are adopted by this Treasury decision without change.

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 has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

Drafting Information

The principal author of these final regulations is Aaron A. Farmer of the Office of the Associate Chief Counsel (International), IRS. However, other personnel from the Treasury and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of 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 1.367(e)–2, is amended as follows:

■ 1. Paragraph (b)(2)(iii)(C)(*1*) is amended by removing the parenthetical ''(taken together or separately)'' and adding ''when taken together'' in its place.

■ 2. Paragraph (d) is revised.

The revision reads as follows:

§ 1.367(e)–2 Distributions described in section 367(e)(2).

* * * * *

(d) *Anti-abuse rule.* The Commissioner may require a domestic liquidating corporation to recognize gain on a distribution in liquidation described in paragraph (b) of this section (or treat the liquidating corporation as if it had recognized loss on a distribution in liquidation), if a principal purpose of the liquidation is the avoidance of U.S. tax (including, but not limited to, the distribution of a liquidating corporation's earnings and profits with a principal purpose of avoiding U.S. tax). A liquidation may have a principal purpose of tax avoidance even though the tax avoidance purpose is outweighed by other purposes when taken together.

* * * * *

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

Approved: June 23, 2003

Pamela F. Olsen,

Assistant Secretary of the Treasury.

[FR Doc. 03–16785 Filed 7–1–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9067]

RIN 1545–BC21

Transfers of Compensatory Options

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations that provide rules governing transfers of certain compensatory stock options (nonstatutory stock options). The regulations affect persons who have been granted nonstatutory stock options, as well as service recipients who may be entitled to deductions related to the options. The text of the temporary regulations also serves as the text of the proposed regulations on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective July 2, 2003.

Applicability Dates: For dates of applicability, see §§ 1.83–7(d) and 1.83–7T(d).

FOR FURTHER INFORMATION CONTACT: Stephen Tackney (202) 622–6030 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

These regulations amend 26 CFR part 1. Section 83 of the Internal Revenue Code (Code) provides that if, in connection with the performance of services, property is transferred to any person other than the person for whom such services are performed, the excess of (1) the fair market value of the property (determined without regard to lapse restrictions) at the first time the rights of the person having the beneficial interest in such property are transferable or are not subject to a substantial risk of forfeiture, whichever occurs earlier, over (2) the amount (if any) paid for such property, is included in the gross income of the service provider in the first taxable year in which the rights of the person having the beneficial interest in such property are transferable or are not subject to a substantial risk of forfeiture.

Section 83(e)(4) provides that section 83 does not apply to the transfer of property pursuant to the exercise of an option with a readily ascertainable fair market value at the date of grant.

Section 83(e)(3) provides that section 83 does not apply to the transfer of an option without a readily ascertainable fair market value. Under § 1.83–7(a), section 83 generally applies to the transfer of the property subject to the option at the time of exercise.

Section 1.83–7(a) further provides that section 83 applies to the transfer of money or other property received upon the sale or disposition in an arm's length transaction of an option without a readily ascertainable fair market value at the time of grant.

Recent transactions promoted by certain parties have raised issues concerning when a transfer of an option to a related person, typically a family member or an entity a substantial interest in which is owned by the option holder or family members, is an arm's length transaction. See Notice 2003–47. The determination of whether a transfer to a related person is an arm's length transaction requires scrutiny of the facts and circumstances surrounding the transfer. Furthermore, if conducted under the terms promoted, Treasury and the IRS believe these transfers will rarely constitute an arm's length transaction.

Explanation of Provisions

The regulations provide that a sale or other disposition of a nonstatutory stock option to a related person will not be treated as a transaction that closes the application of section 83 with respect to the option. For these purposes, a person is related to the service provider if (I) the person and the service provider bear a relationship to each other that is specified in section 267(b) or 707(b)(1), subject to the modifications (i) that ''20 percent'' is used in place of ''50 percent'' each place it appears in section 267(b) and section 707(b)(1) and (ii) that section 267(c)(4) is applied as if the family of an individual includes the spouse of any member of the family, or (II) the service provider and such person are engaged in trades or businesses under common control (within the meaning of section 52(a) and (b)); provided that a person is not related to the service provider if the person is the service recipient with respect to the option or the grantor of the option. The regulations do not alter the treatment of the sale or disposition of an option in an arm's length transaction with an unrelated person. In those circumstances, section 83 applies to the transfer of money or other property received in the exchange.

Special Analyses

It has been determined that these regulations are 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 these 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 Code, these regulations are being submitted to the Chief Counsel for Advocacy of the Small

Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these temporary regulations is Stephen Tackney of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

■ 2. Section 1.83–7 is amended by adding paragraph (d) to read as follows:

§ 1.83–7 Taxation of nonqualified stock options.

* * * * *

(d) *Effective dates.* This section applies for periods before July 2, 2003. For periods on or after July 2, 2003, *see* § 1.83–7T.

■ 3. Section 1.83–7T is added to read as follows:

§ 1.83–7T Taxation of nonqualified stock options (Temporary).

(a) *In general.* If there is granted to an employee or independent contractor (or beneficiary thereof) in connection with the performance of services, an option to which section 421 (relating generally to certain qualified and other options) does not apply, section 83(a) shall apply to such grant if the option has a readily ascertainable fair market value (determined in accordance with paragraph (b) of this section) at the time the option is granted. The person who performed such services realizes compensation upon such grant at the time and in the amount determined under section 83(a). If section 83(a) does not apply to the grant of such an option because the option does not have a readily ascertainable fair market value at the time of grant, sections 83(a) and 83(b) shall apply at the time the option is exercised or otherwise disposed of, even though the fair market value of such option may have become readily ascertainable before such time. If the option is exercised, sections 83(a) and 83(b) apply to the transfer of property pursuant to such exercise, and the employee or independent contractor realizes compensation upon such transfer at the time and in the amount determined under section 83(a) or 83(b). If the option is sold or otherwise disposed of in an arm's length transaction, sections 83(a) and 83(b) apply to the transfer of money or other property received in the same manner as sections 83(a) and 83(b) would have applied to the transfer of property pursuant to an exercise of the option. The preceding sentence does not apply to a sale or other disposition of the option to a person related to the service provider that occurs on or after July 2, 2003. For this purpose, a person is related to the service provider if—

(1) The person and the service provider bear a relationship to each other that is specified in section 267(b) or 707(b)(1), subject to the modifications that the language ''20 percent'' is used instead of ''50 percent'' each place it appears in sections 267(b) and 707(b)(1), and section 267(c)(4) is applied as if the family of an individual includes the spouse of any member of the family; or

(2) The person and the service provider are engaged in trades or businesses under common control (within the meaning of section 52(a) and (b)); provided that a person is not related to the service provider if the person is the service recipient with respect to the option or the grantor of the option.

(b) and (c) For further guidance, *see* § 1.83–7(b) and (c).

(d) *Effective dates.* This section applies on or after July 2, 2003. For dates before July 2, 2003 *see* § 1.83–7.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: June 26, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 03–16786 Filed 7–1–03; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 4

[TTB T.D.–2; Ref. Notice No. ATF–953]

RIN 1512—AC63

Amelioration of Fruit and Agricultural Wines; Technical Amendments (2001R–197P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: The Treasury Department and its Alcohol and Tobacco Tax and Trade Bureau are correcting an error in the wine labeling regulations regarding the amelioration of fruit (non-grape) and agricultural wines. The Bureau is also making a number of technical corrections to the wine labeling regulations.

EFFECTIVE DATE: Effective September 2, 2003.

FOR FURTHER INFORMATION CONTACT: Jennifer Berry, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Procedures Division, PO Box 18152, Roanoke, Virginia 24014; telephone (540) 344–9333.

SUPPLEMENTARY INFORMATION:

Impact of the Homeland Security Act on Rulemaking

Effective January 24, 2003, the Homeland Security Act of 2002 divided the Bureau of Alcohol, Tobacco and Firearms (ATF) into two new agencies, the Alcohol and Tobacco Tax and Trade Bureau (TTB) in the Department of the Treasury and the Bureau of Alcohol, Tobacco, Firearms and Explosives in the Department of Justice. Regulation of wine labeling is the responsibility of the new TTB. References to ATF in this document relate to events that occurred prior to January 24, 2003, or to functions that the Bureau of Alcohol, Tobacco, Firearms and Explosives continues to perform.

Background

The Alcohol and Tobacco Tax and Trade Bureau administers regulations published in chapter I of title 27 CFR. In a recent review of part 4 of this chapter, Labeling and Advertising of Wine, we noted an error at § 4.22(b)(5) regarding the amelioration of fruit (non-grape) and agricultural wines. We are correcting this error and making several other technical amendments to the wine labeling regulations in part 4.

Amelioration Error

The regulations at § 4.22(b)(5) state that fruit (non-grape) and agricultural wines may be treated with sugar or water in excess of the quantities prescribed for their standards of identity without TTB viewing such treatment as an alteration of class and type, if, among other conditions, ''the content of natural acid is not less *than 7.5 parts per thousand.''* [Italics added.] This limitation of 7.5 parts per thousand is incorrect. Pursuant to 26 U.S.C. 5383 and 5384, the correct minimum acid level should be 7.69 parts per thousand.

This level is correctly stated in § 24.178(b)(3) as 7.69 grams per liter. ''Grams per liter'' is equivalent to ''parts per thousand.'' In order to make these regulations accurate and consistent, we are amending the minimum acid limitation in § 4.22(b)(5) to 7.69 grams per liter.

Technical Amendments

We have identified a typographical error at § 4.21(h)(2), the standard of identity for imitation and substandard or other than standard wine. The phrase ''other than standard wine'' has been omitted from this section. The corrected regulation will read as follows:

(2) ''Substandard wine'' or ''other than standard wine'' shall bear as a part of its designation the words ''substandard'' *or ''other than standard,''* * * *. [Addition in italics.]

We have also identified two technical errors at § 4.30(a). Both the first and second sentences of this section use the word ''article'' to refer to regulatory subparts. ''Article'' was the term used for subparts when the wine labeling regulations were written in 1935. Later revisions replaced ''article'' with ''subpart,'' but these two instances were overlooked. We are correcting this oversight.

We are also removing three obsolete sections from part 4. All three have been replaced with newer sections, and their requirements have been obsolete for years.

- § 4.25, Appellation of origin, obsolete since January 1, 1983, has been replaced with § 4.25a.
- § 4.35, Name and address, obsolete since July 28, 1994, has been replaced with § 4.35a.
- § 4.72, Standards of fill, obsolete since January 1, 1979, has been replaced with § 4.73.

We are assigning the old numbers to the newer sections to improve the organization of part 4. We believe that removing these obsolete sections will make it much easier for readers to find current requirements.

Notice No. 953

ATF published Notice No. 953 on October 3, 2002, proposing to make the corrections and technical amendments described above. No comments were received. Accordingly, we are now finalizing the proposed amendments.

Regulatory Analyses and Notices

Does the Paperwork Reduction Act Apply to This Final Rule?

We propose no requirement to collect information. Therefore, the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply.

How Does the Regulatory Flexibility Act Apply to This Final Rule?

We certify that this regulation will not have a significant economic impact on a substantial number of small entities. We expect no negative impact on small entities. We are not imposing any new requirements. Accordingly, the Regulatory Flexibility Act does not require a regulatory flexibility analysis.

Is This a Significant Regulatory Action as Defined by Executive Order 12866?

This is not a significant regulatory action as defined by Executive Order 12866. Therefore, the order does not require a regulatory assessment.

Drafting Information

The principal author of this document is Jennifer Berry, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau.

List of Subjects in 27 CFR Part 4

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

Authority and Issuance

■ For the reasons discussed in the preamble, we are amending 27 CFR part 4 as follows:

PART 4—LABELING AND ADVERTISING OF WINE

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

Authority: 27 U.S.C. 205, unless otherwise noted.

■ 2. Amend § 4.21 by revising paragraph (h)(2) introductory text to read as follows:

§ 4.21 The standards of identity.

* * * * *

(h) * * *

(2) ''Substandard wine'' or ''other than standard wine'' shall bear as a part of its designation the words ''substandard'' or ''other than standard,'' and shall include:

* * * * *

■ 3. Revise § 4.22(b)(5) to read as follows:

§ 4.22 Blends, cellar treatment, alteration of class or type.

* * * * *

(b) * * *

(5) Treatment of any class or type of wine for which a standard of identity is prescribed in this subpart with sugar or water in excess of the quantities specifically authorized by such standards:

Provided, That the class or type thereof shall not be deemed to be altered:

(i) Where such wine (other than grape wine) is derived from fruit or other agricultural products having a high normal acidity, if the total solids content is not more than 22 grams per 100 cubic centimeters and the content of natural acid is not less than 7.69 grams per liter, and

(ii) Where such wine is derived exclusively from fruit or other agricultural products the normal acidity of which is 20 parts or more per thousand, if the volume of the resulting product has been increased not more than 60 percent by the addition of sugar and water solution for the sole purpose of correcting natural deficiencies due to such acidity and (except in the case of such wine when produced from fruit or berries other than grapes) there is stated as part of the class and type designation the phrase ''Made with over 35 percent sugar solution.''

* * * * *

■ 4. Remove § 4.25.

■ 5. Redesignate § 4.25a as § 4.25.

■ 6. Amend § 4.30(a) by removing the word ''article'' where it appears and replacing it with the word ''subpart''.

■ 7. Remove § 4.35.

■ 8. Redesignate § 4.35a as § 4.35.

■ 9. Remove § 4.72.

■ 10. Redesignate § 4.73 as § 4.72.

Signed: March 26, 2003.

John J. Manfreda,

Acting Administrator.

Approved: June 4, 2003.

Timothy E. Skud,

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

[FR Doc. 03–16563 Filed 7–1–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–03–230]

RIN 1625–AA00

Safety Zone; Lake Huron, Harbor Beach, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for

the Harbor Beach Fireworks on July 19, 2003. This safety zone is necessary to control vessel traffic within the immediate location of the fireworks launch site and to ensure the safety of life and property during the event. This safety zone is intended to restrict vessel traffic from a portion of Lake Huron.

DATES: This temporary final rule is effective from 7 p.m. until 11 p.m. on July 19, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09–03–230] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Detroit, 110 Mt. Elliott Ave., Detroit, MI 48207, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Brandon Sullivan, U.S. Coast Guard Marine Safety Office Detroit, at telephone number (313) 568–9558.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

A temporary safety zone is necessary to ensure the safety of vessels and spectators from the hazards associated with fireworks displays. Based on accidents that have occurred in other Captain of the Port zones, and the explosive hazard of fireworks, the Captain of the Port Detroit has determined fireworks launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risks.

The safety zone will encompass all waters of Lake Huron surrounding the fireworks launch platform bounded by the arc of a circle with a 300-yard radius with its center in approximate position 43°51″00′ N, 082°38″15′ W. The geographic coordinates are based upon North American Datum 1983 (NAD 83). The size of this zone was determined using the National Fire Prevention Association guidelines and local knowledge concerning wind, waves, and currents.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol representative. Entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on-scene representative. The designated on-scene representative will be the Patrol Commander. The Patrol Commander may be contacted via VHF Channel 16.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This determination is based on the minimal time that vessels will be restricted from the safety zone.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit or anchor in the activated safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone is only in effect from 7 p.m. until 11 p.m. on the day of the event and allows vessel traffic to pass outside of the safety zone. Before the effective period, the Coast Guard will issue maritime advisories widely available to users of Lake Huron by the Ninth Coast Guard District Local Notice to Mariners and Marine Information Broadcasts. Facsimile broadcasts may also be made.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Detroit (*see* **ADDRESSES**).

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

Collection of Information

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

Federalism

The Coast Guard has analyzed this rule under Executive Order 13132, Federalism, and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

The Coast Guard has considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Indian Tribal Governments

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

Energy Effects

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

■ 2. A new temporary § 165.T09–230 is added to read as follows:

§ 165.T09–230 Safety Zone; Lake Huron, Harbor Beach, MI.

(a) *Location.* The safety zone will encompass all waters of Lake Huron surrounding the fireworks launch platform bounded by the arc of a circle with a 300-yard radius with its center in approximate position 43°51′00″ N, 082°38′15″ W (NAD 83).

(b) *Effective time and date.* This section is effective from 7 p.m. until 11 p.m. on July 19, 2003.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Detroit, or his designated on-scene representative. The designated on-scene Patrol Commander may be contacted via VHF Channel 16. Section 165.23 also contains other general requirements.

Dated: June 20, 2003.

P.G. Gerrity,

Commander, Coast Guard, Captain of the Port Detroit.

[FR Doc. 03–16640 Filed 7–1–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–42–1–6274a; FRL–7521–2]

Approval and Promulgation of Implementation Plans for Texas; Approval of Section 179B Demonstration of Attainment, Carbon Monoxide Motor Vehicle Emissions Budget for Conformity, and Contingency Measure for El Paso Carbon Monoxide Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving, through direct final action, a revision to the Texas State Implementation Plan (SIP), submitted to show attainment of the Carbon Monoxide (CO) National Ambient Air Quality Standard (NAAQS) in the El Paso CO nonattainment area, but for emissions emanating from outside of the United States. The EPA is also approving the El Paso area's CO emissions budget, and a CO contingency measure requirement. The State submitted the revisions to satisfy sections 179B and other Part D requirements of the Federal Clean Air Act (CAA).

DATES: This rule is effective on September 2, 2003, without further notice, unless we receive adverse comment by August 1, 2003. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, TX 75202–2377.

Texas Commission on Environmental Quality, 12100 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Joe Kordzi, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7186.

SUPPLEMENTARY INFORMATION:

Throughout this document ''we,'' ''us,'' and ''our'' means EPA.

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I. What Is the Background for This Action?

El Paso, Texas, was designated nonattainment for CO and classified as moderate under sections 107(d)(4)(A) and 186(a) of the CAA. The El Paso CO nonattainment area is restricted to a narrow strip along the Rio Grande, adjacent to Ciudad Juarez, Mexico.

The CAA requires that CO nonattainment areas designated moderate and above demonstrate attainment through air quality modeling or any other analytical method determined by the Administrator to be at least as effective. Section 179B of the CAA contains special provisions for nonattainment areas that are affected by emissions emanating from outside the United States. Under section 179B, the EPA will approve a SIP if the area meets all other CAA requirements, and establishes that implementation of the plan would achieve attainment of the CO standard by the CAA statutory deadline ''but for emissions emanating from outside the United States.'' This is the type of demonstration that the State of Texas has made.

II. What Did the State Submit and How Did We Evaluate It?

A. Modeling

The Governor of the State of Texas submitted a revision to the Texas SIP for the El Paso CO moderate nonattainment area via a letter dated September 27, 1995, which was supplemented in February 1998. This included air quality modeling, under section 179B of the CAA, that demonstrates that El Paso would attain the CO NAAQS, but for emissions emanating from outside of the United States.

El Paso and Juarez, Mexico, share an air-shed. However, emission inventory data was not available for Juarez, so modeling of the entire air-shed was not possible. In such an instance, section 179B allows an area such as El Paso to perform modeling using only U.S. pollutant emission data in performing the attainment demonstration.

In its demonstration, Texas used two models, RAM, and CAL3QHC. RAM modeling was used to estimate background CO concentrations, and CAL3QHC was used to estimate hot-spot concentrations, or those areas that are the most likely to produce the highest concentrations of CO. Using RAM modeling, Texas identified the worst-case meteorological episode conducive for CO concentration. This was subsequently used in the CAL3QHC modeling to determine CO concentrations at six selected intersections. These concentrations were then combined with hourly variables in the 8-hour period with the highest RAM-determined background CO concentration. The modeling results for El Paso indicate that the area would attain the CO standard but for emissions emanating from outside the United States. Texas performed its CO modeling analyses for El Paso, according to EPA guidance, using conservative inputs to EPA guideline models.

B. CO Motor Vehicles Emissions Budget

The Governor of Texas submitted the 1996 CO motor vehicle emissions budget of 96.90 tons/day on September 27, 1995. The finding that the budget of the El Paso CO attainment plan was adequate was made in a letter on September 1, 1999.[1] It is EPA's conclusion that the SIP demonstrates attainment with the budget and contains the measures necessary to support the budget. Today, we are approving this budget, under section 176(c) of the CAA.

C. Contingency Measures

Nonattainment areas must adopt contingency measures that are implemented in the event the area does not attain the standard by the attainment date. Under section 187(a)(4) of the CAA's CO requirements, El Paso must have at least a basic Inspection and Maintenance (I/M) program. However, El Paso was also bound to the CAA's ozone requirements for serious areas, which under section 182(c)(3), requires an enhanced program. These two programs yield different levels of CO reductions. The difference in emissions reductions could be called incremental credit. That is, incremental reductions in CO are reductions produced by a control program more stringent than required by CO provisions in the CAA.

The El Paso area is not subject to the section 187(a)(2)(A) Vehicle Miles Traveled (VMT) forecasts and the section 187(a)(3) contingency measures requirements, because its design value was below 12.7 ppm. It is, however, subject to the section 172(c)(9) contingency measures requirement. The CAA does not specify how many contingency measures are needed or the magnitude of the emission reductions (or VMT reductions) they must provide. In the EPA's General Preamble,[2] EPA provides its belief that for moderate areas that fail to attain by the attainment date, States may select contingency measures for the reduction of CO emissions. EPA believes that one appropriate choice of contingency measures would be to provide for the implementation of sufficient VMT reductions or emissions reductions to counteract the effect of 1 year's growth in VMT. The State used this approach to calculate the magnitude of emission reductions it must provide, which is approximately 10.4 tons per day of CO reductions in El Paso. A basic I/M program would produce 43 tons per day of CO reductions. The low-enhanced I/M program approved for El Paso was credited in the SIP for 89 tons per day of CO reductions, which is 46 tons per day of CO reductions beyond the reductions obtained from a basic program. This is well above the 10.4 tons per day the State calculated was required to meet the contingency requirements. The more stringent requirements of the low-enhanced program generate these incremental reductions in CO, thus fulfilling the requirement. The EPA is approving all of the incremental credit of 46 tons per day into the SIP as meeting the CO contingency measures requirement.

D. Has the EPA Approved Other Parts of the SIP Before Now?

All CO nonattainment areas must adopt SIPs that contain the following core elements:[3]

[1] EPA later determined that this motor vehicle emission budget was adequate for transportation conformity purposes (*see* 64 FR 55911, October 15, 1999).

[2] EPA has issued a ''General Preamble'' describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under title I of the Act (57 FR 13498, April 16, 1992, and 57 FR 18070, April 28, 1992).

[3] As outlined in section 187 of the CAA, additional requirements pertain to moderate

1. An inventory of all actual emissions of CO sources in the area (sections 187(a)(1) and 172(c)(3) of the CAA);

2. A revised inventory every three years (sections 187(a)(5) and 172(c)(3));

3. A permit program for the construction and operation of new and modified major stationary sources of CO (sections 172(c)(5)and 173);

4. Contingency measures that are to be implemented if the area fails to attain the standard by the deadline (section 172(c)(9));

5. An I/M program that meets applicable requirements (section 187(a)(4)); and

6. An oxygenated fuels program, if the design value was 9.5 ppm or above based on 1988 and 1989 data (section 211(m)); The EPA:

1. Approved an emissions inventory on September 12, 1994 (59 FR 46766);

2. Approved an oxygenated fuels program on September 12, 1994 (59 FR 46766);

3. Approved a permit program for new and modified major sources of CO on September 27, 1995 (60 FR 49781);

4. Received a periodic update of the CO inventory;

5. Approved the Texas Motorist Choice Vehicle Inspection and Maintenance Program (includes El Paso) on November 14, 2001 (66 FR 57261); and

6. Is approving a CO contingency measure in this action.

E. How Close Is El Paso to Attainment of the CO Standard?

Data from the El Paso monitoring network from 1999 to the end of 2002 appear to indicate that the area is in attainment of the CO standard. The State has informed EPA that it may request redesignation in the near future.

III. What Is Our Final Action?

The EPA is approving a revision to the Texas SIP, which was submitted to show attainment of the CO standard in the El Paso CO nonattainment area by the applicable attainment date, but for emissions from Mexico. The revision satisfies section 179B of the CAA.

The EPA believes that all section 179B approvals should be on a contingency basis. This modeling-based approval is valid only as long as the area's modeling continues to show that the El Paso CO area would be in attainment, but for emissions from outside the United States. If the EPA later determines by rulemaking that additional CO reductions are needed from sources in the United States, the EPA will require Texas to submit a new CO attainment SIP for El Paso.

The EPA is also approving El Paso's CO motor vehicle emissions budget, under section 176(c) of the CAA. Lastly, the EPA is approving the use of 46 tons per day in incremental CO reduction credits from the Texas low-enhanced vehicle inspection and maintenance program, as fulfillment of the State's CO attainment contingency measure requirement for the El Paso nonattainment area under section 172(c)(9).

IV. Why Is This a ''Final Action?''

We are publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the section 179B attainment demonstration SIP, the associated motor vehicle emissions budget, and the attainment contingency measures for the El Paso CO nonattainment area, if adverse comments are received. This rule will be effective on September 2, 2003, without further notice unless we receive adverse comment by August 1, 2003. If EPA receives adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

V. Regulatory Assessment Requirements

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

nonattainment areas with design values above 12.7 ppm, and to severe nonattainment areas.

Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 2, 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, Carbon monoxide, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 20, 2003.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

■ 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. 7402 *et seq.*

Subchapter SS—Texas

■ 2. The table in § 52.2270(e) entitled ''EPA approved nonregulatory provisions and quasi-regulatory measures in the Texas SIP'' is amended by adding to the end of the table three entries for the El Paso carbon monoxide nonattainment area to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Comments
*	*	*	*	*
Section 179B Demonstration of Attainment for Carbon Monoxide for El Paso.	El Paso CO nonattainment area.	09/27/95	07/02/03 **Federal Register** page number.	Supplemented 02/11/98.
Carbon Monoxide On-Road Emissions Budget for Conformity.	El Paso CO nonattainment area.	09/27/95	07/02/03	
Contingency Measure for El Paso Carbon Monoxide Area.	El Paso CO nonattainment area.	09/27/95	07/02/03 **Federal Register** page number.	

[FR Doc. 03–16579 Filed 7–1–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0155; FRL–7316–5]

Glyphosate; Pesticide Tolerance; Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: EPA issued a final rule in the **Federal Register** of Wednesday, June 18, 2003 (68 FR 36472), concerning tolerances on corn, field, forage, at 6.0 parts per million (ppm) and on grain, aspirited fractions to reduce the tolerance from 200 ppm to 100 ppm. This document is being issued to correct typographical errors.

DATES: This document is effective on July 2, 2003.

FOR FURTHER INFORMATION CONTACT: Jim Tompkins, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305-5697; e-mail address: tompkins.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the final rule a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0155. 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall # 2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_ 40/40cfr180_00.html, a beta site currently under development.

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. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. What Does this Correction Do?

EPA is correcting the amendatory language to the amendments to § 180.364. Inadvertently, the amendatory language indicated that ''corn, field, forage'' and ''grain, aspirited fractions'' were being added to the table in paragraph (a) of § 180.364. Actually, both ''corn, filed, forage'' and ''grain, aspirited fractions'' were already included in the table to paragraph (a). Since EPA merely intended to revise the entries to changes the tolerances levels, this document corrects the amendatory language to correctly express the changes that EPA is making.

III. Why is this Correction Issued as a Final Rule?

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's technical correction final without prior proposal and opportunity for comment, because EPA is merely inserting language that was inadvertently omitted from the previously published final rule. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

IV. Do Any of the Statutory and Executive Order Reviews Apply to this Action?

This final rule implements a technical correction to the CFR, and it does not otherwise impose or amend any requirements. As such, the Office of Management and Budget (OMB) has determined that a technical correction is not a ''significant regulatory action'' subject to review by OMB under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Nor does this final rule contain any information collection requirements that require review and approval by OMB pursuant to the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). Since the Agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the APA or any other statute (see Unit III.), this action is not subject to provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). This final rule will not have substantial direct effects on the States or on one or more Indian tribes, on the relationship between the national government and the States or one or more Indian tribes, or on the distribution of power and responsibilities among the various levels of government or between the Federal government and Indian tribes. As such, this action does not have any ''federalism implications'' as described in Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999), or any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Since this direct final rule is not a ''significant regulatory action'' as defined by Executive Order 12866, it does not require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), and is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This action does not involve any technical standards that require the Agency's consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). This action will not result in environmental justice related issues and does not, therefore, require special consideration under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994) or Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988). In issuing this final rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

V. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Pesticides and pest.

Dated: June 24, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Amendatory language item 2 to § 180.364, on page 36475, published in the **Federal Register** of June 18, 2003, (68 FR 36472) is corrected to read as set forth below. The revised portions of the table are set forth for user convenience.

■ 2. Section 180.364 is amended by removing the entire entries for ''Animal feed, nongrass, group, except alfalfa,'' ''Aspirated grain fractions,'' and ''Soybean, aspirated grain fractions'' and by revising the entries for ''Corn, field, forage '' ; and ''Grain, aspirited fractions'' to read as follows:

§ 180.364 Glyphosate; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Corn, field, forage	6.0
* * * * *	
Grain, aspirated fractions	100.0
* * * * *	

* * * * *

[FR Doc. 03–16622 Filed 7–1–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0130; FRL–7310–9]

Famoxadone; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of famoxadone (3-anilino-5-methyl-5-(4-phenoxyphenyl)-1,3-oxazolidine-2,4-dione) in or on vegetables, fruiting, group 8 (except tomato) at 4.0 parts per million (ppm), tomato at 1.0 ppm; vegetables cucurbit, group 9 at 0.30 ppm; lettuce, head at 10.0 ppm; potato at 0.02 ppm; grape at 2.50 ppm; grape, raisin at 4.0 ppm; fat of cattle, horses, goats, sheep at 0.02 ppm; liver of cattle, horses, goats, sheep at 0.05 ppm; and milk fat (reflecting negligible residues in whole milk) at 0.060 ppm. E.I. Dupont Nemours and Company (Dupont) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). These reflect the first food tolerances for this fungicide in the United States.

DATES: This regulation is effective July 2, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0130, must be received on or before September 2, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Dennis M. McNeilly, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 308–6742; e-mail address: *mcneilly.dennis@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0130. 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm*.

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 docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of January 10, 2001 (66 FR 1981) (FRL–6760–8), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 0F6070) for establishing tolerances for potatoes at 0.05 ppm, curcurbit vegetable crop group (cucumbers, melon, squash) at 0.7 ppm; fruiting vegetable crop group (tomatoes, and peppers) at 1.0 ppm; and head lettuce at 15 ppm by Dupont, P.O. Box 80038, Wilmington, DE 19880–0038. That notice included a summary of the petition prepared by Dupont, the registrant. There were no comments received in response to the notice of filing.

In a second **Federal Register** of August 1, 2001 (66 FR 39762) (FRL–6789–2), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 7E4847) for establishing a tolerance for grapes at 2.0 parts per million by Dupont, P.O. Box 80038, Wilmington, DE 19880–0038. That notice included a summary of the petition prepared by Dupont, the registrant. The Agency received a written comment from the World Wildlife Fund (WWF) dated August 31, 2001. The Agency's response to this comment can be found at Unit III.B.

The initial petitions requested that 40 CFR 180.587 be amended by establishing tolerances for residues of the fungicide famoxadone (3-anilino-5-methyl-5-(4-phenoxyphenyl)-1,3-oxazolidine-2,4-dione) in or on potatoes at 0.05 ppm; cucurbit vegetable crop group at 0.7 ppm; fruiting vegetable crop group at 1.0 ppm; head lettuce at 15 ppm; grapes at 2.0 ppm; and raisins at 4.0 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will

result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for tolerances for residues of famoxadone on vegetables, fruiting, group 8 (except tomato) at 4.0 ppm; tomato at 1.0 ppm; vegetables, cucurbit, group 9 at 0.30 ppm; lettuce, head at 10.0 ppm; potato at 0.02 ppm; grape at 2.50 ppm; grape, raisin at 4.0 ppm; fat of cattle, horses, goats, sheep at 0.02 ppm; liver of cattle, horses, goats, sheep at 0.05 ppm and milk, fat (reflecting negligible residues in whole milk) at 0.060 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by famoxadone are discussed in Table 1 of this unit as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90-Day oral toxicity in rats	NOAEL = Male (M): 3.3 milligrams/kilogram/day (mg/kg/day); Female (F): 4.2 mg/kg/day. LOAEL = M: 13.0 mg/kg/day based on mild hemolytic anemia and decreased glucose. F: 16.6 mg/kg/day based on decreased body weight gain, food consumption, and food efficiency; mild hemolytic anemia and decreased globulin.
870.3100	90-Day oral toxicity in mice	NOAEL = M: 62.4 mg/kg/day; F: 79.7 mg/kg/day. LOAEL = M: 534 mg/kg/day based on mild hemolytic anemia with secondary responses in spleen and mild hepatotoxicity in the liver. F: 757 mg/kg/day based on mild hemolytic anemia with secondary responses in spleen and mild hepatotoxicity in the liver.
870.3150	90-Day oral toxicity in nonrodents (dogs)	NOAEL = M: 1.3 mg/kg/day; F: 1.4 mg/kg/day LOAEL = M: 10.0 mg/kg/day based on lens cataracts in eyes. At 23.8/21.2 mg/kg/day, also myotonic twitches (starting on day 21); decreased body weight, body weight gain, food consumption, and food efficiency; slight anemia and hyperkalemia. F: 1.4 mg/kg/day based on lens cataracts in eyes. At 10.1 mg/kg/day, no additional effects. At 23.3/20.1 mg/kg/day, same effects as for males at 23.8/21.2 mg/kg/day.
870.3200	28-Day dermal toxicity in rats	NOAEL = M: 250 mg/kg/day; F: 1,000 mg/kg/day LOAEL = M: 500 mg/kg/day based on increased alkaline phosphatase, alanine aminotransferase and sorbitol dehydrogenase; and mild hepatotoxicity in the liver. F: none (>1,000 mg/kg/day). No dermal irritation in M or F.
870.3700	Prenatal developmental in rats	Maternal NOAEL = 250 mg/kg/day LOAEL = 500 mg/kg/day based on transient decreased body weight gain and food consumption. Developmental NOAEL = 1,000 mg/kg/day LOAEL = none (>1,000 mg/kg/day
870.3700	Prenatal developmental in nonrodents (rabbits)	Maternal NOAEL = 350 mg/kg/day LOAEL = 1,000 mg/kg/day based on abortions; decreased body weight, body weight gain, and food consumption; and abnormal stools. Developmental NOAEL = 350 mg/kg/day LOAEL = 1,000 mg/kg/day based on abortions and equivocal increases in postimplantation loss and mean resorptions per dose.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.3800	Reproduction and fertility effects (rats)	Parental/Systemic NOAEL = M/F: 11.3/14.2 mg/kg/day LOAEL = M/F: 44.7/53.3 mg/kg/day based on decreased body weight, body weight gain, and food consumption; and hepatotoxicity in the liver. Reproductive NOAEL = M/F: 44.7/53.3 mg/kg/day LOAEL = M/F: none (>44.7/53.3 mg/kg/day Offspring NOAEL = M/F: 11.3/14.2 mg/kg/day LOAEL = M/F: 44.7/53.3 mg/kg/day based on decreased body weights for F_1 and F_2 pups throughout lactation.
870.4100	Chronic toxicity in dogs	NOAEL = M: 1.2 mg/kg/day. F: 1.2 mg/kg/day. LOAEL = M: 8.8 mg/kg/day based on lens cataracts in eyes. F: 9.3 mg/kg/day based on lens cataracts in eyes. No other adverse effects were observed in M or F.
870.4100	Chronic toxicity in Cynomolgus monkeys	NOAEL = M: 100 mg/kg/day. F: 100 mg/kg/day. LOAEL = M: 1,000 mg/kg/day based on mild hemolytic anemia with secondary responses in spleen, liver and kidney; and sinus dilatation in spleen. F: 1,000 mg/kg/day based on mild hemolytic anemia with secondary responses in spleen, liver and kidney; and sinus dilatation in spleen.No evidence of lens cataracts in eyes of M or F.
870.4200	Carcino-genicity in mice	NOAEL = M: 96 mg/kg/day. F: 130 mg/kg/day. LOAEL = M: 274 mg/kg/day based on slight hepatotoxicity in the liver; no anemia. F: 392 mg/kg/day based on amyloidosis and slight hepatotoxicity in the liver; no anemia. No evidence of carcinogenicity in M or F.
870.4300	Combined chronic toxicity/carcinogenicity in rats	NOAEL = M: 8.4 mg/kg/day. F: 2.2 mg/kg/day LOAEL = M: 16.8 mg/kg/day based on slight hemolytic anemia with compensatory erythropoiesis and secondary responses in spleen and bone marrow; and mild hepatotoxicity in the liver. F: 10.7 mg/kg/day based on decreased body weight gain and slight hemolytic anemia. At 23.0 mg/kg/day, also secondary responses to anemia in spleen, bone marrow and/or liver; and mild hepatotoxicity in the liver. No evidence of carcinogenicity M or F.
870.5100	Reverse gene mutation	Negative without and with S-9 activation up to limit dose of 5,000 μgram(g)/plate.
870.5300	Forward gene mutation (*In Vitro Mammalian Cell Gene Mutation Test*)	Negative without and with S-9 activation up to the limit of solubility (in DMSO) of 30 μg/mL.
870.5300	Forward gene mutation (CHO/HGPRT locus)	Negative without and with S-9 activation up to cytotoxic concentrations (≥ 200 μg/mL without S-9 and ≥ 150 μg/mL with S-9).
870.5375	Chromosome aberration (human lymphocytes)	Positive (weak clastogenic effect) without S-9 activation. Statistically significant increases in percentage of aberrant cells at several dose levels ranging from 5–15 μg/mL. Cytotoxicity was observed at 10–18 μg/mL. Negative with S-9 activation.
870.5375	Chromosome aberration (human lymphocytes)	Positive (weak clastogenic effect) without S-9 activation. Statistically significant increases in percentage of aberrant cells at several dose levels ranging from 15–30 μg/mL. Cytotoxicity was observed at 20–30 μg/mL. Negative with S-9 activation.
870.5395	Micronucleus assay (mouse bone marrow)	Negative at single-oral doses of up to limit dose of 5,000 mg/kg.
870.5550	Unscheduled DNA synthesis (rat hepatocytes)	Positive response (increased net nuclear grain counts) observed at several treatment levels ranging from 0.05–10 μg/mL. Cytotoxicity was observed at 10 μg/mL.
870.5550	Unscheduled DNA synthesis (rat hepatocytes)	Negative at treatment levels up to 10 μg/mL. Cytotoxicity was observed at 10 μg/mL.
870.5550	Unscheduled DNA synthesis (prim. rat hepatocytes)	Negative at treatment levels up to 5.0 μg/mL. Cytotoxicity was observed at 2.5 and 5.0 μg/mL.
870.5550	Unscheduled DNA synthesis (hepatocytes derived from male rats given Famoxadone)	Negative at single-oral doses of up to 2,000 mg/kg. No marked increases in net nuclear grain counts or percentage of cells in repair in hepatocyte cultures.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.6200	Acute neurotoxicity screening battery (rats)	NOAEL = M: 1,000 mg/kg F: 2,000 mg/kg. LOAEL = M: 2,000 mg/kg based on decreased body weight gain and food consumption (on days 1–2); and palpebral (eyelid) closure (on day 1 only). F: none (>2,000 mg/kg).
870.6200	Subchronic neurotoxicity screening battery (rats)	NOAEL = M: 11.7 mg/kg/day F: 14.4 mg/kg/day. LOAEL = M: 47 mg/kg/day based on decreased body weight, body weight gain, food consumption and food efficiency. F:59 mg/kg/day based on decreased body weight, body weight gain, food consumption and food efficiency. No evidence of neurotoxicity in M or F.
870.7800	Immunotoxicity study, rats (28-days)	NOAEL = M: 14 mg/kg/day. F: 16 mg/kg/day. LOAEL = M: 55 mg/kg/day based on decreased body weight, body weight gain, food consumption, and food efficiency; and increased spleen weights (probably due to increased pigment in spleen). F: 57 mg/kg/day based on decreased body weight, body weight gain, food consumption, and food efficiency; and increased spleen weights (probably due to increased pigment in spleen). No evidence of immunotoxicity in M or F.
870.7800	Immunotoxicity study,mice (28-days)	NOAEL = M: 1186 mg/kg/day. F: 417 mg/kg/day. LOAEL = M: none (>1,186 mg/kg/day). F: 1,664 mg/kg/day based on increased spleen weights (probably due to increased pigment in spleen). No evidence of immunotoxicity in M or F.
870.7485	Metabolism and pharmacokinetics, rats	Only about 40% of the administered dose was absorbed. Most of the administered dose (87–6%) was eliminated in the feces within 24 hours; very little (3–12%) was eliminated in the urine. Unchanged parent (51–84% of administered dose) and 2 hydroxylated metabolites (IN-KZ534 and IN-KZ007) were the major components recovered in the feces. No significant qualitative or quantitative differences were observed for sex, dose level, or repeated dosing.
870.7485	Metabolism and pharmacokinetics, dogs (males only)	Absorption was limited. Most of the administered dose (62%) was eliminated in the feces within 24 hours; very little (about 8%)was eliminated in the urine. Initially, unchanged parent (94–97% of radioactivity in feces) was recovered in the feces, but later (>24 hrs) unchanged parent (12–35% of radioactivity in feces), IN-KZ007 (21–3% of radioactivity in feces) and IN-ML815 (4–9% of radioactivity in feces) were recovered. Even later (>48 hrs), trace amounts of the hydroxylated metabolites IN-KZ532 and IN-KZ534 were also identified in the feces.

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factors (SF) is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for famoxadone used for human risk assessment is shown in Table 2 of this unit:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR FAMOXADONE FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary (Females 13–50 years of age)	Not applicable	Not applicable	No appropriate endpoint attributable to a single-oral dose was identified in the available toxicology studies on famoxadone.
Acute Dietary (General population including infants and children)	Not applicable	Not applicable	No appropriate endpoint attributable to a single-oral dose was identified in the available toxicology studies on famoxadone.
Chronic Dietary (All populations)	LOAEL= 1.4 mg/kg/day UF = 1,000[a] Chronic RfD = 0.0014 mg/kg/day	FQPA SF = 1 cPAD = chronic RfD/FQPA SF Chronic PAD = 0.0014 mg/kg/day	13-Week feeding study in dogs.[b] LOAEL = 1.4 mg/kg/day based on microscopic lens lesions (cataracts) in eyes of female dogs.
Cancer (Oral, dermal, and inhalation)	Not applicable	Not applicable	Classification: Not Likely to be carcinogenic to humans.

* The reference to the FQPA SF refers to any additional SF retained due to concerns unique to the FQPA.

[a] The UF of 1,000 includes the conventional 100 and an additional 10 for the use of the LOAEL and dose from a subchronic (13-week) study for chronic risk assessment.

[b] Regarding the chronic RfD for famoxadone, a 1-year chronic feeding study in dogs is available, but was determined to not be an appropriate study for use in chronic risk assessment at this time. Although the testing laboratory reported a NOAEL of 1.2 mg/kg/day for treatment-related lens lesions (cataracts) in the eyes of the male and female dogs, a subsequent evaluation by a consulting pathologist of the microscopic sections of the eyes from all dogs in this study strongly suggested that a serious fixation artifact affected all the eye sections such that only prominent cataracts were detectable and as a consequence, a NOAEL could not be reliably determined with any degree of confidence. Considering this second evaluation, the Agency concluded that this fixation artifact may have had a profound effect on the interpretation of the histopathological findings in the eyes of all dogs in this study. In view of the considerable uncertainty relating to the microscopic findings in the eyes of all dogs in this study and the resulting uncertainty with regard to determining a NOAEL for eye effects, the Agency decided to not use the results from this 1-year study for the purpose of determining a chronic RfD for famoxadone at this time. Based on a consideration of findings in the eyes of dogs in both the 13-week and 1-year feeding studies, it was determined that the lowest dose at which evidence of cataracts was actually observed was in the female dogs in the 13-week study at the lowest dose tested of 1.4 mg/kg/day (the LOAEL). This 13-week study, rather than the 1-year study, was selected to be the most appropriate study for chronic risk assessment at this time. Since a LOAEL, rather than a NOAEL, and a subchronic study, rather than a chronic study, were used to determine the chronic RfD, an additional 10x UF was added to the conventional UF of 100x. The chronic RfD (LOAEL of 1.4 mg/kg/day/UF of 1,000) for famoxadone was determined to be 0.0014 mg/kg/day.

The comment received from WWF concerned a toxicity issue in particular: The potential for famoxadone to be an endocrine disruptor. WWF quoted the notice of filing which was written by Dupont. ''Chronic, lifespan and multi-generational bioassays in mammals and acute and subchronic studies on aquatic organisms and wildlife did not reveal endocrine effects. Any endocrine related effects would have to have been detected in this definitive array of required tests. The probability of any such effects due to agricultural uses of famoxadone is negligible.'' WWF stated that pursuant to FQPA, the Agency is establishing a new endocrine disruptor screening and testing program because existing toxicology protocols are not adequate to detect endocrine disruption. Therefore, Dupont's evaluation of the endocrine disruptor potential is incomplete and consequently misleading. WWF also urges the Agency to consider not only evidence of increasedsusceptibility, but also the significance of endocrine disruptor data gaps when determining the FQPA SF for famoxadone.

In response to the WWF the Agency notes that FQPA requires EPA to develop a screening program to determine whether certain substances (including all pesticide active and other ingredients) may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect... EPA has been working with interested stakeholders to develop a screening and testing program as well as a priority-setting scheme. In the available toxicity studies on famoxadone, no evidence of endocrine-related effects was observed. However, famoxadone may be subjected to further screening and/or testing to better characterize potential effects related to endocrine disruption when additional appropriate screening and/or testing protocols have been developed by the Agency's Endocrine Disruptor and Testing Advisory Committee (EDSTAC).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances are being established for (40 CFR 180.587) for the residues of famoxadone, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from famoxadone in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. No toxicological endpoint attributable to a single-oral dose was identified in the available toxicology studies on famoxadone that would be applicable to females (13–50 years) or to the general population (including infants and children). Therefore, famoxadone is not expected to pose an acute dietary risk.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 and 1998–nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Anticipated residues based upon average field trial values and assumptions that 100% of each crop is treated with famoxadone.

iii. *Cancer.* The Agency has classified famoxadone as not likely to be

carcinogenic to humans. As such, famoxadone is not expected to pose a cancer dietary risk.

iv. *Anticipated residue and percent crop treated (PCT) information.*

Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. No PCT information was used in the risk assessment. The Agency used 100% which would over estimate exposure.

2. *Dietary exposure from drinking water.*

The Agency lacks monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for famoxadone in drinking water because this is a new chemical. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of famoxadone.

The Agency uses the FQPA Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in groundwater. In general, EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The FIRST model is a subset or meta-model of the PRZM/EXAMS model that uses specific high-end runoff scenario for pesticides. FIRST incorporates an index reservoir environment and a percent crop area (PCA), while PRZM/EXAMS incorporate an index reservoir environment, PCA, all available information on the pesticide's fate and use pattern, and site-specific cropping information.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to famoxadone they are further discussed in the aggregate risk sections in Unit E.

Based on the PRZM/EXAMS and SCI-GROW models the EECs of famoxadone for chronic exposures are estimated to be 0.47 parts per billion (ppb) for surface water and 0.23 ppb for ground water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Famoxadone is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether famoxadone has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, famoxadone does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that famoxadone has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* The Agency concluded that there is not a concern for pre- and/or postnatal toxicity resulting from exposure to famoxadone.

No quantitative or qualitative evidence of increased susceptibility, as compared to adults, of rat or rabbit fetuses to *in utero* exposure to famoxadone was observed in the developmental toxicity studies. No quantitative or qualitative evidence of increased susceptibility, as compared to adults, of rat fetuses or neonates was observed in the 2-generation reproduction study.

In the rat developmental toxicity study, the NOAEL for maternal toxicity was 250 mg/kg/day and the LOAEL was 500 mg/kg/day, based on transient decreases in body weight gain and food consumption. At 1,000 mg/kg/day, no additional treatment-related effects were observed in the dams. No developmental toxicity was observed in the rat study. The NOAEL for developmental toxicity was 1,000 mg/kg/day, the highest dose tested.

In the rabbit developmental toxicity study, the maternal and developmental NOAELs and LOAELs were the same. The NOAEL for maternal toxicity and developmental toxicity was 350 mg/kg/day. The LOAEL for maternal toxicity was 1,000 mg/kg/day, based on abortions in 4 out of 17 does; markedly decreased body weight, reduced body weight gain and reduced food consumption in the same 4 does, and increased number of does with abnormal or little or no stools. The LOAEL for developmental toxicity was 1,000 mg/kg/day; based on abortions in 4 out of 17 does; and equivocal increases in percent post implantation loss and mean number of resorptions

per doe. In the rabbit study, maternal toxicity (does) and developmental toxicity (fetuses) are considered to be equally sensitive to the test material. Therefore, based on the results in these two developmental toxicity studies in rats and rabbits, no increased susceptibility of the fetuses (as compared to adults) was demonstrated for famoxadone.

In the 2-generation reproduction study in rats, the NOAEL for parental toxicity was 200 ppm (equal to 11.3/14.2 mg/kg/day, M/F) and the LOAEL was 800 ppm (44.7/53.3 mg/kg/day, M/F), based on decreased body weight, body weight gain, and food consumption; and heptotoxicity in the liver. Also, at 800 ppm, adaptive hepatocellular responses indicating enzyme induction were observed. No reproductive toxicity was observed in this study. The NOAEL for reproductive toxicity was 800 ppm (44.7/53.3 mg/kg/day, M/F), the highest dose tested. In this same study, the NOAEL for offspring toxicity was 200 ppm (equal to 11.3/14.2 mg/kg/day, M/F) and the LOAEL was 800 ppm (44.7/53.3 mg/kg/day, based on decreased body weights for F_1 and F_2 pups throughout their respective lactation periods.

3. *Neurotoxicity*. The Agency concluded that there is not a concern for developmental neurotoxicity resulting from exposure to famoxadone and that a developmental neurotoxicity study is not required.

Although clinical signs of neurotoxicity were observed in dogs in the 13-week study at the highest dose tested (>20 mg/kg/day), this effect was not observed at lower doses of about 10 mg/kg/day in the same 13-week study or in a subsequently performed 1-year feeding study in dogs. Also, toxicologically significant signs of neurotoxicity were not observed in any of the other studies on famoxadone in any species (including rats, mice, or monkeys) at any time. In addition, pre- and postnatal studies in rats and rabbits demonstrated no increased susceptibility of fetuses or neonates to famoxadone as compared to adults. Toxicologically significant neurotoxic effects would not be expected to occur in an additional study in rats. The clinical signs of neurotoxicity (muscle twitches) observed only in dogs, only in males, and only at the highest dose tested, would not be anticipated to occur in a developmental neurotoxicity study in rats.

4. *Conclusion*. The Agency concluded that the toxicology database was complete for FQPA purposes and that there are no residential uncertainties for pre-/postnatal toxicity. Based on the hazard data, the Agency recommended the special FQPA SF be reduced to 1x. The famoxadone risk assessment team evaluated the quality of the exposure data; and, based on these data, recommended that the special FQPA SF be reduced to 1x. The recommendation is based on the following:

i. There is no quantitative or qualitative evidence of increased susceptibility of rat and rabbit fetuses to *in utero* exposure in developmental studies. There is no quantitative or qualitative evidence of increased susceptibility of rat offspring in the multi-generation reproduction study.

ii. The chronic dietary food exposure assessment utilizes average field trial residue data and for all proposed uses, 100% crop treated is assumed. The chronic assessment is somewhat refined and based on reliable data derived from studies designed to produce worst-case residues and unlikely to underestimate exposure.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. No appropriate endpoint attributable to a single-oral dose was identified in the available toxicology studies on famoxadone. Therefore, no acute risk from famoxadone is not expected.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to famoxadone from food will utilize 36% of the cPAD for the U.S. population, 76% of the cPAD for Children ages 1–2 and 68% of the cPAD for Children ages 3–5. Children ages 1–2 are expected to be the most highly exposed subpopulation to famoxadone. There are no residential uses for famoxadone. In addition, there is potential for chronic dietary exposure to famoxadone in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 3 of this unit:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER)EXPOSURE TO FAMOXADONE

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.0014	36%	0.47	0.23	31

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER)EXPOSURE TO FAMOXADONE—Continued

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
Children 1–2 years old	0.0014	76%	0.47	0.23	3.4
Children 3–5 years old	0.0014	68%	0.47	0.23	4.5

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background-exposure level). Famoxadone is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background-exposure level). Famoxadone is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population*. Famoxadone is classified as ''not likely to be carcinogenic to humans.'' As such, no cancer risk is expected.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, including infants and children, from aggregate exposure to famoxadone residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Famoxadone was screened through multi-residue methods listed in the Pesticide Analytical Manual Volume I (PAM Vol. I), Third Edition (January 1994), using Protocols C to E. Protocols A and B were not used because famoxadone does not have an n-methyl carbamate structure (Protocol A), nor is it an acid or phenol (Protocol B). Protocol C showed good analytical response using the electron-capture detector (ECD) and nitrogen-phosphorus detector (NPD). Good recoveries were obtained for the analysis of wine, grapes, and tomatoes (92–138%) using Protocol D. Food commodities can be analyzed for famoxadone residues using the appropriate extraction method with the mixed ether elution system, resulting in recovery values of 92 to 108%.

The multi-residue methods testing appears to be scientifically acceptable and has been sent to the FDA for further evaluation. Preliminary analysis suggests that Protocol D may be appropriate for analysis of famoxadone in plant matrices and has the potential to be the primary enforcement method.

Adequate enforcement methodology is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

No CODEX maximum residue limits currently exist for famoxadone: Maximum Residue Levels (MRLs) have been established for potatoes in the Netherlands at 0.02 ppm and for grapes in Germany at 2.0 ppm.

V. Conclusion

Therefore, tolerances are established for residues of famoxadone (3-anilino-5-methyl-5-(4-phenoxyphenyl)-1,3-oxazolidine-2,4-dione) in or on vegetables, fruiting, group 8 (except tomato) at 4.0 ppm; tomato at 1 ppm; vegetables cucurbit, group 9 at 0.30 ppm; lettuce, head at 10.0 ppm; potato at 0.02 ppm grape at 2.50 ppm (import only); raisin at 4.0 ppm (import only); fat of cattle, horses, goats, sheep at 0.02 ppm; liver of cattle, horses, goats, sheep at 0.05 ppm; and milk, fat (reflecting negligible residues in whole milk) at 0.060 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0130 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 2, 2003.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The

telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0130, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

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

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: June 20, 2003.

Jim Jones,

Director, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.587 is added to read as follows:

§ 180.587 Famoxadone.

(a) *General.* Tolerances are established for residues of the fungicide famoxadone (3-anilino-5-methyl-5-(4-phenoxyphenyl)-1,3-oxazolidine-2,4-dione) in or on the following commodities:

Commodity	Parts per million
Cattle, fat	0.02
Cattle, liver	0.05
Goat, fat	0.02
Goat, liver	0.05
Grape[1]	2.50
Grape, raisin[1]	4.0
Horse, fat	0.02
Horse, liver	0.05
Lettuce, head	10.0
Milk, fat (reflecting negligible residues in whole milk)	0.06
Potato	0.02
Sheep, fat	0.02
Sheep, liver	0.05
Tomato	1.0
Vegetable, cucurbits, group 9	0.30
Vegetable, fruiting, group 8 except tomato	4.0

[1] There are no U.S. registrations as of May 15, 2003.

(b) Section 18 emergency exemptions. [Reserved]

(c) Tolerances with regional registrations. [Reserved]

(d) Indirect or inadvertant residues. [Reserved]

[FR Doc. 03–16736 Filed 7–1–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 54

[CC Docket No. 02–6; FCC 03–101]

Schools and Libraries Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Final rule, correction.

SUMMARY: This document corrects an error in the **DATES** section and the **SUPPLEMENTARY INFORMATION** portion of a **Federal Register** document regarding the Commission taking major steps to simplify and streamline the operation of our universal service mechanism for schools and libraries, while improving our oversight over the support mechanism. In addition, the Commission adopts a number of rules to streamline program operation, and promote the Commission's goal of reducing the likelihood of fraud, waste, and abuse. The summary was published in the **Federal Register** on June 20, 2003.

DATES: Effective July 2, 2003.

FOR FURTHER INFORMATION CONTACT: Jonathan Secrest and Katherine Tofigh, Attorneys, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This summary contains a correction to the dates section and the **SUPPLEMENTARY INFORMATION** portion of a **Federal Register** summary, 68 FR 36931 (June 20, 2003). The full text of the Commission's Second Report and Order in CC Docket No. 02–6, FCC 03–101 released on April 30, 2003 is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC, 20554.

In rule FR Doc. 03–14928 published June 20, 2003 (68 FR 36931) make the following corrections.

1. On page 36931, in the third column, in the **DATES** section, remove ''§ 54.515(b)'' and add ''§ 54.514(b)'' in its place.

2. On page 36941, in the third column, in paragraph 89, seventh line, remove ''§ 54.515(b)'' and add ''§ 54.514(b)'' in its place.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–16533 Filed 7–1–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. NHTSA–03–14450]

RIN 2127–AI99

Federal Motor Vehicle Theft Prevention Standard; Final Listing of Model Year 2004 High-Theft Vehicle Lines

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This final rule announces NHTSA's determination for model year (MY) 2004 high-theft vehicle lines that are subject to the parts-marking requirements of the Federal motor vehicle theft prevention standard, and high-theft MY 2004 lines that are exempted from the parts-marking requirements because the vehicles are equipped with antitheft devices determined to meet certain statutory criteria pursuant to the statute relating to motor vehicle theft prevention.

EFFECTIVE DATE: The amendment made by this final rule is effective July 2, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Consumer Standards Division, Office of Planning and Consumer Standards, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: The Anti Car Theft Act of 1992, Pub. L. 102–519, amended the law relating to the parts-marking of major component parts on designated high-theft vehicle lines and

other motor vehicles. The Anti Car Theft Act amended the definition of ''passenger motor vehicle'' in 49 U.S.C. 33101(10) to include a ''multipurpose passenger vehicle or light duty truck when that vehicle or truck is rated at not more than 6,000 pounds gross vehicle weight.'' Since ''passenger motor vehicle'' was previously defined to include passenger cars only, the effect of the Anti Car Theft Act is that certain multipurpose passenger vehicle (MPV) and light-duty truck (LDT) lines may be determined to be high-theft vehicles subject to the Federal motor vehicle theft prevention standard (49 CFR part 541).

The purpose of the theft prevention standard is to reduce the incidence of motor vehicle theft by facilitating the tracing and recovery of parts from stolen vehicles. The standard seeks to facilitate such tracing by requiring that vehicle identification numbers (VINs), VIN derivative numbers, or other symbols be placed on major component vehicle parts. The theft prevention standard requires motor vehicle manufacturers to inscribe or affix VINs onto covered original equipment major component parts, and to inscribe or affix a symbol identifying the manufacturer and a common symbol identifying the replacement component parts for those original equipment parts, on all vehicle lines selected as high-theft.

The Anti Car Theft Act also amended 49 U.S.C. 33103 to require NHTSA to promulgate a parts-marking standard applicable to major parts installed by manufacturers of ''passenger motor vehicles (other than light duty trucks) is not to exceed one-half of the lines not designated under 49 U.S.C. 33104 as high-theft lines.'' Section 33103(a) further directed NHTSA to select only lines not designated under § 33104 of this title as high theft lines. NHTSA lists each of these selected lines in appendix B to part 541. Since § 33103 did not specify marking of replacement parts for below-median lines, the agency does not require marking of replacement parts for these lines. NHTSA published a final rule amending 49 CFR part 541 to include the definitions of MPV and LDT, and major component parts. [*See* 59 FR 64164, December 13, 1994].

49 U.S.C. 33104(a)(3) specifies that NHTSA shall select high-theft vehicle lines, with the agreement of the manufacturer, if possible. Section 33104(d) provides that once a line has been designated as likely high-theft, it remains subject to the theft prevention standard unless that line is exempted under § 33106. Section 33106 provides that a manufacturer may petition to have a high-theft line exempted from the requirements of § 33104, if the line is equipped with an antitheft device as standard equipment. The exemption is granted if NHTSA determines that the antitheft device is likely to be as effective as compliance with the theft prevention standard in reducing and deterring motor vehicle thefts.

The agency annually publishes the names of the lines which were previously listed as high-theft, and the lines which are being listed for the first time and will be subject to the theft prevention standard beginning in a given model year. It also identifies those lines that are exempted from the theft prevention standard for a given model year under § 33104. Additionally, this listing identifies those lines (except light-duty trucks) in appendix B to part 541 that have theft rates below the 1990/1991 median theft rate but are subject to the requirements of this standard under § 33103.

On July 1, 2002, the final listing of high-theft lines for the MY 2003 vehicle lines was published in the **Federal Register** (67 FR 44085). The final listing identified five vehicle lines that were listed for the first time and became subject to the theft prevention standard beginning with the 2003 model year.

For MY 2004, the agency identified two new vehicle lines that are likely to be high-theft lines, in accordance with the procedures published in 49 CFR part 542. The new lines are the Toyota Scion xA and the Scion xB. In addition to these two vehicle lines, the list of high-theft vehicle lines includes all lines previously designated as high-theft and listed for prior model years. Accordingly, appendix A has also been amended to reflect these changes.

The vehicle lines listed as being subject to the parts-marking standard have previously been designated as high-theft lines in accordance with the procedures set forth in 49 CFR part 542. Under these procedures, manufacturers evaluate new vehicle lines to conclude whether those new lines are likely to be high theft. The manufacturer submits these evaluations and conclusions to the agency, which makes an independent evaluation; and, on a preliminary basis, determines whether the new line should be subject to the parts-marking requirements. NHTSA informs the manufacturer in writing of its evaluations and determinations, together with the factual information considered by the agency in making them. The manufacturer may request the agency to reconsider the preliminary determinations. Within 60 days of the receipt of these requests, the agency makes its final determination. NHTSA informs the manufacturer by letter of these determinations and its response to the request for reconsideration. If there is no request for reconsideration, the agency's determination becomes final 45 days after sending the letter with the preliminary determination. Each of the new lines on the high-theft list has been the subject of a final determination under either 49 U.S.C. 33103 or 33104.

The list of lines that have been exempted by the agency from the parts-marking requirements of part 541 includes high-theft lines newly exempted in full beginning with MY 2004. The two vehicle lines newly exempted in full are the DaimlerChrysler Jeep Grand Cherokee and the Nissan Infiniti M45. Additionally, the agency erroneously omitted the Ford Motor Company's (Ford) Lincoln Town Car from Appendix A–I of the MY 2003 final rule. The agency granted Ford's petition for an exemption of its Lincoln Town Car from the parts-marking requirements of the Federal Motor Vehicle Theft Prevention Standard beginning with the 2003 model year (67 FR 35189, May 17, 2002). Accordingly, appendix A–I has been amended to reflect these changes. The vehicle lines listed as being exempt from the standard have previously been exempted in accordance with the procedures of 49 CFR part 543 and 49 U.S.C. 33106.

Similarly, the low-theft lines listed as being subject to the parts-marking standard have previously been designated in accordance with the procedures set forth in 49 U.S.C. 33103.

Therefore, NHTSA finds for good cause that notice and opportunity for comment on these listings are unnecessary. Further, public comment on the listing of selections and exemptions is not contemplated by 49 U.S.C. chapter 331.

For the same reasons, since this revised listing only informs the public of previous agency actions and does not impose additional obligations on any party, NHTSA finds for good cause that the amendment made by this notice should be effective as soon as it is published in the **Federal Register**.

Regulatory Impacts

1. Costs and Other Impacts

NHTSA has analyzed this rule and determined that it is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. The agency has also considered this notice under Executive Order 12866. As already noted, the selections in this final rule have previously been made in accordance with the provisions of 49 U.S.C. 33104,

and the manufacturers of the selected lines have already been informed that those lines are subject to the requirements of 49 CFR part 541 for MY 2004. Further, this listing does not actually exempt lines from the requirements of 49 CFR part 541; it only informs the general public of all such previously granted exemptions. Since the only purpose of this final listing is to inform the public of actions for MY 2004 that the agency has already taken, a full regulatory evaluation has not been prepared.

2. Regulatory Flexibility Act

The agency has also considered the effects of this listing under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As noted above, the effect of this final rule is simply to inform the public of those lines that are already subject to the requirements of 49 CFR part 541 for MY 2004. The agency believes that the listing of this information will not have any economic impact on small entities.

3. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of this rule, and determined that it will not have any significant impact on the quality of the human environment.

4. Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

5. Civil Justice Reform

This final rule does not have a retroactive effect. In accordance with § 33118 when the Theft Prevention Standard is in effect, a State or political subdivision of a State may not have a different motor vehicle theft prevention standard for a motor vehicle or major replacement part. 49 U.S.C. 33117 provides that judicial review of this rule may be obtained pursuant to 49 U.S.C. 32909. Section 32909 does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 541

Administrative practice and procedure, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR part 541 is amended as follows:

PART 541—[AMENDED]

■ 1. The authority citation for part 541 continues to read as follows:

Authority: 49 U.S.C. 33102–33104 and 33106; delegation of authority at 49 CFR 1.50.

■ 2. In part 541, appendices A and A–I are revised. Appendices A and A–I are revised to read as follows:

Appendix A to Part 541—Lines Subject to the Requirements of This Standard

Manufacturer	Subject lines
ALFA ROMEO	Milano 161
	164
BMW	Z3
	Z8
	6 Car Line
CONSULIER	Consulier GTP
DAEWOO	Korando
	Musso (MPV)
	Nubira
DAIMLERCHRYSLER	Chrysler Cirrus
	Chrysler Fifth Avenue/Newport
	Chrysler Laser
	Chrysler LeBaron/Town & Country
	Chrysler LeBaron GTS
	Chrysler's TC
	Chrysler New Yorker Fifth Avenue
	Chrysler Sebring
	Chrysler Town & Country
	Dodge 600
	Dodge Aries
	Dodge Avenger
	Dodge Colt
	Dodge Daytona
	Dodge Diplomat
	Dodge Lancer
	Dodge Neon
	Dodge Shadow
	Dodge Stratus
	Dodge Stealth
	Eagle Summit
	Eagle Talon
	Jeep Cherokee (MPV)
	Jeep Liberty (MPV)
	Jeep Wrangler (MPV)
	Plymouth Caravelle
	Plymouth Colt
	Plymouth Laser
	Plymouth Gran Fury

Manufacturer	Subject lines
	Plymouth Neon
	Plymouth Reliant
	Plymouth Sundance
	Plymouth Breeze
FERRARI	Mondial 8
	328
FORD	Ford Aspire
	Ford Escort
	Ford Probe
	Ford Thunderbird
	Lincoln Continental
	Lincoln Mark
	Mercury Capri
	Mercury Cougar
	Merkur Scorpio
	Merkur XR4Ti
GENERAL MOTORS	Buick Electra
	Buick Reatta
	Buick Skylark
	Chevrolet Malibu
	Chevrolet Nova
	Chevrolet Blazer (MPV)
	Chevrolet Prizm
	Chevrolet S–10 Pickup
	Geo Storm
	Chevrolet Tracker (MPV)
	GMC Jimmy (MPV)
	GMC Sonoma Pickup
	Oldsmobile Achieva (MYs 1997–1998)
	Oldsmobile Bravada
	Oldsmobile Cutlass
	Oldsmobile Cutlass Supreme (MYs 1988–1997)
	Oldsmobile Intrigue
	Pontiac Fiero
	Saturn Sports Coupe
HONDA	Accord
	CRV (MPV)
	Odyssey (MPV)
	Passport
	Pilot (MPV)
	Prelude
	S2000
	Acura Integra
	Acura MDX (MPV)
	Acura RSX
HYUNDAI	Accent
	Sonata
	Tiburon
ISUZU	Amigo
	Impulse
	Rodeo
	Rodeo Sport
	Stylus
	Trooper/Trooper II
	VehiCross (MPV)
JAGUAR	XJ
KIA MOTORS	Optima
	Rio
	Sephia (1998–2002)
	Spectra
LOTUS	Elan
MASERATI	Biturbo
	Quattroporte
	228
MAZDA	626
	MX–3
	MX–5 Miata
	MX–6
MERCEDES-BENZ	190 D
	190 E
	260E (1987–1989)
	300 SE (1988–1991)

Manufacturer	Subject lines
	300 TD (1987)
	300 SDL (1987)
	300 SEL
	350 SDL (1990–1991)
	420 SEL (1987–1991)
	560 SEL (1987–1991)
	560 SEC (1987–1991)
	560 SL
MITSUBISHI	Cordia
	Eclipse
	Lancer
	Mirage
	Montero (MPV)
	Montero Sport (MPV)
	Tredia
	3000GT
NISSAN	240SX
	Sentra/200SX
	Xterra
PEUGEOT	405
PORSCHE	924S
SUBARU	XT
	SVX
	Baja
	Forester
	Legacy
SUZUKI	Aerio
	X90 (MPV)
	Sidekick (MYs 1997–1998)
	Vitara/Grand Vitara (MPV)
TOYOTA	Toyota 4-Runner (MPV)
	Toyota Avalon
	Toyota Camry
	Toyota Celica
	Toyota Corolla/Corolla Sport
	Toyota Echo
	Toyota Highlander (MPV)
	Toyota Matrix (MPV)
	Toyota MR2
	Toyota MR2 Spyder
	Toyota Prius
	Toyota RAV4 (MPV)
	Toyota Sienna (MPV)
	Toyota Tercel
	Lexus IS300
	Lexus LX470 (MPV)
	Lexus RX300 (MPV)
	Scion xA [1]
	Scion xB [1]
VOLKSWAGEN	Audi Quattro
	Volkswagen Scirocco

[1] Lines added for MY 2004.

Appendix A–1—High-Theft Lines With Antitheft Devices Which Are Exempted From the Parts-Marking Requirement of This Standard Pursuant to 49 CFR Part 543

Manufacturer	Subject lines
AUSTIN ROVER	Sterling
BMW	MINI
	X5
	Z4 [2]
	3 Car Line
	5 Car Line
	7 Car Line
	8 Car Line
DAIMLERCHRYSLER	Jeep Grand Cherokee [1]
	Chrysler Conquest
	Chrysler Imperial

Manufacturer	Subject lines
FORD	Lincoln Town Car [2]
	Mustang
	Mercury Sable
	Mercury Grand Marquis
	Taurus
GENERAL MOTORS	Buick LeSabre
	Buick Park Avenue
	Buick Regal/Century
	Buick Riviera
	Cadillac Allante
	Cadillac Deville
	Cadillac Seville
	Chevrolet Cavalier
	Chevrolet Corvette
	Chevrolet Impala/Monte Carlo
	Chevrolet Lumina/Monte Carlo (MYs 1996–1999)
	Chevrolet Malibu
	Chevrolet Venture
	Oldsmobile Alero
	Oldsmobie Aurora
	Oldsmobile Toronado
	Pontiac Bonneville
	Pontiac Grand Am
	Pontiac Grand Prix
	Pontiac Sunfire
HONDA	Acura CL
	Acura Legend (MYs 1991–1996)
	Acura NSX
	Acura RL
	Acura SLX
	Acura TL
	Acura Vigor (MYs 1992–1995)
ISUZU	Axiom
	Impulse (MYs 1987–1991)
JAGUAR	XK
MAZDA	6
	929
	RX–7
	Millenia
MERCEDES-BENZ	124 Car Line (the models within this line are):
	260E
	300D
	300E
	300CE
	300TE
	400E
	500E
	129 Car Line (the models within this line are):
	300SL
	500SL
	600SL
	SL320
	SL500
	SL600
	202 Car Line (the models within this line are):
	C220
	C230
	C280
	C36
	C43
MITSUBISHI	Galant
	Starion
	Diamante
NISSAN	Nissan Altima
	Nissan Maxima
	Nissan Pathfinder
	Nissan 300ZX
	Infiniti G35
	Infiniti I30
	Infiniti J30
	Infiniti M30
	Infiniti M45 [1]

Manufacturer	Subject lines
	Infiniti QX4
	Infiniti Q45
PORSCHE	911
	928
	968
	986 Boxster
SAAB	9–3
	900 (1994–1998)
	9000 (1989–1998)
TOYOTA	Toyota Supra
	Toyota Cressida
	Lexus ES
	Lexus GS
	Lexus LS
	Lexus SC
VOLKSWAGEN	Audi 5000S
	Audi 100/A6
	Audi 200/S4/S6
	Audi Allroad Quattro (MPV)
	Audi Cabriolet
	Volkswagen Cabrio
	Volkswagen Corrado
	Volkswagen Golf/GTI
	Volkswagen Jetta/Jetta III
	Volkswagen Passat

[1] Lines exempted in full beginning with MY 2004.
[2] Lines exempted in full beginning with MY 2003.

Issued on: June 26, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–16708 Filed 7–1–03; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 68, No. 127
Wednesday, July 2, 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

Foreign Agricultural Service

7 CFR Part 1580

RIN 0551–AA66

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement Chapter 6 of Title II of the Trade Act of 1974, as amended by Subtitle C of Title 1 of the Trade Act of 2002 (P.L. 107–210) to establish a new program, Trade Adjustment Assistance for Farmers. Under this program, the Department of Agriculture would provide technical assistance and cash benefits to eligible producers of raw agricultural commodities when the Administrator, Foreign Agricultural Service (FAS) determines that increased imports have contributed importantly to a specific price decline over five preceding marketing years. The proposed rule would establish the procedure by which producers of raw agricultural commodities can petition for certification of eligibility and apply for technical assistance and adjustment payments.

DATES: Comments should be received on or before July 9, 2003, to be assured of consideration.

ADDRESSES: Comments should be mailed or delivered to Jean-Louis Pajot, Import Policies and Programs Division, Foreign Agricultural Service, 1400 Independence Avenue, SW., STOP 1021, U.S. Department of Agriculture, Washington, DC 20250–1021. Comments may also be e-mailed to *Jean-Louis.Pajot@usda.gov.* Comments received may be inspected between 10 a.m. and 4 p.m. at room 5541–S, 1400 Independence Avenue, SW., Washington, DC 20250–1021.

FOR FURTHER INFORMATION CONTACT: Jean-Louis Pajot at the address above, or telephone at 202–720–2916, or e-mail at *Jean-Louis.Pajot@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The proposed rule has been determined to be significant under E.O. 12866 and has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

The Regulatory Flexibility Act ensures that regulatory and information requirements are tailored to the size and nature of small businesses, small organizations, and small governmental jurisdictions. This proposed rule will not have a significant economic impact on a substantial number of small farm operations. Participation in the program is voluntary. Direct and indirect costs are likely to be very small as a percentage of revenue and in terms of absolute costs. The minimal regulatory requirements impact large and small businesses equally, and the program's benefits should improve cash flow and liquidity for farmers participating in the program.

Paperwork Reduction Act

Summary: In accordance with the Paperwork Reduction Act of 1995, the Department intends to request approval by the Office of Management and Budget (OMB) of an information collection required to support the proposed rule establishing an adjustment assistance program for farmers. Copies of the information collection may be obtained from Kimberly Chisley, the Agency Information Collection Coordinator, at (202) 720–2568 or e-mail at *Chisley@fas.usda.gov.*

To obtain program benefits, under this program, a group of raw agricultural commodity producers, or their duly authorized representative, must submit a petition to the Administrator for certification of eligibility to apply for adjustment assistance. The proposed rule contains an information collection that solicits data that is essential for the Administrator in making a determination on certification of eligibility for adjustment assistance. The information collection requires, to the maximum extent feasible, that a petition contain: a description of the raw agricultural product concerned; data on specific prices for the most recent marketing year; national average or regional prices for the commodity for the five preceding marketing years; data on increases in imports of a directly competing commodity; and an assessment of the impact of increased imports on domestic prices, including any supporting evidence that imports contributed importantly to a decline in domestic prices. Within 90 days after certification, a producer may submit an application for adjustment assistance benefits. The application contains an information collection that conforms to the requirements of section 296 regarding conditions that must be met to qualify for cash benefits. The application requires submission of: standard business information; the quantity of production in the year covered by the certification accompanied by supporting documentation; data on gross income and net farm income accompanied by supporting documentation; certification that an applicant has not received other cash benefits; and certification that an applicant has obtained information and technical assistance from the Extension Service to assist the applicant in adjusting to import competition.

Estimate of the Burden: The average estimated public reporting burden is 14 hours.

Respondents: groups of farmers of raw agricultural commodities or their duly authorized representatives.

Estimated Annual Number of Respondents: 500.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 7,000 hours.

Copies of the information collection can be obtained from Kimberly Chisley, the Agency Collection Coordinator, at (202) 720–2568.

Requests for comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology, or any other aspect of this collection of information. Comments on issues covered by the Paperwork Reduction Act must be submitted within 30 days of publication to be assured of consideration. Comments may be sent to Jean-Louis Pajot, Import Policies and Program Division, FAS, 1400 Independence Avenue, Stop 1021, SW., Washington, DC 20520–1021. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also be a matter of public record. Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

FAS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to maximum extent possible. Electronic submission of the information collection will be implemented before October 2003 in compliance with the GPEA. The Department will request OMB approval of forms that are being developed for electronic submission of the information collection, and issue a **Federal Register** notice soliciting public comments on the requested revision of the information collection to provide for submission of the information collection on electronic forms. All public comments received will be considered prior to implementation of an electronic reporting system, and will also become a matter of public record. Copies of that information collection will be made available from Kimberly Chisley, the Agency Information Collection Coordinator, at (202)720–2568 or e-mail at *Chisley@fas.usda.gov.*

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988. The provisions of this proposed rule would not have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with such provision or which otherwise impede their full implementation. The proposed rule would not have retroactive effect. Before any judicial action may be brought regarding this rule, all administrative remedies must be exhausted.

National Environmental Policy Act

The Administrator has determined that this action will not have a significant effect on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is necessary for this proposed rule.

Executive Orders 12372, 13083 and 13084, and the Unfunded Mandates Reform Act (P. L. 104–4)

These Executive Orders and Public Law 104–4 require consultation with State and local officials and Indian tribal governments. This proposed rule does not impose an unfunded mandate or any other requirement on State, local or tribal governments. Accordingly, these programs are not subject to the provisions of Executive Order 12372, Executive Order 13083, and Executive Order 13084, or the Unfunded Mandates Reform Act.

Executive Order 12630

This Order requires careful evaluation of governmental actions that interfere with constitutionally protected property rights. This proposed rule would not interfere with any property rights and, therefore, does not need to be evaluated on the basis of the criteria outlined in Executive Order 12630.

Background

The Trade Act of 2002 (P.L. 107–210) amended the Trade Act of 1974 (19 U.S.C. 2551, *et seq.*) to add a new chapter 6, which establishes a program of trade adjustment assistance for farmers, providing both technical assistance and cash benefits to producers. The statute authorizes an appropriation of not more than $90 million for each fiscal year 2003 through 2007 to carry out the program.

Under this proposed rule, a group of agricultural commodity producers may petition the Administrator of the Foreign Agricultural Service (FAS) for trade adjustment assistance from mid-August through the end of January. FAS will first review the petition for appropriateness, completeness, and timeliness, before publishing a notice in the **Federal Register** that it has been received. The Economic Research Service (ERS) will then conduct a market study to verify the decline in producer prices, and to assess possible causes, taking due account of any special factors which may have affected prices of the articles concerned, including imports, exports, production, changes in consumer preferences, weather conditions, diseases, and other relevant issues. ERS will report its findings to the FAS Administrator, who will then determine whether or not the group is eligible for trade adjustment assistance. If the national average price in the most recent marketing year for the commodity produced by the group is equal to or less than 80 percent of the average of the national average prices in the preceding 5 marketing years and that increases in imports of that commodity contributed importantly to the decline in price, the Administrator will certify the group as eligible for trade adjustment assistance.

Upon certification, producers have 90 days to contact the Farm Service Agency (FSA) to apply for assistance. As soon as they apply, they are eligible to receive at no cost a technical assistance package specifically tailored for their needs by the Extension Service. Depending on the commodity and the region, the Extension Service package may include technical publications in print or on-line, group seminars and presentations, and one-on-one meetings. Producers, who receive the technical assistance and also satisfy personal and farm income limits, are eligible for TAA payments. If the funding authorized by Congress is insufficient to pay 100 percent of all TAA claims during the fiscal year, payments will be prorated and issued after June 15, the last possible date for producers to file a TAA application.

Producers may petition for adjustment assistance in subsequent years. Petitions will be reviewed and approved if prices remain at or below the same 80 percent threshold as the initial year of adjustment assistance, and if imports have continued to increase and contributed importantly to the decline in prices.

The Department invites additional comments on all aspects of the proposed rule including: eligibility requirements, including the coverage of aquaculture; unintended market consequences of the program to producers, importers, buyers and consumers; timing and prorating of adjustment payments when funding may be insufficient; petitions on behalf of producers within regions of the United States; marketing periods of less than 12 months; and less restrictive alternatives to the proposed rule that would address the intent of the program.

List of Subjects in 7 CFR Part 1580

Agricultural commodities imports; reporting and record keeping requirements; and trade adjustment assistance.

Proposed Rule

Accordingly, it is proposed to amend title 7 of the Code of Federal

Regulations by adding a new part 1580, to read as follows:

PART 1580—TRADE ADJUSTMENT ASSISTANCE FOR FARMERS

Sec.
1580.101 General statement.
1580.102 Definitions.
1580.201 Petitions for trade adjustment assistance.
1580.202 Hearings, petition reviews, and amendments.
1580.203 Determination of eligibility and certification by the Administrator.
1580.301 Application for trade adjustment assistance.
1580.302 Technical assistance and services.
1580.303 Adjustment assistance payments.
1580.401 Subsequent qualifying year eligibility.
1580.501 Administration.
1580.502 Maintenance of records, audits and compliance.
1580.503 Debarment and suspension.
1580.504 Fraud and recovery of overpayments.
1580.505 Appeals.
1580.601 Implementation.
1580.602 Paperwork Reduction Act assigned number.

Authority: 19 U.S.C. 2401.

§ 1580.101 General statement.

This part provides regulations for the Trade Adjustment Assistance for Farmers program. Under these provisions, producers of agricultural commodities may petition the Department of Agriculture for eligibility to apply for trade adjustment assistance based on criteria set forth in the Trade Act of 1974, as amended by the Trade Act of 2002 (19 U.S.C. 2251, *et seq.*). If the Administrator determines that the national average price for a commodity is less than 80 percent of the preceding 5-year average and that an increase in imports has contributed importantly to the decline in commodity prices, the producers may apply for technical assistance and cash benefits under the program.

§ 1580.102 Definitions.

As used in the part, the following terms mean:

Adjusted gross income means income as defined in 7 CFR 1400.601.

Administrator means the Administrator of the Foreign Agricultural Service (FAS).

Agricultural commodity means any commodity in its raw or natural state found in chapters 1, 4, 5, 6, 7, 8, 10, 12, 14, 23, 24, 41, 51, and 52 of the Harmonized Tariff Schedule of the United States (HTS), and chapter 3 of the HTS with respect to aquaculture products.

Articles like or directly competitive generally means products falling under the same HTS number used to identify the agricultural commodity in the petition. A ''like'' product means substantially identical in inherent or intrinsic characteristics, and the term ''directly competitive'' means those articles which are substantially equivalent for commercial purposes, that is, are adapted to the same uses and are essentially interchangeable therefore.

Authorized representative means an association of agricultural commodity producers.

Certification date means the date on which the Administrator announces in the **Federal Register** or by Department news release, whichever comes first, a certification of eligibility to apply for adjustment assistance.

Contributed importantly means a cause which is important, but not necessarily more important than any other cause.

Department means the U.S. Department of Agriculture.

Deputy Administrator means the Deputy Administrator of the Farm Service Agency (FSA).

Extension Service means the Cooperative State Research, Education, and Extension Service of the U.S. Department of Agriculture.

Family member means an individual to whom a person is related as spouse, lineal ancestor, lineal descendent, or sibling, including:

(1) Great grandparent;

(2) Grandparent;

(3) Parent;

(4) Child, including legally adopted children;

(5) Great grandchildren;

(6) Sibling of the family member in the farming operation; and

(7) Spouse of a person listed in paragraphs (1) through (6) of this definition.

Farm Service Agency (FSA) means the Farm Service Agency of the U.S. Department of Agriculture.

Filing date means the date that a notice of petition is published in the **Federal Register.**

Group of producers means three or more producers who are not members of the same family.

Impacted area means one or more States of the United States.

Marketing year means the marketing season or year as defined by National Agriculture Statistic Service (NASS), or a specific period as proposed by the petitioners and certified by the Administrator.

National average price means the average price paid to producers for an agricultural commodity in a marketing year as determined by the Administrator.

Net farm income means net farm profit or loss reported on Internal Revenue Service Schedule F (Form 1040) and Form 4835 for the year that most closely corresponds with the marketing year under consideration.

Person means an individual, partnership, joint stock owner, corporation, association, trust, estate, or any other legal entity as defined in 7 CFR 1400.3.

Producer means a person who is an owner, operator, landlord, tenant, or sharecropper, who shares in the risk of producing a crop and who is entitled to share in the crop available for marketing from the farm.

Raw or natural state means unaltered by any process other than cleaning, grading, coating, sorting, trimming, mixing, conditioning, drying, dehulling, shelling, chilling, cooling, blanching or fumigating.

United States means the 50 States of the United States, the District of Columbia, and Puerto Rico.

§ 1580.201 Petitions for trade adjustment assistance.

(a) A group of agricultural commodity producers in the United States or their authorized representative may file a petition for trade adjustment assistance.

(b) Filings may be written or electronic, as provided for by the Administrator, and submitted to FAS from August 17 through January 31. FAS shall not accept a petition received after January 31 but will return it to the sender. If January 31 falls on a weekend, the petition will be accepted the next business day.

(c) Petitions shall include the following information.

(1) Name, business address, phone number, and email address (if available) of each producer in the group, or their authorized representative. A petition filed by a group shall identify a contact person for the group.

(2) The agricultural commodity and its Harmonized Tariff Schedule of the United States (HTS) number.

(3) The production area represented by the group or its authorized representative. The petitioners shall indicate if they are filing on behalf of all producers in the United States, or if they are filing solely on behalf of producers in a specifically identified impacted area. In the latter case, at least one member of the group must reside in each State within the impacted area, or the authorized representative must have members residing in each State within the impacted area.

(4) The beginning and ending dates for the marketing year during which domestic prices were affected by

imports. A petition may be filed for only the most recent marketing year for which national average prices are available.

(5) A justification statement explaining why the petitioners should be considered eligible for adjustment assistance.

(6) Price data supporting the petition.

(i) If the petition is filed on behalf of all producers of the agricultural commodity in the United States, the Administrator shall use national average prices compiled by the National Agricultural Statistics Service (NASS), whenever possible. If NASS does not compile price data for the commodity, the petitioners shall provide national average prices for the marketing year under review and for the previous five marketing years, and identify the source of the price series.

(ii) If the petition is filed on behalf of producers in a specifically identified impacted area, the petitioners shall provide national average prices for the impacted area for the marketing year under review and for the previous five marketing years, and identify the source of the price series.

(iii) The Administrator may request petitioners to provide records to support their national average price data.

(d) Once the petition is filed, the Administrator shall determine if it meets the requirements of § 1580.201(c), and if so, publish notice in the **Federal Register** that a petition has been received and that an investigation has begun. The notice shall identify the agricultural commodity, including any like or directly competitive commodities, the marketing year being investigated, the price series being used, and the production area covered by the petition. If the petition does not meet the requirements of § 1580.201(c), the Administrator shall notify as soon as possible the contact person for the group or the authorized representative of the deficiencies.

§ 1580.202 Hearings, petition reviews, and amendments.

(a) If the petitioner, or any other person(s) found by the Administrator to have a substantial interest in the proceedings, submits not later than 10 days after the filing date a request for a hearing, the Administrator shall provide for a public hearing and afford such interested person an opportunity to be present, to produce evidence, and to be heard.

(b) If the petitioner, or any other person(s) having an interest in the proceedings takes issue with any of the information published in the **Federal Register** concerning the petition, they may submit to the Administrator their comments in writing or electronically for consideration by the Administrator not later than 10 days after the filing date.

(c) A producer residing outside the impacted area identified in a petition may file to become a party to the petition by fulfilling the requirements of § 1580.201(c) within 10 days of the filing date. The Administrator may amend the original petition to expand the impacted area and include the additional filer, or consider it a separate filing.

(d) The Administrator shall publish in the **Federal Register** as soon as possible any changes to the original notice resulting from any actions taken under this section.

§ 1580.203 Determination of eligibility and certification by the Administrator.

(a) As soon as practicable after the filing date, but in any event not later than 40 days after that date, the Administrator shall determine whether the petitioners satisfy the following conditions for adjustment assistance.

(1) The national average price for the agricultural commodity for the marketing year under review is equal to or less than 80 percent of the average of the national average prices for the 5 marketing years preceding the most recent marketing year, and

(2) Increases in imports of articles like or directly competitive with the agricultural commodity contributed importantly to the decline in price described in paragraph (a)(1) of this section.

(b) If the Administrator determines that the above conditions have been satisfied, the producers covered by the petition shall be certified as eligible for adjustment assistance.

(c) Upon making a determination, whether affirmative or negative, the Administrator shall promptly publish in the **Federal Register** a summary of the determination, together with the reasons for making the determination.

(d) In addition, the Administrator shall notify producers covered by a certification how to apply for adjustment assistance. Notification methods may include direct mailings to known producers, messages to directly affected producer groups and organizations, electronic communications, internet web site notices, and use of broadcast and print media.

(e) Whenever a group of agricultural producers is certified as eligible for assistance, the Administrator shall use the occasion to notify and inform other producers about the Trade Adjustment Assistance Program and how they may petition for adjustment assistance.

§ 1580.301 Application for trade adjustment assistance.

(a) Only producers covered by a certification of eligibility may apply for adjustment assistance. Producers may request advice from FSA regarding the preparation and submission of their applications.

(b) An eligible producer may submit an application for adjustment assistance at any time after the certification date but not later than 90 days after the certification date. If the 90-day application period ends on a weekend or legal holiday, the producer may apply the following business day.

(c) Applications shall include:

(1) The name and legal address of applicant.

(2) Contact information, i.e., mailing address, phone and email address.

(3) The producer's identification number or Federal Income Tax number.

(4) The amount of the agricultural commodity produced in the most recent marketing year supported by documentation acceptable to FSA.

(d) Upon submitting their application, producers shall be immediately eligible to request trade adjustment technical assistance from the Extension Service at no cost.

(e) Producers able to furnish their applications with all the following certifications shall be eligible for adjustment assistance payments:

(1) Certification that technical assistance from the Extension Service under § 1580.302 has been received.

(2) Certification that cash benefits have not been received under any of the provisions of the Trade Act of 1974, as amended, other than those permitted under this part.

(3) Certification that adjustment assistance payments have not exceeded the $10,000 limitation for the Federal fiscal year.

(4) Certification that net farm income is less than that for the latest year in which no adjustment assistance payment was received.

(5) Certification that their average adjusted gross income, as determined in accordance with 7 CFR 1400.601, for the 3 preceding taxable years does not exceed $2,500,000.

(6) To comply with certifications in (e)(4) and (e)(5) of this section, an applicant shall provide either—

(i) Supporting documentation from a certified public accountant or attorney, or

(ii) Relevant documentation and other supporting financial data, such as financial statements, balance sheets, and

reports prepared for or provided to the Internal Revenue Service or another U.S. Government agency.

(f) Persons legally authorized to execute program documents for estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

§ 1580.302 Technical assistance and services.

(a) Any producer of an agricultural commodity covered by a certification of eligibility may apply for and receive information and technical assistance from the Extension Service that will assist in adjusting to import competition and be at no cost to the producer.

(b) To qualify for technical assistance, producers shall apply under § 1580.301.

(c) Producers shall have an opportunity to meet at least once with an Extension Service employee within 180 days of petition certification to receive information regarding the feasibility and desirability of substituting one or more alternative commodities for the adversely affected agricultural commodity and to receive technical assistance to lower costs associated with producing and marketing the adversely affected agricultural commodity. The Extension Service shall provide to producers written confirmation of all technical assistance meetings. Producers shall also have access to technical information provided in writing and electronically.

(d) Producers shall also be provided information concerning procedures for applying for and receiving other Federal assistance and services available to workers facing economic distress.

(e) Producers shall be entitled to employment services and training benefits under trade adjustment assistance for workers managed by the U.S. Department of Labor.

§ 1580.303 Adjustment assistance payments.

(a) Applicants shall satisfy by September 30 all conditions of § 1580.301 to qualify for adjustment assistance payments.

(b) The FSA office shall issue a payment to a producer that is equal to the product of the amount of the agricultural commodity produced in the most recent marketing year multiplied by one-half the difference between—

(1) an amount equal to 80 percent of the average of the national average prices of the agricultural commodity covered by the petition for the 5 marketing years preceding the most recent marketing year, and

(2) the national average price of the agricultural commodity for the most recent marketing year.

(c) The maximum amount of payments under this part that a producer may receive in any 12-month period shall not exceed $10,000.

(d) The total amount of payments made to a producer may not exceed during any crop year the limitation on counter-cyclical payments set forth in section 1001(c) of the Food Security Act of 1985 (7 U.S.C. 1308(c)).

(e) Any person who may be entitled to a payment may assign their rights to such payment in accordance with 7 CFR part 1404 or successor regulations as designated by the Department.

(f) In the case of death, incompetency, disappearance or dissolution of a person that is eligible to receive benefits in accordance with this part, such person or persons specified in 7 CFR part 707 may receive such benefits, as determined appropriate by FSA.

(g) If the Administrator, FAS, determines in September that program funds may be insufficient to meet the requirements for adjustment assistance payments under this part during the coming fiscal year, FSA may suspend adjustment payments until June 16 in order to prorate amounts owed producers.

(h) FSA will not make adjustment assistance payments to producers who have not satisfied the technical assistance requirement.

§ 1580.401 Subsequent qualifying year eligibility.

(a) Prior to the anniversary of a certification date,

(1) groups and authorized representatives that provided national average prices to justify their initial certifications shall provide the Administrator national average prices for the most recent marketing year, and

(2) the Administrator shall determine whether or not—

(i) the national average price for the agricultural commodity produced by the group for the most recent marketing year is equal to or less than 80 percent of the average of national average prices for the 5 marketing years used to make the first certification under § 1580.203(a)(1), and

(ii) further increases in imports are contributing importantly to the decline in price.

(b) The Administrator shall promptly publish in the **Federal Register** the determination with supporting justification statement.

(c) In the case of a re-certification, FSA shall notify producers that they may be eligible to receive trade adjustment assistance for a subsequent qualifying year.

(d) To qualify for assistance in subsequent qualifying years, producers shall—

(1) submit an application pursuant to § 1580.301, and

(2) contact the Extension Service for technical adjustment assistance.

(e) The amount of an adjustment assistance payment during a qualifying year shall be determined in the same manner as in the originating year, except that the average national price shall be determined by using the 5-marketing-year period used to determine the amount of cash benefits for the first certification.

(f) An eligible producer who did not apply for adjustment assistance in the initial year may apply pursuant to § 1580.301.

§ 1580.501 Administration.

(a) The application process will be administered under the general supervision of the Administrator, FSA, and shall be carried out in the field by State and county FSA committees.

(b) State and county FSA committees and representatives do not have the authority to modify or waive any of the provisions of this part.

(c) The State FSA committee shall take any action required by this part that has not been taken by a county FSA committee. The State FSA committee shall also:

(1) Correct or require a county FSA committee to correct any action taken by such county FSA committee that is not in accordance with this part; and

(2) Require a county FSA committee to withhold taking or reversing any action that is not in accordance with this part.

(d) No delegation in this part to a State or county FSA committee shall prevent the Deputy Administrator from determining any question arising under the program or from reversing or modifying any determination made by a State or county FSA committee.

(e) The Deputy Administrator may authorize the State and county committees to waive or modify non-statutory deadlines or other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the program.

§ 1580.502 Maintenance of records, audits and compliance.

(a) Persons making application for benefits under this program must maintain accurate records and accounts that will document that they meet all eligibility requirements specified

herein, as may be requested by FSA. Such records and accounts must be retained for 2 years after the date of the final payment to the producer under this program.

(b) At all times during regular business hours, authorized representatives of FSA, the United States Department of Agriculture, or the Comptroller General of the United States shall have access to the premises of the producer in order to inspect, examine, and make copies of the books, records, and accounts, and other written data as specified in paragraph (a) of this section.

(c) Audits of certifications of average adjusted gross income may be conducted as necessary to determine compliance with the requirements of this subpart. As a part of this audit, income tax forms may be requested and if requested, must be supplied. If a producer has submitted information to FSA, including a certification from a certified public accountant or attorney, that relied upon information from a form previously filed with the Internal Revenue Service, such producer shall provide FSA a copy of any amended form filed with the Internal Revenue Service with 30 days of the filing.

(d) If requested in writing by FSA, the United States Department of Agriculture, or the Comptroller General of the United States, the producer shall provide all information and documentation the reviewing authority determines necessary to verify any information or certification provided under this subpart, including all documents referred to in § 1580.301(c), within 30 days. Acceptable production documentation may be submitted by facsimile, in person, or by mail and may include copies of receipts, ledgers, income statements, deposit slips, register tapes, invoices for custom harvesting, records to verify production costs, contemporaneous measurements, truck scale tickets, and contemporaneous diaries that are determined acceptable by the county committee. Failure to provide necessary and accurate information to verify compliance, or failure to comply with this subpart's requirements, will result in ineligibility for all program benefits subject to this subpart for the year or years subject to the request.

(e) All information provided to FSA for the purposes of determining compliance with this part will remain confidential and not be subject to any request submitted under the Freedom of Information Act.

§ 1580.503 Debarment and suspension.

The Government-wide Debarment and Suspension (Nonprocurement) regulations and Government Requirements for Drug-Free Workplace (Grants), 7 CFR part 3017—subparts A through E, apply to this part.

§ 1580.504 Fraud and recovery of overpayments.

(a) If the Administrator, FSA or a court of competent jurisdiction, determines that any person has received any payment under this program to which the person was not entitled, such person will be liable to repay such amount to the Administrator, FSA. The Administrator, FSA may waive such repayment if it is determined that:

(1) The payment was made without fault on the part of the person; and

(2) Requiring such repayment would be contrary to equity and good conscience.

(b) Unless an overpayment is otherwise recovered, or waived under paragraph (a), the Administrator, FSA shall recover the overpayment by deductions from any sums payable to such person.

(c) If the Administrator, FSA, or a court of competent jurisdiction, determines that a person:

(1) Knowingly has made, or caused another to make, a false statement or representation of a material fact, or

(2) Knowingly has failed, or caused another to fail, to disclose a material fact, and, as a result of such false statement or representation, or of such nondisclosure, such person has received any payment under this program to which the person was not entitled, such person shall, in addition to any other penalty provided by law, be ineligible for any further payment under this program.

(d) Except for overpayments determined by a court of competent jurisdiction, no repayment may be required, and no deduction may be made, under this section until a determination and an opportunity for a fair hearing has been given to the person concerned, and the determination has become final.

(e) Whoever makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, for the purpose of obtaining or increasing for himself or for any other person any payments authorized to be furnished under this program shall be fined not more that $10,000 or imprisoned for not more than 1 year, or both.

§ 1580.505 Appeals.

Any person may obtain reconsideration and review of determinations made with respect to applications for program benefits under this part in accordance with appeal regulations of the 7 CFR part 780.

§ 1580.601 Implementation.

Trade adjustment assistance is available for the most recent marketing year for which prices were available on February 3, 2003.

§ 1580.602 Paperwork Reduction Act assigned number.

The information collection requirements contained in these regulations (7 CFR part 1580) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and been assigned OMB control number xxxx–xxxx.

Dated: June 27, 2003.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 03–16812 Filed 7–1–03; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–149–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, –200B, and –200F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–100, –200B, and –200F series airplanes. This proposal would require initial and repetitive inspections to find discrepancies in the upper and lower skins of the fuselage lap joints, and repair if necessary. This action is necessary to find and fix such discrepancies, which could result in sudden fracture and failure of a lap joint and rapid in-flight decompression of the airplane fuselage. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 18, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–

149–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 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-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–149–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 or 2000 or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6434; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed 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 above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received. 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 proposed 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 proposed 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 summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–149–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–149–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating rapid in-flight decompression of a Boeing Model 737 series airplane. Investigation revealed that the skin above the forward entry door was separated at the stringer S–4R lap joint, with a 28-inch tear running along the lap joint. The skin was bent back at the upper edge of the stringer at S–5R and formed a rectangular opening that progressed from body station (BS) 328 to BS 300. Further investigation revealed that numerous scratches on the skin of the lap joint had initiated fatigue cracks and subsequent tearing of the skin. We also have received reports of similar damage (corrosion and fatigue cracking) to certain lap joints on other Model 737 series airplanes. These discrepancies have been attributed to the manufacturing process, which includes a cold-bonded adhesive of the lap joint configuration. Such conditions, if not corrected, could result in sudden fracture and failure of a lap joint and rapid in-flight decompression of the airplane fuselage.

The subject area on certain Model 747–100, –200B, and –200F series airplanes is manufactured using a process similar to that used on the affected Model 737 series airplanes. Therefore, those Model 747–100, –200B, and –200F series airplanes may be subject to the same unsafe condition revealed on the Model 737 series airplanes.

Related AD

This AD is related to AD 2000–17–04, amendment 39–11878, (65 FR 51750, August 25, 2000), applicable to certain Boeing Model 737–100, –200, and –200C series airplanes. That AD requires repetitive inspections to detect discrepancies in the upper and lower skins of the fuselage lap joint, and repair if necessary.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–53A2463, including Appendices A, B, and C, and the Evaluation Form, dated March 7, 2002, which describes procedures for repetitive medium and low frequency eddy current inspections for discrepancies (cracking and/or corrosion), and repair of any discrepancies found. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Alert Service Bulletin and This Proposed AD

Although the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions or inspection procedures, this proposed AD requires the repair and inspection procedures be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, we no longer need to include it in each individual AD; however, this AD identifies the office authorized to approve alternative methods of compliance.

Cost Impact

There are approximately 86 airplanes of the affected design in the worldwide fleet. The FAA estimates that 55

airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 5,334 work hours per airplane to accomplish the proposed inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $17,602,200, or $320,040 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein 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. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory 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, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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:

Boeing: Docket 2002–NM–149–AD.

Applicability: Model 747–100, –200B, and –200F series airplanes, as listed in Boeing Alert Service Bulletin 747–53A2463, dated March 7, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To find and fix discrepancies in the upper and lower skins of the fuselage lap joints, which could result in sudden fracture and failure of a lap joint and rapid in-flight decompression of the airplane fuselage, accomplish the following:

Initial and Repetitive Inspections

(a) Do the applicable (initial and repetitive) inspections as specified in Figures 2 through 8, as applicable, of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2463, including Appendices A, B, and C, dated March 7, 2002, to find discrepancies (cracking and corrosion) in the upper and lower skins of the fuselage lap joints. Do the inspections at the applicable times specified in Figure 1 of the Accomplishment Instructions of the alert service bulletin, in accordance with the alert service bulletin; except that where Figure 1 specifies a compliance time of ''after the release date of this service bulletin,'' this AD requires a compliance time of ''after the effective date of this AD.'' Where Figure 1 specifies a compliance time of ''flight cycles'' this AD requires a compliance time of ''total flight cycles.''

(b) Where Boeing Alert Service Bulletin 747–53A2463, including Appendices A, B, and C, dated March 7, 2002, specifies that the manufacturer may be contacted for certain inspection procedures, inspect per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings.

Adjustments to Compliance Time: Cabin Differential Pressure

(c) For the purposes of calculating the compliance threshold and repetitive interval for the inspections required by paragraph (a) of this AD: Flight cycles in which cabin differential pressure is at 2.0 pounds per square inch (psi) or less need not be counted when determining the number of flight cycles that have occurred on the airplane, provided that flight cycles with momentary spikes in cabin differential pressure above 2.0 psi are included as full pressure flight cycles. For this provision to apply, all cabin pressure records must be maintained for each airplane. No fleet-averaging of cabin pressure is allowed.

Repair

(d) Before further flight, repair any discrepancy (cracking or corrosion) found during any inspection required by paragraph (a) of this AD, per the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2463, including Appendices A, B, and C, dated March 7, 2002. If any discrepancy is found and the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain repairs, before further flight, repair per a method approved by the Manager, Seattle ACO; or per data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings.

Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, Seattle ACO, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on June 26, 2003.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–16694 Filed 7–1–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–11–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, that would have required inspections of certain bonded skin panels to detect delamination of the skin doublers (tear straps) from the skin panels, and follow-on corrective actions if necessary. This new action revises the proposed rule by revising certain inspection methods and expanding the area of certain inspections. This new action also proposes to extend the compliance time for certain inspections. The actions specified by this new proposed AD are intended to prevent skin doublers from

delaminating from their skin panels, which could result in fatigue cracks in the skin doublers and skin panels and consequent rapid decompression of the airplane.

DATES: Comments must be received by July 28, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–11–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 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-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 98–NM–11–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.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Duong Tran, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6452; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed 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 above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

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 proposed 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 proposed 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 summarizing each FAA-public contact concerned with the substance of this proposal 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 98–NM–11–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–11–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on August 10, 2000 (65 FR 48937). That original supplemental NPRM (hereafter referred to as ''the first supplemental NPRM'') would have required inspections of certain bonded skin panels to detect delamination of the skin doublers (tear straps) from the skin panels, and follow-on corrective actions if necessary. The first supplemental NPRM was prompted by reports that certain skin doublers were delaminated from their skin panels due to improper processing of certain skin panels. That condition, if not corrected, could result in fatigue cracks in the skin doublers and skin panels and consequent rapid decompression of the airplane.

Explanation of New Service Information

Since the issuance of the first supplemental NPRM, Boeing has issued Service Bulletin 737–53–1179, Revision 2, dated October 25, 2001. (The first supplemental NPRM refers to Revision 1 of that service bulletin, dated September 30, 1999, as the appropriate source of service information for the actions proposed in that first supplemental NPRM.) Revision 2 of the service bulletin does the following:

- Revises the inspection method from close visual to detailed visual for the one-time internal inspection for cracks or corrosion of bonded skin panels.
- Extends the compliance time for the one-time internal inspection to 50,000 total flight cycles (or 50,000 flight cycles after skin panel replacement, as applicable), or 20,000 flight cycles after service bulletin release, whichever is later.
- Expands the area of the external inspection from under stringer 17 to under all stringers.
- Expands the inspection area following a finding of delamination to include all fasteners common to the delamination area plus two fasteners on each side of the delamination area.
- Expands the effectivity to include certain airplanes not listed in the effectivity listing of Revision 1 of the service bulletin.

Accomplishment of the actions specified in Revision 2 of the service bulletin is intended to adequately address the unsafe condition.

Explanation of Changes to Proposal

We have revised the preamble and body of this second supplemental NPRM to identify affected airplane models more specifically.

We have changed all references to ''detailed visual inspection'' in the first supplemental NPRM to ''detailed inspection'' in this second supplemental NPRM. Also, for clarification, we have revised the definition of a ''general visual inspection'' in this second supplemental NPRM.

In addition, because the language in Note 6 of the first supplemental NPRM is regulatory in nature, that note has been redesignated as paragraph (g) of this second supplemental NPRM.

Comments

Due consideration has been given to the comments received in response to the first supplemental NPRM. While one commenter supports the proposal, certain comments have resulted in changes to the proposal that are reflected in this second supplemental NPRM. Certain other comments received in response to the original NPRM and first supplemental NPRM are no longer relevant to this proposal because of the changes in the proposal related to Revision 2 of the service

bulletin. Certain other comments that are still relevant but that have not resulted in any change to the proposal will be addressed in the final rule, along with any additional comments received in response to this second supplemental NPRM.

Revise References to Inspection Methods and Procedures

One commenter, the airplane manufacturer, requests that the FAA revise certain references to inspection methods and procedures in various places in the first supplemental NPRM:

• In paragraphs (a)(2)(i) and (b)(2)(i) of the first supplemental NPRM, change the method for the inspection for cracks or corrosion of bonded ''Zone A'' skin panels from internal general visual to internal detailed visual. The procedures in the service bulletin describe a detailed visual inspection rather than a general visual inspection.

• In paragraphs (a)(2)(i), (a)(2)(ii), (b)(2)(i), and (b)(2)(ii) of the first supplemental NPRM, clarify the inspection requirements for ''Zone A'' and ''Zone B'' skin panels by referring to the figures in the service bulletin that define those inspections.

• In Note 6 of the first supplemental NPRM, clarify that the internal inspections described in that paragraph apply only to ''Zone A'' areas, and that accomplishment of those internal inspections is acceptable specifically for compliance with paragraph (a)(2)(i) of the proposed AD.

• For clarification, if the changes above are implemented, delete Note 7 of the first supplemental NPRM.

We concur with the commenter's requests and, accordingly, have made the following changes to this second supplemental NPRM:

• We have revised paragraphs (a)(2)(i) and (b)(2)(i) of this second supplemental NPRM to specify a one-time internal detailed inspection to detect cracks or corrosion of ''Zone A'' skin panels.

• We have revised paragraphs (a)(2)(i), (a)(2)(ii), (b)(2)(i), and (b)(2)(ii) of this second supplemental NPRM to refer to the Accomplishment Instructions of Revision 2 of the service bulletin. (We find that referring to the Accomplishment Instructions of the service bulletin meets the commenter's intent with regard to referring to the specific figures.)

• We have revised paragraph (g) of this second supplemental NPRM (which contains the provisions of Note 6 of the first supplemental NPRM) to state that internal detailed inspections of ''Zone A'' skin panels that are accomplished before the effective date of the AD per previous revisions of the service bulletin are acceptable for compliance with paragraph (a)(2)(i) of this AD.

• We have not included the contents of Note 7 of the first supplemental NPRM in this second supplemental NPRM.

Give Credit for Inspections Accomplished per Existing Programs

One commenter to the first supplemental NPRM, as well as one commenter to the original NPRM, requests that we allow credit for visual inspections of areas subject to this proposal if they were previously accomplished per an FAA-approved Corrosion Prevention and Control Program (CPCP).

We concur with the commenters' requests. We have previously issued AD 90–25–01, amendment 39–6789 (55 FR 49263, November 27, 1990), to require the implementation of a CPCP on all Boeing Model 737 series airplanes. Inspections accomplished per that CPCP are an acceptable method of compliance for certain inspections that would be required by this proposed AD, provided that these inspections are accomplished within the compliance times specified in this proposed AD. Operators must note that this credit applies only for general visual inspections of ''Zone A'' skin panels. Accordingly, we have added a new paragraph (h) to this second supplemental NPRM to provide this credit.

Allow Repair per Structural Repair Manual

Two commenters request that any subject area that has been repaired previously per the Boeing 737 Structural Repair Manual (SRM) be exempted from the inspection requirements of this proposal. One of the commenters notes that repair by installation of solid fasteners is defined in Chapter 51–00–01, Figure 225, of the SRM, which the commenter states is referenced in the proposal. The other commenter asks whether we intend to require an alternative method of compliance (AMOC) for each fuselage flush or external repair in the inspection area. That commenter specifically requests that all repairs per the SRM be approved as an AMOC to the proposed AD, and that we allow Boeing Designated Engineering Representatives to approve repairs.

We partially concur with the commenters' requests. We do not find it appropriate to give ''blanket'' approval of any repair per the SRM, and we note that neither the first supplemental NPRM nor the service bulletin refers to the specific section and figure of the SRM referred to by the commenter. However, we find that repairs accomplished according to specific sections of the SRM referred to in Boeing Service Bulletin 737–53–1179, Revision 2, eliminate the need for the proposed inspections for the area of the repair only. All other repairs must be approved by the FAA or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings. Therefore, we have added a new paragraph (f) to this second supplemental NPRM (and reordered subsequent paragraphs accordingly) to specify that, where the service bulletin refers to specific sections of the SRM for repair instructions, repairs per those SRM sections eliminate the requirement to do the inspections required by this proposed AD for the repaired area only.

Define Method for Determining Configuration

One commenter requests clarification on what method to use to determine the configuration of skin panels as ''Zone A'' or ''Zone B,'' as specified in Figure 2, Sheet 4 of 4, in the service bulletin.

We concur that some clarification may be necessary. As stated previously, we have revised paragraphs (a)(2)(i), (a)(2)(ii), (b)(2)(i), and (b)(2)(ii) of this second supplemental NPRM to refer to the Accomplishment Instructions and Figure 2 of the service bulletin as the appropriate reference for determining whether a skin panel is ''Zone A'' or ''Zone B.'' The criteria for determining the category of a skin panel are shown under paragraph 3.A. in the Accomplishment Instructions of the service bulletin. We find that these criteria are adequate for determining the applicable inspection method for each skin panel. No further change to this second supplemental NPRM is necessary in this regard.

Give Credit for Actions Accomplished Previously

One commenter requests clarification that an operator is in compliance with the proposed AD if the terminating inspection has been done prior to the effective date of the AD.

We find that no change is necessary to meet the intent of the commenter's request. We give credit for actions accomplished before the effective date of an AD by means of the phrase ''Compliance: Required as indicated, unless accomplished previously,'' which appears in every AD.

Explanation of New Requirements of Proposal

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, this second supplemental NPRM would require accomplishment of the actions specified in Boeing Service Bulletin 737–53–1179, Revision 2, described previously, except as discussed below.

Explanation of Applicability

The applicability statement of this second supplemental NPRM includes Model 737–100, –200, –200C, –300, –400, and –500 series airplanes; having line numbers 1 through 2947 inclusive. As explained in the first supplemental NPRM, in determining the applicability of this proposed AD, we considered the possibility that any airplane delivered prior to October 1, 1997, might be equipped with an improperly processed skin panel. We have determined that line number 2947 corresponds to a delivery date of October 1, 1997.

Differences Between Second Supplemental NPRM and Service Bulletin

Operators also should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this second supplemental NPRM would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle Aircraft Certification Office, to make such findings.

Additionally, the service bulletin specifies that certain inspections may be accomplished in accordance with ''an equivalent'' procedure. However, this second supplemental NPRM would require that those inspections be accomplished in accordance with the procedures specified in the chapter of the 737 Nondestructive Test Manual specified in the service bulletin. An ''equivalent'' procedure may be used only if approved as an alternative method of compliance in accordance with the provisions of paragraph (i) of this second supplemental NPRM.

Conclusion

Since certain changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

There are approximately 2,083 airplanes of the affected design in the worldwide fleet. The FAA estimates that 863 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 10 work hours per airplane to accomplish the proposed external general visual and detailed inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these external inspections proposed by this AD on U.S. operators is estimated to be $517,800, or $600 per airplane, per inspection cycle.

It would take approximately 360 work hours per airplane to accomplish the proposed internal detailed and ultrasonic inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection proposed by this AD on U.S. operators is estimated to be $18,640,800, or $21,600 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein 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. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory 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, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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:

Boeing: Docket 98–NM–11–AD.

Applicability: Model 737–100, 737–200, –200C, –300, –400, and –500 series airplanes; line numbers (L/N) 1 through 2947 inclusive; certified 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 (i) 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 skin doublers (tear straps) from delaminating from their skin panels, which could result in fatigue cracks in the skin doublers and skin panels and consequent rapid decompression of the airplane, accomplish the following:

Initial and Repetitive Inspections (L/N 611 through 2725 inclusive)

(a) For airplanes having L/N 611 through 2725 inclusive: Accomplish the actions required by paragraphs (a)(1) and (a)(2) of this AD on any bonded skin panel assembly that has NOT been replaced with any new or serviceable bonded skin panel assembly, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–53–1179, Revision 2, dated October 25, 2001.

Note 2: For the purposes of this AD, bonded skin panels consist of skin doublers

(tear straps) that are bonded to skin panels located above stringer S–26 from body station (BS) 259 to BS 1016 on both sides of the airplane.

Note 3: If the skin panel is solid with no doublers (tear straps) bonded to it, the inspections required by this AD are not necessary for that skin panel.

(1) Prior to the accumulation of 20,000 total flight cycles, or within 5,000 flight cycles after the effective date of this AD, whichever occurs later, accomplish paragraphs (a)(1)(i) and (a)(1)(ii) of this AD, in accordance with the Accomplishment Instructions of the service bulletin. Repeat the inspections thereafter at intervals not to exceed 5,000 flight cycles, until accomplishment of paragraph (a)(2) of this AD.

(i) Perform an external general visual inspection of all affected areas NOT specified in paragraph (a)(1)(ii) of this AD to detect cracks or corrosion of bonded skin panels.

(ii) Perform an external detailed inspection to detect cracks or corrosion of bonded skin panels at all stringers, window belts, lap joints, and butt splice joints.

Note 4: 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.''

Note 5: For the purposes of this AD, a detailed 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) Prior to the accumulation of 50,000 total flight cycles, but after the accumulation of 4,500 total flight cycles; or within 20,000 flight cycles after the effective date of this AD; whichever occurs later; accomplish paragraphs (a)(2)(i) and (a)(2)(ii) of this AD. Accomplishment of the requirements of paragraphs (a)(2)(i) and (a)(2)(ii) of this AD constitutes terminating action for the repetitive inspection requirement of paragraph (a)(1) of this AD.

(i) For ''Zone A'' areas (as defined in the Accomplishment Instructions and Figure 2 of the service bulletin): Perform a one-time internal detailed inspection to detect cracks or corrosion of bonded skin panels, or delamination of the skin doublers from the bonded skin panels.

(ii) For ''Zone B'' areas (as defined in the Accomplishment Instructions and Figure 2 of the service bulletin): Perform an internal or external ultrasonic inspection to detect cracks or corrosion of bonded skin panels, or delamination of the skin doublers from the bonded skin panels.

Initial and Repetitive Inspections (L/N 1 through 2947 inclusive)

(b) For airplanes having L/N 1 through 2947 inclusive, on which any bonded skin panel was replaced with a new or serviceable, Boeing-built, bonded skin panel prior to October 1, 1997: Accomplish the actions required by paragraphs (b)(1) and (b)(2) of this AD, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–53–1179, Revision 2, dated October 25, 2001.

(1) Within 20,000 flight cycles after replacement of the bonded skin panel, or within 5,000 flight cycles after the effective date of this AD, whichever occurs later, accomplish paragraphs (b)(1)(i) and (b)(1)(ii) of this AD. Repeat the inspections thereafter at intervals not to exceed 5,000 flight cycles, until accomplishment of paragraph (b)(2) of this AD.

(i) Perform an external general visual inspection of all affected areas NOT specified in paragraph (b)(1)(ii) to detect cracks or corrosion of bonded skin panels.

(ii) Perform a detailed inspection to detect cracks or corrosion of bonded skin panels at all stringers, window belts, lap joints, and butt splice joints.

(2) Within 50,000 flight cycles after replacement of the bonded skin panel, but after the accumulation of 4,500 flight cycles after such replacement; or within 20,000 flight cycles after the effective date of this AD; whichever occurs later; accomplish paragraphs (b)(2)(i) and (b)(2)(ii) of this AD. Accomplishment of the requirements of paragraphs (b)(2)(i) and (b)(2)(ii) of this AD constitutes terminating action for the repetitive inspection requirement of paragraph (b)(1) of this AD.

(i) For ''Zone A'' areas (as defined in the Accomplishment Instructions and Figure 2 of the service bulletin): Perform a one-time internal detailed inspection to detect cracks or corrosion of bonded skin panels or delamination of the skin doublers from the bonded skin panels.

(ii) For ''Zone B'' areas (as defined in the Accomplishment Instructions and Figure 2 of the service bulletin): Perform an internal or external ultrasonic inspection to detect cracks or corrosion of bonded skin panels, or delamination of the skin doublers from the bonded skin panels.

Corrective Actions

(c) If any crack, corrosion, or delamination is detected during any inspection required by paragraph (a) or (b) of this AD, prior to further flight, accomplish the actions required by either paragraph (c)(1) or (c)(2) of this AD.

(1) Replace the cracked, corroded, or delaminated skin panel with a new or serviceable skin panel manufactured by Boeing on or after April 1, 1997, in accordance with Figure 2 and the Accomplishment Instructions of Boeing Service Bulletin 737–53–1179, Revision 2, dated October 25, 2001.

(2) Accomplish corrective actions (including additional inspections and repairs) in accordance with Figure 2 and the ''Delamination and Crack Repair'' section of the Accomplishment Instructions of Boeing Service Bulletin 737–53–1179, Revision 2, dated October 25, 2001, except as provided by paragraph (d) of this AD.

Exception to Repair Procedures

(d) Where Boeing Service Bulletin 737–53–1179, Revision 2, dated October 25, 2001, specifies that repair of a cracked, corroded, or delaminated skin panel is to be accomplished in accordance with instructions received from Boeing, this AD requires that the repair be accomplished in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

Operator's Equivalent Procedures

(e) Where Boeing Service Bulletin 737–53–1179, Revision 2, dated October 25, 2001, specifies that the inspections required by this AD may be accomplished in accordance with an ''equivalent'' procedure, the inspections must be accomplished in accordance with the chapter of the Boeing 737 Nondestructive Test Manual specified in the service bulletin.

Credit for Actions Accomplished Previously

(f) Where the service bulletin refers to specific sections of the Boeing 737 Structural Repair Manual (SRM) for repair instructions, repairs accomplished before the effective date of this AD per those SRM sections eliminate the requirement to do the inspections required by this proposed AD for the repaired area only.

(g) Internal detailed inspections of ''Zone A'' skin panels accomplished before the effective date of this AD in accordance with the original issue of Boeing Service Bulletin 737–53–1179, dated June 22, 1995, or Revision 1, dated September 30, 1999, are acceptable for compliance with paragraph (a)(2)(i) of this AD, provided that they were accomplished after the accumulation of 4,500 total flight cycles.

(h) Inspections accomplished per the Corrosion Prevention and Control Program established by AD 90–25–01, amendment 39–6789, are acceptable for compliance with the external general visual inspections of ''Zone A'' skin panels required by paragraphs (a)(1)(i) and (b)(1)(i) of this AD, provided that the inspections are accomplished within the applicable compliance times specified in paragraphs (a) and (b) of this AD.

Alternative Methods of Compliance

(i) 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, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal

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

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(j) 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.

Issued in Renton, Washington, on June 26, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–16693 Filed 7–1–03; 8:45 am]

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PEACE CORPS

22 CFR Part 303

Procedures for Disclosure of Information Under the Freedom of Information Act

AGENCY: Peace Corps.

ACTION: Proposed rule.

SUMMARY: The Peace Corps is proposing to review its regulations on the Freedom of Information Act (FOIA) to implement the 1996 amendments to the FOIA regarding electronic records, time limits, and standards for processing requests for records. In addition, revisions are proposed to incorporate procedures for Office of Inspector General (OIG) records. Provisions are also added describing the availability of Peace Corps records in the **Federal Register** and the agency's electronic reading room. Finally, provisions are added that set out procedures for responding to a subpoena.

DATES: Comments must be received by August 1, 2003.

ADDRESSES: Comments should be submitted to Tyler S. Posey, General Counsel, Office of the General Counsel, 8th Floor, 1111 20th Street, NW., Washington, DC 20526.

FOR FURTHER INFORMATION CONTACT: Suzanne B. Glasow, Associate General Counsel, 202–692–2150.

SUPPLEMENTARY INFORMATION:

Background. This rule proposes to substantially revise the Peace Corps' FOIA regulation to implement the 1996 amendments to the FOIA regarding electronic records, time limits. and standards for processing requests for records. *See* ''Electronic Freedom of Information Act Amendments of 1996.'' Pub. L. 104–231. It also adds procedures for OIG records and describes the availability of Peace Corps records in the **Federal Register** and the agency's public reading room. Finally, provisions are added that set out procedures for responding to a subpoena. This rule is based on guidelines issued by the Department of Justice's (DOJ) Office of Information and Privacy and DOJ's FOIA rule. A section-by-section analysis follows.

Section-by-Section Analysis

Section 303.1 Purpose

The purpose of this part is to provide rules and procedures for making Peace Corps records, including electronic records, available to the public under the Freedom of Information Act, 5 U.S.C. 552. The language of this section is revised to reflect the broader scope of the rule, which now includes provisions on electronic records and the availability of Peace Corps records in the **Federal Register** and the agency's electronic reading room.

Section 303.2 Definitions

This section is revised by deleting outdated definitions and by including definitions located elsewhere in the current rule. The definitions of the terms related to the charging of fees are based, as required under the FOIA, on an Office of Management and Budget (OMB) guidance. *See* 52 FR 10012 (March 27, 1987) and 53 FR 651–6154 (March 1, 1988).

Section 303.3 Policy

This new section sets out the policy of the Peace Corps regarding its compliance with the FOIA.

*Section 303.4 Records Published in the **Federal Register***

This new section describes the Peace Corps' process for complying with Sec. 552(a)(1) of FOIA, which requires each agency to currently publish in the **Federal Register** for the guidance of the public a range of basic information regarding its structure and operations, including information on the agency's organization, function, procedural and substantive rules, and general statements of policy. The Peace Corps complies with this requirement by annually publishing such information in the United States Government Manual, a special publication of the **Federal Register.**

Section 303.5 Public Reading Room

This is a new section which sets out the process by which the Peace Corps implements Section 552(a)(2) of the FOIA which requires agencies to maintain a public reading room where certain Peace Corps records must be made available to the public for inspection and copying. Reading room records generally include final opinions and orders, statements of policy and interpretations adopted by the Peace Corps that are not published in the **Federal Register** and administrative staff manuals and instructions that affect the public. A new category of reading room records includes any record provided pursuant to a public request for records that is determined by the Peace Corps to be subject to multiple subsequent requests (''subsequent request records''). For example, the Federal Bureau of Investigation has identified its records on Elvis Presley, Marilyn Monroe, Elliot Ness, Jackie Robinson and Will Rodgers as subsequent request records.

The use of the term ''will be made available'' in paragraph (b) is intended to clarify that certain public reading room records will normally be maintained in the public reading room, while others will normally be kept in close proximity elsewhere in Peace Corps headquarters. In response to a request, any records kept in close proximity will be made available for inspection and copying in the public reading room.

Paragraph (c) describes the protections from public disclosure that may apply to certain reading room records and the process the Peace Corps will use to edit or delete protected information.

Paragraph (d) provides that reading room records created by the Peace Corps after November 1, 1996, and an index of such records, will be made available electronically. The Peace Corps is in the process of identifying such records and converting them to electronic form. As they are so identified and converted, they will be made available electronically in the public reading room.

Paragraph (e) provides that the Peace Corps will made most of its electronic public reading room records available on its public Web site.

Section 303.6 Procedures for Use of Public Reading Room

This section describes the process by which a member of the public may inspect and copy public reading room records. Persons interested in using the public reading room shall make arrangements with the FOIA Office ahead of time to facilitate their access to the requested information.

Section 303.7 Index of Records

The FOIA requires the Peace Corps to maintain and make available an index of reading room records. This section clarifies that the index the Peace Corps maintains will be made available in the public reading room and on Peace Corps' Web site.

Section 303.8 Requests for Records

The category of FOIA records that is most familiar to the public are records required to be made available by the Peace Corps upon request by a person, unless they are exempt from mandatory disclosure under any of the FOIA exemptions. Such records generally include information created, obtained and/or used by the Peace Corps in the performance of its statutory mission. This category of records does not include public reading room records or records published in the **Federal Register.**

This section sets out the process by which the Peace Corps makes such records available. For example, it sets out the time limits imposed by the FOIA, establishes standards and a process for providing expedited treatment for requests and includes provisions on OIG records, in recognition of the establishment of an OIG at the Peace Corps. It also clarifies that the Peace Corps is not required to create a document or perform research to satisfy a request.

Section 303.9 Exemptions for Withholding Records

This section delineates in paragraph (a) the exemptions that protect certain records from mandatory disclosure. All of the exemptions in this section are based on the FOIA, although not all FOIA exemptions are included in this rule, because certain exemptions are not currently and are unlikely to be applicable to the Peace Corps. Paragraph (b) explains the process by which the Peace Corps will redact protected information from information that must be made available to the requester. Under the 1996 amendments to the FOIA, the Peace Corps must indicate the amount and location of redacted material, if technically feasible, unless such action would harm the interest protected by the applicable exemption.

This section also includes provisions that implement Executive Order 12,600, which requires each agency to notify a person who has submitted records containing confidential business information to the Peace Corps when the agency receives a request for such records, and to provide the submitter an opportunity to object to disclosure.

Section 303.10 Responsibilities and Authorities

This section identifies the officials within the Peace corps authorized to grant or deny requests for records and to decide appeals. It also establishes a process for dealing with law enforcement and classified information and records received by the Peace Corps from other agencies.

Section 303.11 Denials

This section describes what constitutes a denial of records and the process for denying a request for records.

Section 303.12 Appeals

This section describes the process by which a person may appeal a denial. Appeals of denials made by the OIG are forwarded by the FOLIA Officer to the OIG for processing.

Section 303.13 Fees

This section describes the authority of the Peace Corps to charge or waive fees for its costs in responding to FOIA requests. It includes the standards established under FOIA for determining whether a requester qualifies for a fee-waiver and sets out a schedule of fees applicable to the various types of requesters. It also provides the Peace Corps with discretion to charge interest to requesters who fail to pay their fees and to requesters is attempting to break a request into a series of requests for the purpose of evading the assessment of fees.

Section 303.14 Procedures for Responding to a Subpoena

This section sets forth the procedures to be followed when a subpoena, order or other demand is issued in a proceeding in which the Peace Corps is not a party. Paragraph (a) of this section details the types of demands subject to these procedures. Paragraph (b) of this section explains that employees are not to disclose information without approval of the Office of General Counsel, and it is the General Counsel or designee, together with consultation from other Agency officials, including the Agency's FOIA Officer, who makes all determinations with respect to demands discussed herein. Paragraph (c)(1) identifies generally two of the factors that should be considered in deciding whether to make disclosures. These are, however, only a couple of the considerations, as the factors relevant to a particular demand may vary widely with the nature of the demand. Paragraph (c)(2) specifically identifies certain circumstances in which disclosure will not be made by the Peace Corps. These standards, in essence, identify several widely acknowledged areas of privilege that are most relevant to Peace Corps. They are intended to be compatible with the exemptions from mandatory disclosure provided by the Freedom of Information Act, the Privacy Act, and other relevant guidelines.

The OIG has independent subpoena authority under the IG Act of 1978, as amended. The OIG will follow these procedures and they will be implemented by appropriate OIG staff.

Executive Order 12866

This regulation has been determined to be non-significant within the meaning of Executive Order 12866.

Regulatory Flexibility Act

The Peace Corps Director, in accordance with the Regulatory Flexibility Act, (5 U.S.C. 605), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Under the Freedom of Information Act, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters. Thus, fees assessed by the Peace corps are nominal. Further, the ''small entities'' that make FOIA requests, as compared with individual requesters and other requesters, are relatively few in number.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

List of Subjects in 22 CFR Part 303

Freedom of information.

For reasons set out in the preamble, the Peace Corps proposes to revise part 303 as follows:

PART 303—PROCEDURES FOR DISCLOSURE OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

Sec.
303.1 Purpose.
303.2 Definitions.
303.3 Policy.
303.4 Records published in the **Federal Register**.
303.5 Public reading room.

303.6 Procedures for use of public reading room.
303.7 Index of records.
303.8 Requests for records.
303.9 Exemptions for withholding records.
303.10 Responsibilities and authorities.
303.11 Denials.
303.12 Appeals.
303.13 Fees.
303.14 Procedures for responding to a subpoena.

Authority: 5 U.S.C. 552; 22 U.S.C. 2501, *et. seq.;* E.O. 12137; E.O. 12600.

§ 303.1 Purpose.

This part sets out the rules and procedures the Peace Corps follows in making records available to the public under the Freedom of Information Act (FOIA).

§ 303.2 Definitions.

As used in this part—

(a) *Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester has made a commercial use request, the Peace Corps will look to the use to which a requester will put the documents requested. When the Peace Corps has reasonable cause to doubt the requester's stated use of the records sought, or where the use is not clear from the request itself, it will seek additional clarification before assigning the request to a category.

(b) *Duplication* means the process of making a copy of a record requested pursuant to this part. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable electronic documents, among others.

(c) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, or an institution of professional or vocational education which operates a program or programs of scholarly research.

(d) *Non-commercial scientific institution* means an institution that is not operated on a ''commercial'' basis and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(e) *OIG records* means those records as defined generally in this section which originated with or are in the possession and control of the Office of Inspector General (OIG) of the Peace Corps which have been compiled for law enforcement, audit, and investigative functions and/or any other purpose authorized under the IG Act of 1978, as amended.

(f) *Records* means books, papers, maps, photographs, or other documentary materials, regardless of whether the format is physical or electronic, made or received by the Peace Corps in connection with the transaction of Peace Corps' business and preserved by the Peace Corps as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Peace Corps, or because of the informational value of data in them. The term does not include, *inter alia,* books, magazines, or other materials acquired solely for library purpose, or that are otherwise publicly available.

(g) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances when they can qualify as disseminators of ''news'') who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (*e.g.,* electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of ''freelance'' journalists, they will be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

(h) *Review* means the process of examining a document located in response to a request to determine whether any portion of such document is exempt from disclosure. It also includes processing any such document for disclosure. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(i) *Search* means the process of looking for and retrieving records that are responsive to a request for records. It includes page-by-page or line-by-line identification of material within documents and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. Searches may be conducted manually or by automated means and will be conducted in the most efficient and least expensive manner. If the Agency cannot identify the requested records after a 2 hour search, it can determine that the records were not adequately described and ask the requester to provide a more specific request.

§ 303.3 Policy.

The Peace Corps will make its records concerning its operations, activities, and business available to the public consistent with the requirements of the FOIA. Records exempt from disclosure under the FOIA may be made available at the discretion of the Peace Corps.

§ 303.4 Records published in the Federal Register.

The Peace Corps publishes its notices and substantive regulations in the **Federal Register**. It also publishes information on its basic structure and operations necessary to inform the public how to deal effectively with the Peace Corps in the *United Statement Government Manual*, a special publication of the **Federal Register**. The Peace Corps will make reasonable efforts to currently update such information, which includes information on Peace Corps' location and functions, and how the public may obtain information of forms, or make submittals or requests. The Peace Corps' published regulations are at 22 CFR parts 301 *et seq.*

§ 305.5 Public reading room.

(a) The Peace Corps will maintain a public reading room at its headquarters at 1111 20th Street, NW., Washington, DC 20526. This room will be supervised and will be open to the public during Peace Corps' regular business hours for inspecting and copying records described in paragraph (b) of this section.

(b) Subject to the limitation stated in paragraph (c) of this section, the following records will be made available in the public reading room:

(1) All final public opinions, including concurring and dissenting opinions; and orders issued in the adjudication of cases that involve the Peace Corps;

(2) Statements of policy and interpretations adopted by the Peace Corps that are not published in the **Federal Register**.

(3) Administrative staff manuals and instructions to the staff that affect the public;

(4) Copies of records, regardless of form or format, released to any person in response to a public request for records which the Peace Corps

determines are likely to become subject to subsequent requests for substantially the same records, and a general index of such records;

(5) The index required by § 303.7 and

(6) Other records the Peace Corps has determined are of general interest to members of the public in understanding activities of the Peace Corps or in dealing with the Peace Corps in connection with those activities.

(c) Certain records otherwise required by FOIA to be available in the public reading room may be exempt from mandatory disclosure pursuant to Sec. 552(b) of the FOIA. Such records will not be made available in the public reading room. Other records maintained in the public reading room may be edited by the deletion of identifying details concerning individuals to prevent a clearly unwarranted invasion of personal privacy. In such cases, the record shall have attached to it an explanation of the deletion. The extent of the deletion shall be indicated, unless doing so would harm an interest protected by the exemption under which the deletion is made. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made.

(d) *Electronic reading room.* Records required by the FOIA to be maintained and made available in the public reading room created by the Peace Corps on or after November 1, 1996, shall be made electronically.

(e) Most electronic public reading room records will also be made avaiable to the public on the Peace Corps Web site at *http://www.peacecorps.gov.*

§ 303.6 Procedures for use of public reading room.

Any member of the public may inspect or copy records described in § 303.5(b) in the public reading room during regular business hours. Because it will sometimes be impossible to produce records or copies of records on short notice, a person who wishes to inspect or copy records shall arrange a time in advance, by telephone or letter request made to the Peace Corps FOIA Officer. Persons submitting requests by telephone will be notified whether a written request would be advisable to aid in the identification and expeditious processing of the records sought. Written requests should identify the records sought in the manner described in § 303.8(b) and should request a specific date for inspecting the records. The requester will be advised as promptly as possible if, for any reason, it may not be possible to make the records sought available on the date requested.

§ 303.7 Index of records.

The Peace Corps will maintain a current index identifying any matter within the scope of § 303.4 or § 303.5(b)(1) through (5). The index will be maintained and made available for public inspection and copying at the Peace Corps' headquarters in Washington, DC. The cost of a copy of the index will not exceed the standard charge for duplication set out in § 303.13(e). The Peace Corps will also make the index available on its Public Web site.

§ 303.8 Request for records.

(a) Except for records required by the FOIA to be published in the **Federal Register** or to be made available in the public reading room, Peace Corps records will be made promptly available, upon request, to any person in accordance with this section, unless it is determined that such records should be withheld and are exempt from mandatory disclosure under the FOIA.

(b) *Request.* Requests for records under this section shall be made in writing, shall include the signature of the requester, and the envelope and the letter shall be clearly marked ''Freedom of Information Request.'' No e-mail requests will be accepted. All such requests shall be addressed to the FOIA Officer. Request by letter shall use the address given in § 303.5(a). Any request not marked and addressed as specified in this paragraph will be so marked by Peace Corps personnel as soon as it is properly identified, and will be forwarded immediately to the FOIA Officer. A request improperly addressed will not be deemed to have been received for purposes of the time period set out in paragraph (i) of this section until it has been received by the FOIA Officer. Upon receipt of an improperly addressed request, the FOIA Officer shall notify the requester of the date on which the time period began. The request shall be stamped ''received'' on the date it is received by the FOIA Office.

(c) A request must reasonably describe the records requested so that employees of the Peace Corps who are familiar with the subject area of the request are able, with a reasonable amount of effort, to determine which particular records are within the scope of the request. If it is determined that a request does not reasonably describe the records sought, the requester shall be so informed and provided an opportunity to confer with Peace Corps personnel in order to attempt to reformulate the request in a manner that will meet the needs of the requester and the requirements of this paragraph. If the Agency cannot identify the requested records after a 2 hour search, it can determine that the records were not adequately described and ask the requester to provide a more specific request.

(d) To facilitate the location of records by the Peace Corps, a requester should try to provide the following kinds of information, if known:

(1) The specific event or action to which the records refers;

(2) The unit or program of the Peace Corps which may be responsible for or may have produced the record;

(3) The date of the record or the date or period to which it refers or relates;

(4) The type of record, such as an application, particular form, a contract, or a report;

(5) Personnel of the Peace Corps who may have prepared or have knowledge of the record; of

(6) Citations to newspapers or publications which have referred to the record.

(e) The Peace Corps is not required to create a record or to perform research to satisfy a request.

(f) Any request for a waiver or reduction of fees should be included in the FOIA request, and any such request should indicate the grounds for a waiver or reduction of fees, as set out in § 303.13(f). The Peace Corps shall respond to such request as promptly as possible.

(g) *Format.* The Peace Corps will provide records in the form or format indicated by the requester to the extent such records are readily reproducible in the requested form or format.

(h) *Initial response/delays.* (1) The FOIA Officer, upon request for any records made in accordance with this section, except in the case of a request for OIG records, shall make an initial determination of whether to comply with or deny such request and dispatch such determination to the requester within 20 business days after receipt of such request, except for unusual circumstances, in which case the time limit may be extended for up to 10 business days by written notice to the requester setting forth the reasons for such extension and the date on which a determination is expected to be dispatched.

(2) If the FOIA Officer determines that a request or portion thereof is for OIG records, the FOIA Officer shall promptly refer the request or portion thereof to the OIG and send notice of such referral to the requester. In such case, the OIG FOIA Officer shall make an initial

determination of whether to comply with or deny such request and dispatch such determination to the requester within 20 business days after receipt of such request, except for unusual circumstances, in which case the time limit may be extended for up to 10 business days by written notice to the requester setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. If for any reason, a request for Agency information goes directly to the OIG rather than through the FOIA Officer, the OIG shall provide notice to the FOIA Officer of its receipt of the request. The FOIA Office and the OIG should normally consult with each other whenever they receive requests for the same or similar records.

(3) *Unusual circumstances.* As used in this part, ''unusual circumstances'' are limited to the following, but only to the extent reasonably necessary for the proper processing of the particular request:

(i) The need to search for and collect the requested records from components or locations that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency or organization having a substantial interest in the determination of the request or among two or more components of the Peace Corps having a substantial subject matter interest therein.

(j) If a request is particularly broad or complex so that it cannot be completed within the time periods stated in paragraph (h) of this section, the Peace Corps may ask the requester to narrow the request or agree to an additional delay.

(k) When no determination can be dispatched within the applicable time limit, the FOIA Officer or the OIG FOIA Officer shall inform the requester of the reason for the delay, the date on which a determination may be expected to be dispatched, and the requester's right to treat the delay as a denial and to appeal to the Associate Director for the Office of Management or the Inspector General, in accordance with § 303.12. If no determination has been dispatched by the end of the 20-day period, or the last extension thereof, the requester may deem the request denied, and exercise a right of appeal in accordance with § 303.12. The FOIA Officer or the OIG FOIA Officer may ask the requester to forego an appeal until a determination is made.

(1) After it has been determined that a request will be granted, the responsible official will act with due diligence in providing a prompt response.

(m) *Expedited treatment.* (1) Requests and appeals will be taken out of order and given expedited treatment whenever the requester demonstrates a compelling need. A compelling need means:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged Peace Corps or Federal government activity and the request is made by a person primarily engaged in disseminating information;

(iii) The loss of substantial due process rights; or

(iv) A matter of widespread and exceptional media interest in which there exist possible questions about the Peace Corps' or the Federal government's integrity which affect public confidence.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time. For a prompt determination, a request for expedited processing must be properly addressed and marked and received by the Peace Corps pursuant to paragraph (b) of this section.

(3) A requester who seeks expedited processing must submit a statement demonstrating a compelling need that is certified by the requester to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing.

(4) Within ten business days of its receipt of a request for expedited processing, the FOIA Officer or the OIG FOIA Officer shall decide whether to grant the request and shall notify the requester of the decision. If a request for expedited treatment is granted, the request shall be given priority and shall be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously by the Peace Corps.

(5) Appeals shall be made to the Associate Director for the Office of Management, who shall respond within 10 business days of receipt of the appeal.

§ 303.9 Exemptions for withholding records.

(a) The Peace Corps may withhold a requested record from public disclosure only if the record fits within one or more of the following FOIA exemptions:

(1) Matter specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and is in fact properly classified pursuant to such Executive Order;

(2) Matter which is related solely to the internal personnel rules and practices of the Peace Corps;

(3) Matter which is specifically exempted from disclosure by statute (other than exemptions under FOIA at 5 U.S.C. 552(b)), provided that such statute requires that the matter be withheld from the public in such a manner as to leave no discretion on the issue, or establishes particular criteria for withholding, or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than the agency in litigation with the Peace Corps;

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes including enforcing the Peace Corps Act or any other law, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforement proceedings;

(ii) Would deprive a person or a recipient of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis; and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(b) In the event that one or more of the above exemptions in paragraph (a) of this section apply, any reasonable segregable portion of a record shall be provided to the requester after deletion of the portions that are exempt. The amount of information deleted shall be indicated on the released portion of the record, unless doing so would harm the interest protected by the exemption under which the deletion is made. If technically feasible, the amount of information deleted shall be indicated at the place in the record where the deletion is made. At the discretion of the Peace Corps officials authorized to grant or deny a request for records, it may be possible to provide a requester with:

(1) A summary of information in the exempt portion of a record; or

(2) An oral description of the exempt portion of a record.

(c) No requester shall have a right to insist that any or all of the techniques in paragraph (b) of this section should be employed in order to satisfy a request.

(d) Records that may be exempt from disclosure pursuant to paragraph (a) of this section may be made available at the discretion of the Peace Corps.

(e) *Proprietary information.* (1) It is the policy of the Peace Corps to withhold proprietary information that falls within the protection of paragraph (a)(4) of this section. Proprietary information includes trade secrets, or commercial or financial information obtained from a person, the disclosure of which could reasonably be expected to cause substantial competitive harm.

(2) It is also the policy of the Peace Corps to give submitters of arguably proprietary information an adequate opportunity to provide information to the Peace Corps to establish that the information constitutes protected proprietary information.

(3) A person submitting arguably proprietary information to the Peace Corps will be notified in writing by the Peace Corps if there is a FOIA request for the information, unless:

(i) The Peace Corps has already decided that the information should be withheld;

(ii) The information has been lawfully published or has been officially made available to the public; or

(iii) Disclosure of the information is required by law. The notice shall afford the submitted at least ten business days in which to object to the disclosure of any requested information. Whenever the Peace Corps provides such notice to the submitter, it shall also notify the requester that notice and an opportunity to comment are being provided to the submitter.

(4) A submitter's request for protection for information under paragraph (a)(4) of this section shall:

(i) Specifically identify the exact material claimed to be confidential proprietary information;

(ii) State whether the information identified has ever been released to a person who is not in a confidential relationship with the submitter;

(iii) State the basis for the submitter's belief that the information is not commonly known or readily ascertainable by outside persons; and

(iv) State how release of the information would cause harm to the submitter's competitive position.

(5) The Peace Corps shall consider the submitter's objections and specific grounds for non-disclosure when deciding whether to disclose the information. If the Peace Corps decides to disclose the information, it shall, to the extent permitted by law, provide the submitter at least ten business days notice of its decision before the information is disclosed and a statement of its reasons for not sustaining the objection to disclosure. Whenever the Peace Corps notifies the submitter of its final decision, it shall also notify the requester.

(6) Whenever a FOIA requester brings suit seeking to compel disclosure of proprietary information, the Peace Corps shall promptly notify the submitter.

§ 303.10 Responsibilities and authorities.

(a) *Legal counsel.* The General Counsel shall furnish legal advice to Peace Corps officials and staff as to their obligations under this part and shall take such other actions as may be necessary or appropriate to assure a consistent and equitable application of the provisions of this part by and within the Peace Corps.

(b) *Authority to grant or deny requests.* The FOIA Officer is authorized to grant or deny requests for records, except for OIG records, under this part. The OIG FOIA Officer is authorized to grant or deny requests for OIG records under this part. The FOIA Officer and the OIG FOIA Officer shall consult with each other when a request includes both Peace Corps and OIG records in order to ensure consistency and lack of duplication in processing the request.

(c)(1) *Records received from other agencies.* When the Peace Corps receives a request for a record in its possession that it has received from another agency, it shall determine whether the other agency is better qualified to decide whether the record is exempt from disclosure and, if so, whether it should be disclosed as a matter of discretion. If the Peace Corps determines it is better qualified to process the record in response to the request, then it shall do so. If the Peace Corps determines it is not better qualified to process the request, it shall either:

(i) Consult with the other agency before responding to the request; or

(ii) Refer the responsibility for responding to the request for the record to the other agency (but only if the agency is subject to FOIA). Ordinarily, the agency that originated a record will be presumed to be best able to determine whether to disclose it.

(2) *Law enforcement and classified information.* Notwithstanding paragraph (c)(1) of this section:

(i) Whenever the Peace Corps receives a request for a record containing information that relates to an investigation of a possible violation of law that was originated by another agency, the Peace Corps will either consult with the other agency before responding or refer the responsibility for responding to the request to the other agency; and

(ii) Whenever a request is made for a record containing information that has been classified by another agency or may be appropriate for classification under Executive Order 12958 or any other executive order concerning the classification of records, the Peace Corps shall refer the responsibility for responding to the request regarding that information to the agency that classified the information, should consider the information for classification, or has the primary interest in the information, as appropriate.

(3) *Notice of referral.* Whenever the Peace Corps refers all or any part of the responsibility for responding to a request to another agency, it ordinarily shall notify the requester of the referral and inform the requester of the name of the agency to which the request has been referred and the part of the request that has been referred.

(4) *Effect of consultations and referrals on timing of response.* All consultations and referrals will be handled according to the date the FOIA request was initially received by the Peace Corps.

(5) *Agreements with other agencies.* The Peace Corps may make agreements with other agencies to eliminate the need for consultations or referrals for particular types of records.

§ 303.11 Denials.

(a) A denial of a written request for a record that complies with the requirements of § 303.8 shall be in writing and shall include, as applicable:

(1) A reference to the applicable exemption or exemptions in § 303.9(a) upon which the denial is based;

(2) An explanation of how the exemption applies to the requested records;

(3) A statement explaining why it is deemed unreasonable to provide segregable portions of the record after deleting the exempt portions;

(4) An estimate of the volume of requested matter denied unless providing such estimate would harm the interest protected by the exemption under which the denial is made, if other than the FOIA Officer;

(5) The name and title of the person or persons responsible for denying the request, if other than the FOIA Officer; and

(6) an explanation of the right to appeal the denial and the procedures for submitting an appeal, including the address of the official to whom appeals should be submitted.

(b) A partial deletion of a record made available to a requester shall be deemed a denial of a record for purposes of paragraph (a) of this section. All denials shall be treated as final opinions under § 303.5(b).

§ 303.12 Appeals.

(a) Any person whose written request has been denied is entitled to appeal the denial within 20 business days by writing to the Associate Director of the Office of Management or, in the case of a denial of a request for OIG Records, the Inspector General, at the address given in § 303.5(a). The envelope and letter should be clearly marked ''Freedom of Information Act Appeal.'' An appeal need not be in any particular form, but should adequately identify the denial, if possible, by describing the requested record, identifying the official who issued the denial, and providing the date on which the denial was issued.

(b) The decision of the Associate Director for the Office of Management or the Inspector General on an appeal shall be in writing and, in the event the denial is in whole or in part upheld, shall contain an explanation responsive to the arguments advanced by the requester, the matters described in § 303.11(a)(1) through (4), and the provisions for judicial review of such decision under section 552(a)(4) of the FOIA. The decision shall be dispatched to the requester within 20 business days after receipt of the appeal, unless an additional period is justified pursuant to § 303.8(i) and such period taken together with any earlier extension does not exceed 10 business days. The decision by the Associate Director for the Office of Management or the Inspector General shall constitute the final action of the Peace Corps. All such decisions shall be treated as final opinions under § 303.5(b).

§ 303.13 Fees.

(a) For information routinely provided by the Peace Corps to the public in the normal course of doing business, such as informational or recruiting brochures, no fees will be charged.

(b) For each a commercial use request, fees will be limited to reasonable standard charges for document search, review, and duplication.

(c) For each request for records sought by a representative of the news media or by an educational or non-commercial scientific institution, fees shall be limited to reasonable standard charges for document duplication after the first 100 pages.

(d) For all other requests, fees shall be limited to reasonable standard charges for search time after the first 2 hours and duplication after the first 100 pages.

(e) The schedule of reasonable standard charges for services regarding the production or disclosure of the Peace Corps records is as follows:

(1) Manual search and review of records: Salary rate of employee[s] performing the search and review plus 16%. Charges for search and review time less than a full hour will be billed by quarter-hour segments;

(2) Computer time: Actual costs as incurred;

(3) Duplication by paper copy: 10 cents per page;

(4) Duplication by other methods: Actual costs as incurred;

(5) Certification of true copies: $1.00 each;

(6) Packing and mailing records: Actual costs as incurred; and

(7) Special delivery or express mail: Actual charges as incurred.

(f) *Fee waivers.* Fees will be waived or reduced below the fees established under paragraph (e) of this section if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Peace Corps or Federal government and is not primarily in the commercial interest of the requester.

(1) In order to determine whether disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Federal government, the Peace Corps shall consider the following four criteria:

(i) The subject of the request: Whether the subject of the requested records concerns the operations or activities of the Peace Corps or Federal government;

(ii) The informative value of the information to be disclosed: Whether the disclosure is ''likely to contribute'' to an understanding of Peace Corps or Federal government operations or activities;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to ''public understanding;'' and

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute ''significantly'' to public understanding of Peace Corps or Federal government operations or activities.

(2) In order to determine whether disclosure of the information is not primarily in the commercial interest of the requester, the Peace Corps shall consider the following two factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and if so,

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is ''primarily in the commercial interest of the requester.''

(3) These fee waiver/reduction provisions will be subject to appeal in the same manner as appeals from denial under § 303.12

(g) No fee will be charged under this section unless the cost of routine collection and processing of the fee payment is likely to exceed the average cost of processing a payment.

(h) Requesters must agree to pay all fees charged for services associated with their requests. The Peace Corps will assume that requesters agree to pay all charges for services associated with their requests up to $25 unless otherwise indicated by the requester.

(i) No requester will be required to make an advance payment of any fee unless:

(1) The requester has previously failed to pay a required fee to another federal agency or to Peace Corps within 30 days of the date of billing, in which case an advance deposit of the full amount of the anticipated fee together with the fee then due plus interest accrued may be required. (The request will not be

deemed to have been received by the peace Corps until such payment is made.); or

(2) The Peace Corps determines that an estimated fee will exceed $250, in which case the requester shall be notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. Such notification shall be transmitted as soon as possible, but in any event within 5 business days of receipt of the request by the Peace Corps. The notification shall offer the requester the opportunity to confer with appropriate representatives of the Peace Corps for the purpose of reformulating the request so as to meet the needs of the requester at a reduced cost. The request will not be deemed to have been received by the Peace Corps for purposes of the initial 20-day response period until the requester makes a deposit on the fee in an amount determined by the Peace Corps.

(j) Interest may be charged to those requesters who fail to pay the fees charged. Interest will be assessed on the amount billed, starting on the 31st day following the day on which the billing was sent. The rate charged will be as prescribed in 31 U.S.C. 3717.

(k) The Agency is not required to process a request for a requester who has not paid FOIA fees owed to another Federal agency.

(l) If the Peace Corps reasonably believes that a requester or group of requesters is attempting to break a request into a series of requests for the purpose of evading the assessment of fees, the Peace Corps shall aggregate such requests and charge accordingly. Likewise, the Peace Corps will aggregate multiple requests for documents received from the same requester within 45 business days.

(m) The Peace Corps reserves the right to limit the number of copies of any document that will provided to any one requester or to require that special arrangements for duplication be made in the case of bound volumes or other records representing unusual problems of handling or reproduction.

§ 303.14 Procedures for responding to a subpoena.

(a) *Purpose and scope.* (1) This part sets forth the procedures to be followed in proceedings in which the Peace Corps is not a party, whenever a subpoena, order or other demand (collectively referred to as a ''demand'') of a court or other authority is issued for:

(i) The production or disclosure of any material contained in the files of the Agency;

(ii) The production or disclosure of any information relating to material contained in the files of the Agency;

(iii) The production or disclosure of any information or material acquired by any person while such person was an employee of the Agency as a part of the performance of his official duties or because of his official status, or

(iv) The production of an employee of the Agency for the deposition or an appearance as a witness in a legal action or proceeding.

(2) For purposes of this part, the term ''employee of the Agency'' includes all officers and employees of the Agency appointed by, or subject to the supervision, jurisdiction or control of, the Director of the Agency, including personal services contractors. Also for purposes of this part, records of the Agency do not include records of the Office of Inspector General.

(3) This part is intended to provide instructions regarding the internal operations of the Agency, and is not intended, and does not and may not be relied upon, to create any right or benefit, substantive or procedural, enforceable at law by a party against the Agency.

(4) This part applies to:

(i) State and local court, administrative and legislative proceedings; and

(ii) Federal court and administrative proceedings;

(5) This part does not apply to:

(i) Congressional requests or subpoenas for testimony or documents;

(ii) Employees or former employees making appearances solely in their private capacity in legal or administrative proceedings that do not relate to the Agency (such as cases arising out of traffic accidents or domestic relations); Any question whether the appearance relates solely to the employee's or former employee's private capacity should be referred to the Office of General Counsel.

(6) Nothing in this part otherwise permits disclosure of information by the Agency except as is provided by statue or other applicable law.

(b) *Procedure in the event of a demand for production or disclosure.* (1) No employee or former employee of the Agency shall, in response to a demand of a court or other authority set forth in § 303.14(a) produce any material, disclose any information or appear in any proceeding, described in § 303.14(a) without the approval of the General Counsel or designee.

(2) Whenever an employee or former employee of the Peace Corps receives a demand for the production of material or the disclosure of information described in § 303.14(a) he shall immediately notify and provide a copy of the demand to the General Counsel or designee. The General counsel, or designee, shall be furnished by the party causing the demand to be issued or served a written summary of the information sought, its relevance to the proceeding in connection with which it was served and why the information sought is unavailable by any other means or from any other sources.

(3) The General Counsel, or designee, in consultation with appropriate Agency officials, including the Agency's FOIA Officer, or designee, and in light of the considerations listed in § 303.14(d), will determine whether the person on whom the demand was served should respond to the demand was served should respond to the demand.

(4) To the extent he deems it necessary or appropriate, the General Counsel or designee, may also require from the party causing such demand to be issued or served a plan of all reasonably foreseeable demands, including but not limited to names of all employees and former employees from whom discovery will be sought, areas of inquiry, length of time of proceedings requiring oral testimony and identification of documents to be used or whose production is sought.

(c) *Consideration in determining whether production or disclosure should be made pursuant to a demand.* (1) In deciding whether to make disclosures pursuant to a demand, the General Counsel or designee, may consider, among things:

(i) Whether such disclosure is appropriate under the rules of procedure governing the case or matter in which the demand arose; and

(ii) Whether disclosure is appropriate under the relevant substantive law concerning privilege.

(2) Among the demands in response to which disclosure will not be made are those demands with respect to which any of the following factors exist:

(i) Disclosure would violate a statute or a rule of procedure;

(ii) Disclosure would violate the privacy rights of an individual;

(iii) Disclosure would violate a specific regulation;

(iv) Disclosure would reveal classified information, unless appropriately declassified by the originating agency;

(v) Disclosure would reveal trade secrets or proprietary information without the owner's consent;

(vi) Disclosure would otherwise adversely affect the interests of the United States or the Peace Corps; or

(vii) Disclosure would impair an ongoing Inspector General or Department of Justice investigation.

Dated: June 25, 2003.

Tyler S. Posey,

General Counsel.

[FR Doc. 03–16523 Filed 7–1–03; 8:45 am]

BILLING CODE 6015–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–116914–03]

RIN 1545–BC06

Transfers of Compensatory Options

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the sale or other disposition of compensatory nonstatutory stock options to related persons. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by September 30, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG–116914–03), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC, 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:RU (REG–116914–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *www.irs.gov/regs*.

FOR FURTHER INFORMATION CONTACT: Concerning the temporary regulations, Stephen Tackney (202) 622–6030; concerning submissions of comments and/or requests for a hearing, Guy Traynor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend 26 CFR part 1. The regulations provide that a sale or other disposition of a nonstatutory stock option to a related person will not be treated as a transaction that closes the application of section 83 with respect to the option. The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that these temporary regulations are 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 533(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these 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, these regulations are being submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. The IRS and Treasury Department specifically request comments on the clarity and efficacy of the proposed definition of a related person. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Stephen Tackney of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

§ 1.83–7 [Amended]

2. Section 1.83–7 is amended as follows:

1. Paragraph (a) is amended by adding a sentence at the end.

2. Paragraphs (a)(1) and (a)(2) are added.

3. Paragraph (d) is added.

The additions read as follows:

(a) [The text of proposed § 1.83–7(a) is the same as the text of § 1.83–7T(a) published elsewhere in this issue of the **Federal Register**].

* * * * *

(d) *Effective dates.* This section is applicable to sales or other dispositions of options on or after the publication of final regulations in the **Federal Register**. For dates on or after July 2, 2003, *see* § 1.83–7T(d).

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 03–16787 Filed 7–1–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–139796–02]

RIN 1545–BB10

Section 704(b) and Capital Account Revaluations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the capital account maintenance rules under section 704 of the Internal Revenue Code. These regulations expand the rules regarding a partnership's right to adjust capital accounts to reflect unrealized appreciation and depreciation in the value of partnership assets.

DATES: Written or electronic comments and requests for a public hearing must be received by September 30, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG–139796–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:PA:RU (REG–139796–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC.

Alternatively, taxpayers may submit comments electronically via the Internet by submitting comments directly to the IRS Internet site at *www.irs.gov/regs*.

FOR FURTHER INFORMATION CONTACT: Craig Gerson at (202) 622–3050; concerning submissions, the hearing, and/or placement on the building access list to attend the hearing, Sonya Cruse, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 704(b) of the Internal Revenue Code provides that a partner's distributive share of income, gain, loss, deduction, or credit is determined in accordance with the partner's interest in the partnership if the partnership agreement does not provide as to the partner's distributive shares of these items, or the allocation to a partner of these items under the agreement does not have substantial economic effect. Regulations under section 704 provide extensive rules for determining whether allocations under an agreement have substantial economic effect. One requirement for finding substantial economic effect is that the partnership maintains partners' capital accounts in accordance with certain rules. Compliance with these capital account maintenance rules, and other related rules, provides taxpayers a safe harbor under which the IRS will respect a partnership agreement's allocations.

Under the capital account maintenance rules of § 1.704–1(b)(2)(iv), partnership property is generally reflected on the partnership's books at historic cost, rather than at fair market value. However, newly contributed property is reflected in the capital accounts of the partners at fair market value, rather than the contributing partner's cost; that is, the contributed property is essentially revalued at the time of contribution. § 1.704–1(b)(2)(iv)(*d*)(*1*). In addition, under § 1.704–1(b)(2)(iv)(*f*), a partnership is permitted to, and generally does, revalue its assets to their current fair market values if there is a contribution to the partnership by a new or existing partner as consideration for an interest in the partnership or a distribution from the partnership to a retiring or continuing partner as consideration for an interest in the partnership. Also, a revaluation is permitted under generally accepted industry accounting practices if substantially all of a partnership's property (excluding money) consists of stock, securities, commodities, options, warrants, futures, or similar instruments that are readily tradable on an established securities market.

Commentators have suggested that there are additional situations beyond those described in § 1.704–1(b)(2)(iv)(*f*) where revaluations are useful to properly reflect a partnership's economic arrangements. In particular, several commentators have noted that the section 704 regulations do not specifically permit a revaluation of partnership property in connection with the admission of a service partner because the service partner does not contribute property. Those commentators argue that a revaluation upon the admission of a service partner allows a partnership to allocate the existing partnership capital to the other partners. In this manner, the partnership keeps its capital accounts consistent with an intent to provide the service partner with only a profits interest. See Rev. Proc. 93–27 (1993–2 C.B. 343) and Rev. Proc. 2001–43 (2001–2 C.B. 191).

Explanation of Provisions

1. Revaluations of Property Under Section 704 on Provision of Services

The proposed regulations expand the circumstances under which a partnership is specifically permitted to increase or decrease the capital accounts of the partners to reflect a revaluation of partnership property on the partnership's books. Specifically, the proposed regulations allow revaluations in connection with the grant of an interest in the partnership (other than a *de minimis* interest) on or after the date final regulations are published in the **Federal Register** as consideration for the provision of services to or for the benefit of the partnership by an existing partner acting in a partner capacity, or by a new partner acting in a partner capacity or in anticipation of being a partner.

2. Possible Expansion of Regulations

The IRS and the Treasury Department are considering further increasing the number of situations in which revaluations of partnership property are permitted. One approach under consideration would allow revaluations any time there is more than a *de minimis bona fide* change in the manner in which partners agree to share profits or losses. Comments are requested concerning whether the regulations should adopt this standard or another standard for revaluations.

3. Other Future Guidance

The IRS recently issued proposed regulations on the taxation of noncompensatory partnership options and is currently studying the taxation of compensatory partnership options. This notice of proposed rulemaking concerning revaluations is not intended to provide guidance regarding when a partnership interest is considered to be granted.

Effective Date

The regulations are proposed to apply to the grant of an interest in a partnership (other than a *de minimis* interest) on or after the date final regulations are published in the **Federal Register** as consideration for the provision of services to or for the benefit of the partnership by an existing partner acting in a partner capacity, or by a new partner acting in a partner capacity or in anticipation of being a partner.

Special Analysis

It has been determined that this notice of proposed rulemaking 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, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are timely submitted to the IRS. The IRS and the Treasury Department request comments on the proper scope of the rule allowing revaluations. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Craig Gerson, Office of Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and 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 proposed to be amended in part as follows:

PART 1—INCOME TAXES

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

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

2. Section 1.704–1 is amended as follows:

1. Paragraph (b)(2)(iv)(*f*)(*5*)(*iii*) is redesignated as paragraph (b)(2)(iv)(*f*)(*5*)(*iv*).

2. New paragraph (b)(2)(iv)(*f*)(*5*)(*iii*) is added.

§ 1.704–1 Partner's distributive share.

* * * * *

(b) * * *

(2) * * *

(iv) * * *

(*f*) * * *

(*5*) * * *

(*iii*) In connection with the grant of an interest in the partnership (other than a *de minimis* interest) on or after the date final regulations are published in the **Federal Register** as consideration for the provision of services to or for the benefit of the partnership by an existing partner acting in a partner capacity, or by a new partner acting in a partner capacity or in anticipation of being a partner.

* * * * *

Judith B. Tomaso,

Acting Deputy Commissioner of Internal Revenue.

[FR Doc. 03–16788 Filed 7–1–03; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 4 and 24

[Notice No. 13]

RIN 1512–AC48

Production of Dried Fruit and Honey Wines (2001R–136P)

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) requests comments on two proposed amendments to the regulations relating to the production of dried fruit and honey wines. The first amendment will allow the production of dried fruit wines with an alcohol by volume content of more than 14 percent. The second will lower the minimum starting Brix of 22 degrees to 13 degrees in the production of honey wines. These proposals are the result of two petitions submitted by producers of raisin and honey wines. We also correct a technical error in the wine labeling regulations by raising the maximum limit on alcohol content derived from fermentation from 13 to 14 percent for ameliorated agricultural wines.

DATES: Submit written comments on or before September 2, 2003.

ADDRESSES: You may view copies of the proposed regulations, related documents, and any comments received on this notice by appointment at the ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226.

You may send comments to any of the following addresses—

- Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, PO Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 13);
- (202) 927–8525 (facsimile);
- *nprm@ttb.gov* (e-mail); or
- *http://www.ttb.gov* (online). A comment form is available with the copy of this notice posted on our Web site.

See the Public Participation section of this notice for specific instructions and requirements.

FOR FURTHER INFORMATION CONTACT: Jennifer Berry, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Procedures Division, PO Box 18152, Roanoke, VA 24014; or telephone (540) 344–9333.

SUPPLEMENTARY INFORMATION:

Background

Has Passage of the Homeland Security Act Affected Department of Treasury Rulemaking?

Effective January 24, 2003, the Homeland Security Act of 2002 divided the Bureau of Alcohol, Tobacco and Firearms (ATF) into two new agencies, the Alcohol and Tobacco Tax and Trade Bureau (TTB) in the Department of the Treasury and the Bureau of Alcohol, Tobacco, Firearms, and Explosives in the Department of Justice. Regulation of wine production is the responsibility of the new TTB. References to ATF and TTB in this document reflect the timeframe, before or after January 24, 2003, of the rulemaking process.

What Is TTB's Authority To Regulate the Production of Dried Fruit and Honey Wines?

The Internal Revenue Code (IRC) of 1986 (26 U.S.C. 5387) states that wines made from agricultural products other than the juice of fruit must be made ''in accordance with good commercial practice,'' as prescribed by the Secretary of the Treasury through regulations. We define wines made according to these regulations, including those made from dried fruit and honey, as ''standard agricultural wines.'' The IRC specifies these production limitations:

- You may not add wine spirits to agricultural wines;
- You may not add coloring or flavoring materials to agricultural wines, with the exception of hops to honey wine; and
- You may not blend wines from different agricultural commodities.

Title 27 CFR part 24, Wine, Subpart I—Production of Agricultural Wine, contains regulations under the jurisdiction of TTB that implement these statutory requirements.

What Are the Current Regulatory Requirements for the Production of Dried Fruit and Honey Wines?

Subpart I contains provisions for the production of agricultural wines, including some derived from the IRC's ''good commercial practice'' provision. Sections 24.202 and 24.203 contain provisions specific to dried fruit wine and honey wine, respectively. Section 24.204 contains requirements for all agricultural wines other than dried fruit and honey wines. Among other requirements, all three of these sections prohibit the production of any agricultural wine with an alcohol content of more than 14 percent by volume after complete fermentation or complete fermentation and sweetening. The IRC does not specify this limitation,

which has been in the regulations since 1954. Rather, the limitation derives from the law's ''good commercial practice'' provision.

In addition to the provisions on alcohol content, §§ 24.202, 24.203, and 24.204 also contain limits on starting Brix for agricultural wines. The regulations define Brix as the quantity of dissolved solids in a wine, expressed as grams of sucrose in 100 grams of solution at 60 degrees Fahrenheit, *i.e.*, the percent of sugar by weight. The regulations permit the addition of water, and sugar in the case of § 24.204, during the production of agricultural wines, in order to facilitate fermentation if the density of the fermenting mixture is not reduced below 22 degrees Brix. This limitation, like that on alcohol content discussed above, was placed in the wine regulations in 1954 and is based on ''good commercial practice'' standards and not on a specific statutory prohibition.

Petitions

Dried Fruit Petition

Bruno and George Wines, Inc., in Beaumont, Texas, petitioned us to propose that the regulations at § 24.202, Dried fruit, be amended to allow for the production of a standard dried fruit wine that contains more than 14 percent alcohol by volume. Because of the current prohibition in § 24.202 against dried fruit wines with a higher alcohol content, we now classify such a wine as an ''other than standard'' wine. Mr. Shawn Bruno, the president of Bruno and George, Inc., states that he wishes to produce and market a raisin wine made according to his grandfather's traditional Sicilian recipe. The resulting wine would have an alcohol content greater than 14 percent alcohol by volume. Mr. Bruno points out that, if we lift this prohibition, his wine could be classified as a dessert raisin wine. In fact, the wine labeling regulations at § 4.21(f)(3) allow for agricultural wines with an alcohol content greater than 14 percent but less than 24 percent to be designated as agricultural dessert wines. Mr. Bruno comments that he sees no logical reason for exclusion of his raisin wine from this category.

Honey Wine Petition

Redstone Meadery in Boulder, Colorado, petitioned us to propose that we amend the regulations at § 24.203, Honey wine, to allow for the production of a standard honey wine with a starting Brix below 22 degrees. As discussed above, § 24.203 currently states that water may be added in the production of honey wine to facilitate fermentation, as long as the density of the honey and water mixture is not reduced below 22 degrees Brix. We currently classify honey wines with a lower starting Brix as ''other than standard'' wines. Mr. David Myers of Redstone Meadery states that he wishes to make a lower alcohol honey wine that will require that the starting Brix be below 22 degrees. Mr. Myers argues that, because such a wine would still have honey as its primary fermentable ingredient, we should classify it as honey wine. Mr. Myers suggests the creation of a new category for low-alcohol honey wines, if the minimum starting Brix cannot be lowered. He proposes the names ''light honey wine'' or ''honey wine varietal'' for this new category, which would encompass honey wines with a starting Brix of between 22 degrees and 13.3 degrees, or roughly 7 percent alcohol by volume.

What Was the Result of TTB's Analysis of the Proposals?

Our research into the history of the requirements for agricultural wines reveals that both section 5387 of the IRC and its implementing regulations in §§ 24.202, 24.203, and 24.204 date from 1954. Section 5387 includes the following explanation:

> These wines are not specifically referred to in existing law. This addition to the law enables the setting up by regulations of standards of agricultural wines after experience has shown to what extent provisions of law relating to natural wines should be considered applicable. Uniform limitations cannot be prescribed for all agricultural wines. Limitations consistent with good commercial practices in respect to the production of rice wines could not be prescribed for other wines, such as honey wine, rhubarb wine, etc. (H. Rept. 1337, 83rd Cong., 2nd Sess. (1954), reprinted at 1954 U.S. Code Cong. & Admin. News 3, 4518.)

This explanation shows that the law recognizes that agricultural wines are unique, with production standards that may vary significantly from one type of wine to another. While these standards may be guided by those for natural wine, defined in the law as wines made from sound, ripe grapes or other sound, ripe fruit, they may also vary significantly from natural wine standards. Thus, in 1954, the Internal Revenue Service established regulations that were based on standards of good commercial practice at that time. Because these standards can change over time as a result of technical developments and consumer preferences, we feel it is reasonable to reexamine these regulations in light of current industry practice and consumer understanding of these products.

During our research into these requirements, we were unable to determine the rationale for the alcohol content limit of 14 percent for agricultural wines. The initial implementing regulations in 1954 do not explain why the limitation of 14 percent alcohol content was determined to be a good commercial practice for agricultural wines. *See* 19 FR 7642, Nov. 27, 1954, and 19 FR 9633, Dec. 31, 1954. While the IRC places similar limits on sweetened grape and sweetened fruit and berry wines (*see* 26 U.S.C. 5383(a) and 5384(a)), we feel that it may be unreasonable to apply standards for fruit and berry wines to all agricultural wines, since agricultural products typically have different requirements for fermentation.

Also, as noted by the petitioner, § 4.21(f)(3) permits a dessert wine classification for agricultural wines that are 14 to 24 percent alcohol by volume. Currently, only producers of imported agricultural wines can legally call their products ''dessert agricultural wine.'' Some dessert raisin wines are imported into the United States. Because domestic raisin wine producers must comply with the production provisions in part 24, they cannot take advantage of § 4.21(f)(3) and also label their wines as dessert wines. Changing § 24.202 will put domestic dried fruit wines on an equal footing with imported products. In addition, the importation of these dessert dried fruit wines evidences that the higher alcohol content is a good commercial practice that produces wines that meet consumer preferences. For these reasons, we propose to amend the regulations to allow for the production of dried fruit wines that are greater than 14 percent alcohol by volume.

We were also unable to document a reason for the 22 degrees Brix limitation, but we believe it derives from the limitations placed on grape and fruit wines. Section 5382(b)(1) of the IRC states that the juice or must of grape and fruit wines may not be reduced with water to less than 22 degrees. We believe it may be inappropriate to apply this same standard to all agricultural wines, since source products such as honey, raisins, and dandelions, etc., often contain far less natural water than do grapes and other fruits. Because they do, vintners must add water in order to achieve fermentation. Also, our research into the production of honey wines unearthed references to a category of low-alcohol honey wine called ''hydromel.'' The fact that a recognized category already exists for a lower alcohol honey wine

indicates that such a wine is consistent with good commercial practice.

For these reasons, we propose to lower the minimum Brix from 22 degrees to 13 degrees in 27 CFR 24.203, Honey wine. We also propose to amend this section to make it clear that sugar may be added only after fermentation for the purpose of sweetening. This restriction will ensure that the alcohol in honey wine is derived from honey and not added sugar.

We are not proposing the creation of a separate category for low-alcohol honey wines, as suggested by Redstone Meadery. No separate category exists for grape or fruit wines that are, for example, 7 percent alcohol by volume. We, therefore, see no need to have one for agricultural wines.

Also, the terms proposed by Mr. Myers, ''light honey wine'' and ''honey wine varietal,'' have other connotations when used in labeling wine that could cause consumer confusion. Title 27 CFR 4.21(a)(2) currently allows use of the term ''light'' on labels of grape wines that are less than 14 percent alcohol by volume. This authorization encompasses wines that are not usually considered low-alcohol. Creating a different meaning for ''light'' honey wines could confuse consumers.

In addition, we feel that the consumer associates the word ''varietal'' with grape varieties, not with agricultural products. We will, however, reconsider the creation of a separate category if we receive sufficient comments that favor such a change over the lowering of the minimum Brix.

As noted earlier, we were unable to determine the original reason for the regulatory limits on alcohol content and starting Brix. However, the intent may have been to restrict the quantity of sugar and water additions that would result in alcohol through fermentation. In other words, the regulation writers intended that the alcohol result primarily from the sugar in the agricultural winemaking material, rather than from both sugar and water. This intent would be consistent with the same restriction on natural wines from grapes and from berries. Accordingly, we are particularly interested in comments on whether this increased allowance for sugar and water additions to dried fruit and honey wines is consistent with good commercial practice.

What Technical Error Is TTB Correcting?

While reviewing the regulations relating to agricultural wines, we noted a technical error in § 4.21(f)(1)(i), which states that ameliorated agricultural wines may not have an alcohol content derived from fermentation of more than 13 percent by volume. This 13 percent limit is inconsistent with the IRC's treatment of other types of ameliorated wines. While the IRC does not contain a limit on alcohol content for ameliorated agricultural wines, it gives a 14 percent limit for ameliorated fruit and berry wines. Until corrected by T.D. ATF–458, § 4.21(d)(1)(i) and (e)(1)(i), the standards of identity for citrus and fruit wines, respectively, also contained an incorrect limit of 13 percent. In order to establish consistency for all classes of wine, we propose to amend § 4.21(f)(1)(i) to raise the alcohol content limit on ameliorated agricultural wines to 14 percent. Note that § 4.21(f)(1)(i) addresses only *ameliorated* agricultural wines and does not prohibit the production of nonameliorated agricultural wines that are greater than 14 percent alcohol by volume.

Public Participation

We request comments on these two proposals. We specifically request comments from producers and consumers of dried fruit and honey wines on whether these two proposals conflict with current standards of good commercial practice, and of what constitutes a raisin wine or honey wine. We also request comments regarding the increases of sugar in dried fruit wines and water in honey wines that will be allowed as a result of these revisions.

All comments must include your name and mailing address, reference this notice number, and be legible and written in language generally acceptable for public disclosure.

Although we do not acknowledge receipt, we will consider your comments if we receive them on or before the closing date. We will consider comments received after the closing date if we can. We regard all comments as originals.

What Is a Comment?

To be considered a comment, your submission must relate specifically to this proposed rule. For example, you might be for or against all or part of this proposed rule, or you might express neutrality. We find comments that use reasoning, logic, and, if applicable, good science to explain your position most persuasive in the formation of a final rule.

How Should I Submit Comments?

You may submit comments in any of four ways.

- *By mail:* You may send written comments to TTB at the address listed in the **ADDRESSES** section. We require a legible, written signature.
- *By facsimile:* You may submit comments by facsimile transmission to 202–927–8525. Faxed comments must—

(1) Be on 8.5- by 11-inch paper;

(2) Contain a legible, written signature; and

(3) Be five or less pages long. This limitation assures electronic access to our equipment. We will not accept faxed comments that exceed five pages.

- *By e-mail:* You may e-mail comments to *nprm@ttb.gov.* Comments transmitted by electronic-mail must—

(1) Contain your e-mail address; and

(2) Be legible when printed on 8.5- by 11-inch paper.

- *By online form:* We provide a comment form with the online copy of this proposed rule on our Web site at *http://www.ttb.gov/alcohol/rules/index.htm.* At this site, select ''Send comments via e-mail'' under this notice number.

You may also write to the Administrator to ask for a public hearing. The Administrator reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

What Information Will TTB Disclose About This Notice?

You may see copies of the proposed regulations, related information, and any comments on this notice by appointment at the ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226. You may also get copies at 20 cents per page. Telephone the ATF librarian at (202) 927–7890 if you want to schedule an appointment or request copies of comments.

For your convenience, we will post comments received in response to this notice on the TTB Web site. All comments posted on our Web site will show the names of commenters but not street addresses, telephone numbers, or e-mail addresses. We may also omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in the ATF Reference Library. To access online copies of the comments on this rulemaking, visit *http://www.ttb.gov/alcohol/rules/index.htm* and select ''View Comments'' under this notice number.

Will TTB Keep My Comments Confidential?

We cannot recognize any material in comments as confidential. We will disclose all information on comments and commenters. In addition, we will summarize and discuss pertinent

comments in the preamble to the final rule or to any subsequent notices that are published as a result of the comments. Do not present any material you consider confidential or inappropriate for disclosure.

Regulatory Analyses and Notices

Does the Paperwork Reduction Act Apply to This Proposed Rule?

We propose no requirement to collect information. Therefore, the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply.

Does the Regulatory Flexibility Act (RFA) Apply to This Proposed Rule?

As required by the RFA, we certify that implementation of this proposed regulation would not have a significant economic impact on a substantial number of small business entities. We expect no negative impact on small entities and propose no new reporting, recordkeeping, or other administrative requirements. Accordingly, the RFA does not require a regulatory flexibility analysis.

Does Executive Order 12866 Define This NPRM as a Significant Regulatory Action?

This proposed rule fits none of the criteria of significant regulatory actions, as defined by Executive Order 12866, 58 FR 51735. Therefore, it requires no regulatory assessment.

Drafting Information

The principal author of this document is Jennifer Berry, Regulations and Procedures Division (Roanoke), Alcohol and Tobacco Tax and Trade Bureau.

List of Subjects

27 CFR Part 4

Advertising, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wines.

27 CFR Part 24

Administrative practice and procedure, Claims, Electronic fund transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavoring, Surety bonds, Vinegar, Warehouses, Wine.

Authority and Issuance

For the reasons discussed in the preamble, TTB proposes to amend 27 CFR part 4 as follows:

PART 4—LABELING AND ADVERTISING OF WINE

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

Authority: 27 U.S.C. 205, unless otherwise noted.

2. Section 4.21 is amended by removing the phrase ''13 percent'' where it appears in the proviso in paragraph (f)(1)(i) and adding in its place the phrase ''14 percent''.

PART 24—WINE

3. The authority citation for part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

4. Section 24.202 is amended by revising the last sentence to read as follows:

§ 24.202 Dried fruit.

* * * After complete fermentation or complete fermentation and sweetening, the finished product may not have a total solids content that exceeds 35 degrees Brix. (26 U.S.C. 5387)

5. Section 24.203 is revised to read as follows:

§ 24.203 Honey wine.

In the production of wine from honey, the winemaker may add water to facilitate fermentation, provided the density of the honey and water mixture is not reduced below 13 degrees Brix; hops in quantities not to exceed one pound for each 1,000 pounds of honey; pure, dry sugar or honey for sweetening; and sugar only after fermentation is completed. After complete fermentation or complete fermentation and sweetening, the wine may not have an alcohol content of more than 14 percent by volume or a total solids content exceeding 35 degrees Brix. (26 U.S.C. 5387)

Signed: February 5, 2003.

Arthur J. Libertucci,

Administrator.

Approved: March 11, 2003.

Timothy E. Skud,

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

[FR Doc. 03–16564 Filed 7–1–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[CGD05–03–036]

RIN 1625–AA01

Baltimore Harbor Anchorage Project

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the geographic coordinates and modify the regulated use of the anchorages in Baltimore Harbor, MD. This amendment is necessary to ensure changes in depth as resulting from an Army Corps of Engineers anchorage-deepwater project and that the dimensions for the Baltimore Harbor anchorages are reflected in the Federal regulations and on NOAA charts. This proposed regulated uses modification will accommodate changes to ships' drafts and lengths since the last revision of this regulation in 1968 and will harmonize the anchorage regulation throughout the Fifth Coast Guard District.

DATES: Comments and related material must reach the Coast Guard on or before September 2, 2003.

ADDRESSES: You may mail comments and related material to Commander, Fifth Coast Guard District (oan), 431 Crawford Street, Portsmouth, VA, 23704–5004. The Aids to Navigation and Waterways Management Branch (oan) maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Aids to Navigation and Waterways Management Branch office between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTjg Anne Grabins, Fifth Coast Guard District Aids to Navigation and Waterways Management Branch, (757) 398–6559.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–02–040), indicate the specific section of this document to which each comment

applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Aids to Navigation and Waterways Management Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The U.S. Army Corps of Engineers received Congressional authorization for the Baltimore Harbor Anchorage project in September 2001. The objective of this project is to increase the project depths of Anchorage No. 3 and No. 4 to 42 ft and 35 ft respectively. The original Federal anchorage project for Baltimore Harbor was designed to accommodate cargo ships with maximum drafts of 33 ft and lengths of 550 ft. The dimensions of the anchorages are changing to accommodate the larger ships that call on the Port that routinely approach 1000 ft LOA with drafts of 36 to 38 feet or more. The new coordinates established for Anchorage Nos. 2, 3, and 4, will also accommodate the widening of the Dundalk West Channel, a north/south Federal navigation project located between Anchorage No. 3 and Anchorage No. 4 and widening of the Duldalk East Channel bordering Anchorage No. 4.

Dredging for the Baltimore Harbor Anchorage project commenced in March 2002 and is scheduled for completion in May 2003.

Discussion of Proposed Rule

This proposed rule would amend the Federal regulations to reflect the changes made to Baltimore Harbor as a result of the Army Corps of Engineers' Baltimore Harbor anchorage improvement project currently in progress and scheduled for completion in May 2003. As a result of this improvement project, the dimensions for the anchorages will change. Analyzing the existing anchorage areas and naturally occurring depths, the Army Corps of Engineers identified areas best suited to meet the needs of the vessels that most frequently call on the Port of Baltimore. Upon completion, Anchorage No. 3 will be divided into two sections: Anchorage 3 Lower (2200′ x 2200′ x 42 ft mean lower low water (MLLW)) and Anchorage 3 Upper (1800′ x 1800′ x 42ft MLLW). Anchorage No. 4 will also be modified (1850′ x 1800′ x 35ft MLLW).

The changes made to Upper 3, Lower 3 and Anchorage No. 4 will change the dimensions of Anchorage No. 2, bordering Anchorage No. 3 to the west and north. Anchorage No. 2 will also be expanded to include the area between Lower 3 and the Seagirt Marine Terminal Entrance Channel. Anchorage No. 2 is an unimproved anchorage, and its depths are not maintained by periodic dredging.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DHS is unnecessary. The deepening of anchorage 3 and anchorage 4 within the Port of Baltimore will better accommodate deep draft vessels waiting for an open berth. The Coast Guard does not expect that these new accommodations will adversely impact maritime commerce.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels used for chartering, taxi, ferry services, or any other marine traffic that transit this area of Fort McHenry Channel in Baltimore Harbor. Changes to Anchorage No. 3 and Anchorage No. 4 may change the vessel routing through this area of the harbor. Deepening the anchorages and changing the coordinates for the anchorages would not have a significant economic impact on a substantial number of small entities for the following reasons. Vessel traffic could pass safely around the new anchorage areas. The new coordinates for the anchorages are a change in dimension, the size of which will remain proportional to its current size, and their location will not interfere with commercial traffic.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LTjg Anne Grabins at the address listed (*see* **ADDRESSES**).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a

State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2. of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(f), of the Instruction, from further environmental documentation. This proposed rule would change the size of Anchorage No. 2, Anchorage No. 3 and Anchorage No. 4.

A draft ''Environmental Analysis Check List'' and a draft ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.** Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 110

Anchorage regulations.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. In § 110.158, revise paragraphs (a) and (b) and add paragraphs (c), (d), and (e) to read as follows:

§ 110.158 Baltimore Harbor, MD.

(a) *Anchorage grounds.*

(1) *Anchorage No. 1, general anchorage.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
39°15′13.0″ N	76°34′08.5″ W
39°15′10.5″ N	76°34′12.5″ W
39°14′52.5″ N	76°33′54.0″ W
39°14′48.0″ N	76°33′42.0″ W

DATUM: NAD 83

(2) *Anchorage No. 2, general anchorage.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
39°15′14.8″ N	76°32′59.6″ W
39°14′43.9″ N	76°32′27.0″ W
39°14′37.7″ N	76°32′28.1″ W
39°14′30.9″ N	76°32′33.5″ W
39°14′46.2″ N	76°32′49.7″ W
39°14′43.7″ N	76°32′63.6″ W
39°14′57.5″ N	76°33′08.1″ W
39°14′46.2″ N	76°33′25.8″ W
39°15′01.4″ N	76°33′42.6″ W
39°15′08.5″ N	76°33′37.7″ W
39°15′19.2″ N	76°33′24.5″ W
39°15′19.3″ N	76°33′14.4″ W

DATUM: NAD 83

(3) *Anchorage No. 3, Upper, general anchorage.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
39°14′32.5″ N	76°33′11.3″ W
39°14′46.2″ N	76°33′25.8″ W
39°14′57.5″ N	76°33′08.1″ W
39°14′43.7″ N	76°33′53.6″ W

DATUM: NAD 83

(4) *Anchorage No. 3, Lower, general anchorage.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
39°14′32.5″ N	76°33′11.3″ W
39°14′46.3″ N	76°32′49.7″ W
39°14′30.9″ N	76°32′33.5″ W
39°14′24.4″ N	76°32′39.9″ W
39°14′15.6″ N	76°32′53.6″ W

DATUM: NAD 83

(5) *Anchorage No. 4, general anchorage.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
39°13′52.9″ N	76°32′29.6″ W
39°14′05.9″ N	76°32′43.3″ W
39°14′07.3″ N	76°32′43.1″ W
39°14′17.9″ N	76°32′26.4″ W
39°14′05.3″ N	76°32′13.1″ W
39°14′00.5″ N	76°32′17.8″ W

DATUM: NAD 83

(6) *Anchorage No. 5, general anchorage.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
39°14′07.0″ N	76°32′58.5″ W
39°13′34.0″ N	76°32′24.0″ W
39°13′22.0″ N	76°32′29.0″ W
39°13′21.0″ N	76°33′12.0″ W

DATUM: NAD 83

(7) *Anchorage No. 6, general anchorage.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
39°13′42.5″ N	76°32′20.2″ W

Latitude	*Longitude*
39°13′20.0″ N	76°31′56.0″ W
39°13′34.0″ N	76°31′33.5″ W
39°14′02.0″ N	76°32′02.9″ W
39°13′50.5″ N	76°32′20.0″ W
DATUM: NAD 83	

(8) *Dead ship anchorage.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
39°13′00.4″ N	76°34′10.4″ W
39°13′13.4″ N	76°34′10.8″ W
39°13′13.9″ N	76°34′05.7″ W
39°13′14.8″ N	76°33′29.8″ W
39°13′00.4″ N	76°33′29.9″ W
DATUM: NAD 83	

(b) *Definitions.* As used in this section:

(1) *Dangerous cargo* means ''certain dangerous cargo'' as defined in § 160.203 of this chapter.

(2) *Class 1 (explosive) materials* means Division 1.1, 1.2, 1.3, and 1.4 explosives, as defined in 49 CFR 173.50.

(c) *General regulations.* (1) Except as otherwise provided, this section applies to vessels over 20 meters long and vessels carrying or handling dangerous cargo or Class 1 (explosive) materials while anchored in an anchorage ground described in this section.

(2) Except in cases where unforeseen circumstances create conditions of imminent peril, or with the permission of the Captain of the Port, no vessel shall be anchored in Baltimore Harbor and Patapsco River outside of the anchorage areas established in this section for more than 24 hours. No vessel shall anchor within a tunnel, cable or pipeline area shown on a government chart. No vessel shall be moored, anchored, or tied up to any pier, wharf, or other vessel in such manner as to extend into established channel limits. No vessel shall be positioned so as to obstruct or endanger the passage of any other vessel.

(3) Except in an emergency, a vessel that is likely to sink or otherwise become a menace or obstruction to navigation or the anchoring of other vessels may not occupy an anchorage, unless the vessel obtains a permit from the Captain of the Port.

(4) The Captain of the Port may grant a revocable permit to a vessel for a habitual use of an anchorage. Only the vessel that holds the revocable permit may use the anchorage during the period that the permit is in effect.

(5) Upon notification by the Captain of the Port to shift its position, a vessel at anchor shall get underway and shall move to its new designated position within 2 hours after notification.

(6) The Captain of the Port may prescribe specific conditions for vessels anchoring within the anchorages described in this section, including, but not limited to, the number and location of anchors, scope of chain, readiness of engineering plant and equipment, usage of tugs, and requirements for maintaining communication guards on selected radio frequencies.

(7) No vessel at anchor or at a mooring within an anchorage may transfer oil to or from another vessel unless the vessel has given the Captain of the Port the four hours advance notice required by § 156.118 of this title.

(8) No vessel may anchor in a ''dead ship'' status (propulsion or control unavailable for normal operations) without prior approval of the Captain of the Port.

(d) *Regulations for vessels handling or carrying dangerous cargoes or Class 1 (explosive) materials.* (1) This paragraph applies to every vessel, except a U.S. naval vessel, handling or carrying dangerous cargoes or Class 1 (explosive) materials.

(2) The Captain of the Port may require every person having business aboard a vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials while in an anchorage, other than a member of the crew, to hold either a pass issued by the Captain of the Port or another form of identification prescribed by the Captain of the Port.

(3) Each person having business aboard a vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials while in an anchorage, other than a member of the crew, shall present the pass or other form of identification prescribed by paragraph (d)(2) of this section to any Coast Guard Boarding Officer who requests it.

(4) The Captain of the Port may revoke at any time a pass issued under the authority of paragraph (d)(2) of this section.

(5) Each non-self-propelled vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials must have a tug in attendance at all times while at anchor.

(6) Each vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials while at anchor must display by day a bravo flag in a prominent location and by night a fixed red light.

(e) *Regulations for specific anchorages.* (1) *Anchorage 1.* Except when given permission by the Captain of the Port, a vessel may not anchor in this anchorage for more than 12 hours.

(2) *Anchorage 3.* Except when given permission by the Captain of the Port, a vessel may not anchor in this anchorage for more than 24 hours.

(3) *Anchorage 7.* Dead Ship Anchorage. The primary use of this anchorage is to lay up dead ships. Such use has priority over other uses. A written permit from the Captain of the Port must be obtained prior to the use of this anchorage for more than 72 hours.

Dated: June 23, 2003.

Sally Brice-O'Hara,

Rear Admiral, Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 03–16639 Filed 7–1–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–42–1–6274b; FRL–7521–1]

Approval and Promulgation of Implementation Plans for Texas; Approval of Section 179B Demonstration of Attainment, Carbon Monoxide Motor Vehicle Emissions Budget for Conformity, and Contingency Measure for El Paso Carbon Monoxide Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is approving, through direct final action, a revision to the Texas State Implementation Plan (SIP), submitted to show attainment of the Carbon Monoxide (CO) National Ambient Air Quality Standard (NAAQS) in the El Paso CO nonattainment area, but for emissions emanating from outside of the United States. The EPA is also approving the El Paso area's CO emissions budget, and a CO contingency measure requirement. The State submitted the revisions to satisfy sections 179B and other part D requirements of the Federal Clean Air Act (CAA).

DATES: Written comments on proposed rule are due on or before August 1, 2003.

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, TX 75202–2377.

Texas Commission on Environmental Quality, 12100 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Joe Kordzi of the EPA Region 6 Air Planning Section, at (214) 665–7186 and at the Region 6 address above.

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comment. The EPA has explained its reasons for this approval in the preamble to the direct final rule. If EPA receives no relevant adverse comment, EPA will not take further action on this proposed rule. If EPA receives relevant adverse comment, EPA will withdraw the direct final rule and it will not take effect. The EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

For additional information, see the direct final rule located in the ''Rules and Regulations'' section of this **Federal Register**.

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

Dated: June 20, 2003.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. 03–16580 Filed 7–1–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI 11

Endangered and Threatened Wildlife and Plants; Extension of Final Decision and Re-opening of Comment Period on Proposed Rule to List Beluga Sturgeon (Huso huso) as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; 6-month extension of final decision and re-opening of comment period.

SUMMARY: We, the Fish and Wildlife Service (Service), announce a 6-month extension for a final decision and re-opening of the comment period on the proposed rule to list beluga sturgeon (*Huso huso*) as endangered. This action is required to allow for public review of, and comment on, a report that was recently received by the Division of Scientific Authority that provides significant new information about the status of Caspian Sea beluga sturgeon stocks.

DATES: Comments and information may be submitted through September 2, 2003. A final decision on the proposal will be made by January 31, 2004.

ADDRESSES: Comments, information, and questions should be submitted to the Chief, Division of Scientific Authority; by mail, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 750; Arlington, Virginia 22203; by fax, 703–358–2276; or by e-mail, *ScientificAuthority@fws.gov.* Comments will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at this address.

FOR FURTHER INFORMATION CONTACT: Robert R. Gabel, Chief, Division of Scientific Authority, at the above address (telephone, 703–358–1708).

SUPPLEMENTARY INFORMATION: On December 18, 2000, we received a petition to list the beluga sturgeon (*Huso huso*) as endangered under the Endangered Species Act of 1973. In the **Federal Register** of June 20, 2002 (67 FR 41918), we published concurrent 90-day and 12-month findings on the petition. The 90-day finding stated that the petition presented substantial information indicating the requested action may be warranted. The 12-month finding stated the petitioned action is warranted. Subsequently, in the **Federal Register** of July 31, 2002 (67 FR 49657), we published a proposed rule to list beluga sturgeon as endangered. In the notice, we requested public comments and information by October 29, 2002, and we stated that requests for a public hearing were to be received by September 16, 2002. The Division of Scientific Authority (DSA) received four requests for a public hearing. To accommodate the requests, we published a notice in the **Federal Register** on November 6, 2002 (67 FR 67586), of a public hearing to take place December 5, 2002. With that notice, we extended the public comment period through December 28, 2002, to allow for submission of comments during, and 15 days after, the public hearing.

On March 11, 2003, we received a new document that may have major relevance to this decision: ''Report on Results of Complex Interstate All-Caspian Sea Expedition on the Assess[ment] of Sturgeon Species Stocks'' from the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The report summarizes the 2002 sturgeon stock-assessment survey for the Caspian Sea. The Secretariat's report contains substantial information that must be considered in our deliberations and should be made available to the public.

In an effort to address Caspian Sea sturgeon conservation issues, the so-called ''Paris agreement'' was developed during the 45th meeting of the CITES Standing Committee (Paris, June 2001). An important provision of the agreement was implementation of annual Caspian Sea sturgeon stock-assessment surveys that were to include mandatory reports. The report submitted by the CITES Secretariat contains the results of the 2002 sturgeon stock-assessment survey. All Caspian Sea range nations (except the Islamic Republic of Iran) participated in the 2002 sturgeon stock-assessment survey. Our review of the 2002 survey report indicates that survey parameters have been substantially broadened and the scope of data collection efforts has improved considerably since completion of the initial survey mandated by the Paris agreement in 2001. The current report provides new information regarding changes in beluga sturgeon feeding habits, expanded toxicological studies, and increased stock abundance estimates that were extrapolated from the most recent raw data.

To consider this new information, and any comments thereon, the Service has decided to extend the publication of a final rule from July 31, 2003, to January 31, 2004. We will also re-open the comment period until [the date specified above in **DATES**], and will provide copies of the indicated document upon request. All comments and information received will be considered in making a final decision on the proposal to list beluga sturgeon as endangered, and will be included in the administrative record.

Authority: Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: June 11, 2003.

Marshall P. Jones, Jr.,

Deputy Director, Fish and Wildlife Service.

[FR Doc. 03–16724 Filed 7–1–03; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 68, No. 127
Wednesday, July 2, 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

Forest Service

Colville Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Colville Resource Advisory Committee will meet on Thursday, July 17, 2003 at the Spokane Community College, Colville Campus, Monumental Room, 985 South Elm Street, Colville, Washington. The meeting will begin at 9 a.m. and conclude at 4 p.m. Agenda items include: (1) RAC review and recommendations of projects for Fiscal Year 2004 Title II Projects to Designated Federal Official and (2) public forum.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Alan Quan, Designated Federal Official or to Cynthia Reichelt, Public Affairs Officer, Colville National Forest, 765 S. Main, Colville, Washington 99114, (509) 684–7000.

Dated: June 25, 2003.

Alan Quan,

Designated Federal Official.

[FR Doc. 03–16675 Filed 7–1–03; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arizona Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Arizona State Advisory Committee in the Western Region will convene at 12 p.m. (PDT) and adjourn at 1 p.m., Wednesday, July 9, 2003. The purpose of the conference call is to discuss a resolution concerning the Patriot Act.

This conference call is available to the public through the following call-in number: 1–800–659–8304, access code number 17582212. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the provided call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Philip Montez of the Western Regional Office, (213) 894–3437, by 3 p.m. on Tuesday, July 8, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 20, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–16722 Filed 7–1–03; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Colorado Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Colorado State Advisory Committee will convene at 9 a.m. (MDT) and adjourn at 10 a.m. (MDT), Tuesday, July 22, 2003. The purpose of the conference call is to discuss the status of projects and follow-up activities for the committee's report, The Grand Junction Report: Issues of Equality in the Mesa Valley.

This conference call is available to the public through the following call-in number: 1–800–659–1081; access code: 17582292. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Malee Craft, Rocky Mountain Regional Office, (303) 866–1040 (TDD 303–866–1049), by 3 p.m. (MDT) on Friday, July 18, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 20, 2003.

Ivy L. Davis,

Chief, Regional Program Coordination Unit.

[FR Doc. 03–16721 Filed 7–1–03; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: Generic Request for Program Evaluation Data Collections.

Form Number(s): None.

OMB Approval Number: 0693–0033.

Type of Review: Regular submission.

Burden Hours: 3,022.

Number of Respondents: 4,000.

Average Hours Per Response: Varied dependent upon data collection. However, average time is expected to be 30 minutes.

Needs and Uses: NIST proposes to conduct surveys designed to evaluate current programs from a customer prospective. The surveys will offer customers the opportunity to express views on the programs they are asked to evaluate. Use of these types of data collections will present NIST with a measure of the economic impact of products, services, or assistance provided by NIST and will give NIST customers a mechanism to suggest how

programs may be improved and then to provide valuable strategic input on enhancing the future direction of NIST programs.

Affected Public: Business or for-profit organizations, not-for-profit institutions, and individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Jacqueline Zeiher, (202) 395–4638.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: June 25, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–16636 Filed 7–1–03; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: Generic Clearance for Usability Data Collections.

Form Number(s): None.

OMB Approval Number: None.

Type of Review: Regular submission.

Burden Hours: 2,000.

Number of Respondents: 2,000.

Average Hours Per Response: 1 hour.

Needs and Uses: NIST will conduct information collections of usability data involving usage of technological devices (such as web sites, handheld computers, cell phones, and robots). This information will enable NIST researchers to study human-computer interactions and help establish guidelines and standards for more effective and efficient interactions.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Jacqueline Zeiher, (202) 395–4638.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: June 25, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–16637 Filed 7–1–03; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Office of the Secretary

[Docket Number: 030624160–3160–01]

Posting of the FY 2002 Alternative Fuel Vehicle Report on the Department of Commerce Website

AGENCY: Department of Commerce.

ACTION: Notice.

SUMMARY: This notice announces the availability of the Department of Commerce's (DoC) alternative fuel vehicle (AFV) report for FY 2002 as required by the Energy Policy Act of 1992 (EPAct).

ADDRESSES: Interested persons can obtain copies of the AFV reports from Mauryce Johnson at U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230 or on the internet at *http://www.osec.doc.gov/oas/fleet.htm.*

FOR FURTHER INFORMATION CONTACT: Mauryce Johnson, 202–482–8246.

SUPPLEMENTARY INFORMATION: The Energy Policy Act of 1992 (EPAct) requires that AFV reports for FY 1999 and beyond be made public, placing them on a publicly available Web site and publishing notice of their availability, including the Web site address, in the **Federal Register**. The purpose of this notice is to comply with the EPAct requirements.

Earthjustice, on behalf of the Center for Biological Diversity, the Bluewater Network, and the Sierra Club, brought suit against eighteen Federal agencies, including DoC, in the United States District Court for the Northern District of California, alleging noncompliance with EPAct's provisions regarding Federal fleets. On July 26, 2002, the court ordered that the named Federal agencies prepare and submit overdue reports to Congress outlining their AFV acquisitions for FY 1999, FY 2000, and FY 2001.

The court ordered each of the eighteen Federal agencies to post their reports on their website and individually publish the availability of their reports in the **Federal Register** no later than January 31, 2003. DoC complied with the court order (67 FR 77743.)

On April 24, 2003, the Center for Biological Diversity filed a motion for contempt alleging that the named agencies including DoC had not complied with all EPAct requirements. Negotiations between the plaintiffs and defendants resulted in a joint stipulation withdrawing their motion for contempt if the named Federal agencies post their AFV Compliance Reports for Fiscal Year 2002 on their respective websites and publish the availability of the report in the **Federal Register** no later than June 30, 2003. The AFV reports must contain a section on compliance with EPAct.

Authority: Pub. L. 102–486, Title III, Sec. 310, Oct. 24, 1992, 106 Stat. 2874.

Denise L. Wells,

Acting Director for Administrative Services.

[FR Doc. 03–16649 Filed 7–1–03; 8:45 am]

BILLING CODE 3510–03–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 32–2003]

Foreign-Trade Zone 52—Suffolk County, NY, Application for Subzone Status, Festo Corporation Facilities (Pneumatic Industrial Automation Components), Hauppauge, NY

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Suffolk County, New York, grantee of FTZ 52, requesting special-purpose subzone status for the pneumatic industrial automation components manufacturing facilities of Festo Corporation (Festo) (a subsidiary of Festo AG, of Germany), located in Hauppauge, New York. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR

part 400). It was formally filed on June 23, 2003.

The proposed subzone would include Festo's two manufacturing facilities located in Suffolk County, Long Island: *Site 1* (8 acres/99,000 sq. ft.)—located at 395 Moreland Road, Hauppauge, New York; and, *Site 2* (5 acres/53,000 sq. ft.)—located at 430 Wireless Boulevard, Hauppauge, about one quarter of a mile to the east of Site 1. The facilities (200 employees) are used to produce pneumatic industrial automation components, including pneumatic cylinders, pneumatic valves and valve manifolds, and pneumatic and electronic integrated control systems (HTSUS 8412.31, 8481.20, 8537.10, 8428.90), and to distribute similar imported components for export and the U.S. market. The manufacturing process at the facilities involves machining, assembly, and testing of up to 130,000 units annually. Components purchased from abroad (about 40% of finished component value) used in manufacturing include: Greases, plastic gaskets/profiles/tubes/rolls/sheet/boxes, belts, rubber tubes and o-rings, packaging material, casters, base metal mountings, flex tubing, clasps, hydraulic engines, pumps, air compressors, wooden pins/dowels, stainless and alloy steel products (must be admitted under privileged foreign status (19 CFR 146.41)), fasteners, springs, washers, articles of aluminum, air dryers and purifiers, sprayers and related parts, pneumatic and hydraulic valves, regulators, ballcocks, bearings, transmissions, transmission/crankshafts, flanges, gears, clutches, couplings, chains, sprockets, electrical connectors, motors, generators, transformers, converters, magnets, lithium batteries, capacitors, printed circuit boards, fuses, relays, switches, lampholders/sockets, panel/distribution boards, controllers, circuit breakers, diodes, conductors, fiber optic cable, and liquid meters (2003 duty rate range: Free—24%).

FTZ procedures would exempt Festo from Customs duty payments on the foreign component inputs used in export production. On its domestic sales and exports to NAFTA markets, the company would be able to choose the duty rate that applies to finished industrial automation components (free—2.7%) for the foreign-sourced inputs noted above. Festo would be able to defer Customs duty payments on the foreign-origin finished industrial automation components that would be admitted to the proposed subzone for U.S. distribution. Duties would be deferred or reduced on foreign production equipment admitted to the proposed subzone until which time it becomes operational. The application indicates that subzone status would help improve the facilities' international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the following addresses:

1. *Submissions via Express/Package Delivery Services:* Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or,

2. *Submissions via the U.S. Postal Service:* Foreign-Trade Zones Board, U.S. Department of Commerce, FCB–4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is September 2, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 15, 2003).

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address No.1 listed above and at the U.S. Department of Commerce Export Assistance Center, 40th Floor, 20 Exchange Place, New York, NY 10005.

Dated: June 24, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–16671 Filed 7–1–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Dockets 39–2002, 40–2002, 41–2002, 42–2002, 43–2002, 44–2002, 45–2002, 46–2002, 47–2002, 48–2002]

Withdrawal of Applications for Subzone Status for Flint Ink North America Corporation Plants

Notice is hereby given of the withdrawal of the applications requesting special-purpose subzone status for the ten Flint Ink North America Corporation plants. The applications were filed on October 7, 2002 (66 FR 64088–64096, 10/17/02).

The withdrawal was requested because of changed circumstances, and the cases have been closed without prejudice.

Dated: June 25, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–16672 Filed 7–1–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Technical Advisory Committee will meet on July 17, 2003, 10:30 a.m., Herbert C. Hoover Building, Room 3407, 14th Street between Constitution & Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Industry and Security with respect to technical questions that affect the level of export controls applicable to materials and related technology.

Agenda

Public Session

1. Opening remarks and introductions.

2. Presentation of papers and comments by the public.

3. Review and discussion of proposals for addition of the following precursor chemicals to the control list:

- Methylphosphonic acid CAS #993–13–5.
- Diethyl methylphosphonate CAS #683–08–9.
- N, N-Dimethylamino phosphoryldichloride DAS #677–43–0.
- Tri-isopropylphosphite CAS #116–17–6.
- Ethyldiethanolamine CAS #139–87–7.
- O,O-Diethyl phosphorodithioate CAS #2465–65–8.
- Sodium hexafluorosilicate CAS #16893–85–9.
- Potassium hexafluorosilicate CAS #16871–90–2.

4. Presentation and discussion of a proposed liberalization of export controls applicable to pharmaceutical preparations of controlled toxins.

5. Review and discussion of proposals to add CWC Schedule 2A and Schedule 3A chemicals to the AG common control lists. The Schedule 2A chemicals are amiton (CAS #78–53–5), PFIB (CAS #382–21–8), and BZ (CAS #6581–06–2). The Schedule 3A chemicals are phosgene (CAS #75–44–5), cyanogen chloride (CAS #506–77–4), hydrogen cyanide (CAS #74–90–8), and chloropicrin (CAS #76–06–2).

Closed Session

6. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the materials should be forwarded prior to the meeting to the address below: Ms. Lee Ann Carpenter, OSIES/EA/BIS MS: 3876, U.S. Department of Commerce, 14 St. & Constitution Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 6, 2002, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3) of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. For more information, call Lee Ann Carpenter at (202) 482–2583.

Dated: June 26, 2003.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 03–16634 Filed 7–1–03; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Information Collection; Comment Request; U.S. Government Trade Event Information Request

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (2) (A)).

DATES: Written comments must be submitted on or before September 2, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th & Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to Stephen Madden, International Trade Administration, Advocacy Center, (202) 482–3896 or *Stephen_Madden@ita.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The International Trade Administration's Advocacy Center marshals federal resources to assist U.S. firms competing for foreign government procurements worldwide. The Advocacy Center is under the umbrella of the Trade Promotion Coordination Committee (TPCC), which is chaired by the Secretary of Commerce and includes 19 federal agencies involved in export promotion. The mission of the Advocacy Center is to promote U.S. exports and create U.S. jobs and coordinate U.S. Government (USG) advocacy among the TPCC. The purpose of the questionnaire is to collect the necessary information to make an evaluation as to whether a firm qualifies for senior-level USG support, in the form of attendance at an event including witnessing a commercial agreement signing. The event could be a company sponsored activity or a foreign or USG sponsored event to highlight a commercial trade success for more than one firm. Without this information we will be unable to determine if a U.S. firm is eligible for USG support for the firm's role in the event.

II. Method of Collection

Form ITA–4136P is sent to U.S. firms that request USG advocacy assistance.

III. Data

OMB Number: 0625–0238.

Form Number: ITA–4136P.

Type of Review: Regular submission.

Affected Public: Business or other-for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Time Per Response: 1 hour.

Estimated Total Annual Burden Hours: 50.

Estimated Total Annual Costs: $1,750.

IV. Request for Comments

Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 25, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–16638 Filed 7–1–03; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 (2002) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review: Not later than the last day of July 2003, interested parties may request administrative review of the following orders, findings, or suspended

investigations, with anniversary dates in July for the following periods:

	Period
Antidumping Duty Proceedings	
Belarus: Solid Urea, A–822–801	7/1/02–6/30/03
Brazil: Industrial Nitrocellulose, A–351–804	7/1/02–6/30/03
Silicon Metal, A–351–806	7/1/02–6/30/03
Chile: Fresh Atlantic Salmon, A–337–803	7/1/02–6/30/03
IQF Red Raspberries, A–337–806	12/31/01–6/30/03
Estonia: Solid Urea, A–447–801	7/1/02–6/30/03
France: Stainless Steel Sheet and Strip in Coils, A–427–814	7/1/02–6/30/03
Germany: Industrial Nitrocellulose, A–428–803	7/1/02–6/30/03
Stainless Steel Sheet and Strip in Coils, A–428–825	7/1/02–6/30/03
India: Polyethylene Terephthalate (Pet) Film, A–533–824	12/21/01–6/30/03
Iran: In-Shell Pistachio Nuts, A–507–502	7/1/02–6/30/03
Italy: Certain Pasta, A–475–818	7/1/02–6/30/03
Stainless Steel Sheet and Strip in Coils, A–475–824	7/1/02–6/30/03
Japan: Cast Iron Pipe Fittings, A–588–605	7/1/02–6/30/03
Clad Steel Plate, A–588–838	7/1/02–6/30/03
Industrial Nitrocellulose, A–588–812	7/1/02–6/30/03
Stainless Steel Sheet and Strip in Coils, A–588–845	7/1/02–6/30/03
Lithuania: Solid Urea, A–451–801	7/1/02–6/30/03
Mexico: Stainless Steel Sheet and Strip in Coils, A–201–822	7/1/02–6/30/03
Republic of Korea: Industrial Nitrocellulose, A–580–805	7/1/02–6/30/03
Stainless Steel Sheet and Strip in Coils, A–580–834	7/1/02–6/30/03
Romania: Solid Urea, A–485–601	7/1/02–6/30/03
Russia: Ferrovanadium and Nitrided Vanadium, A–821–807	7/1/02–6/30/03
Solid Urea, A–821–801	7/1/02–6/30/03
Tajikistan: Solid Urea, A–842–801	7/1/02–6/30/03
Taiwan: Stainless Steel Sheet and Strip in Coils, A–583–831	7/1/02–6/30/03
Thailand: Butt-Weld Pipe Fittings, A–549–807	7/1/02–6/30/03
Canned Pineapple, A–549–813	7/1/02–6/30/03
Furfuryl Alcohol, A–549–812	7/1/02–6/30/03
The People's Republic of China:	
Bulk Aspirin, A–570–853	7/1/02–6/30/03
Carbon Steel Butt-Weld Pipe Fittings, A–570–814	7/1/02–6/30/03
Industrial Nitrocellulose, A–570–802	7/1/02–6/30/03
Persulfates, A–570–847	7/1/02–6/30/03
Sebacic Acid, A–570–825	7/1/02–6/30/03
The United Kingdom: Industrial Nitrocellulose, A–412–803	7/1/02–6/30/03
Stainless Steel Sheet and Strip in Coils, A–412–818	7/1/02–6/30/03
Turkmenistan: Solid Urea, A–843–801	7/1/02–6/30/03
Turkey: Certain Pasta, A–489–805	7/1/02–6/30/03
Ukraine: Solid Urea, A–823–801	7/1/02–6/30/03
Uzbekistan: Solid Urea, A–844–801	7/1/02–6/30/03
Countervailing Duty Proceedings	
European Economic Community: Sugar, C–408–046	1/1/02–12/31/02
India: Polyethylene Terephthalate (Pet) Film, C–533–825	1/1/02–12/31/02
Italy: Certain Pasta, C–475–819	1/1/02–12/31/02
Turkey: Certain Pasta, C–489–806	1/1/02–12/31/02
Suspension Agreements	
Brazil: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products, C–351–829	1/1/02–12/31/02
Russia: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products, A–821–809	1/1/02–12/31/02
Ammonium Nitrate [1], A–821–811	1/1/02–12/31/02

[1] This case is a suspension agreement. It was inadverently listed as an antidumping duty order in the opportunity notice published on June 2, 2003 (68 FR 32727).

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 69 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this

clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. See also the Import Administration Web site at *http://www.ia.ita.doc.gov.*

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of July 2003. If the Department does not receive, by the last day of July 2003, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: June 26, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Group II for Import Administration.

[FR Doc. 03–16730 Filed 7–1–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–836]

Notice of Initiation of Antidumping Duty Investigation: Certain Colored Synthetic Organic Oleoresinous Pigment Dispersions from India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of Antidumping Duty Investigation.

EFFECTIVE DATE: July 2, 2003.

FOR FURTHER INFORMATION CONTACT: Katherine Johnson at (202) 482–4929 or Rebecca Trainor at (202) 482–4007, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Initiation of Investigation

The Petition

On June 5, 2003, the Department of Commerce (''the Department'') received a petition filed in proper form by Apollo Colors Inc., General Press Colors, Ltd., Magruder Color Company, Inc., and Sun Chemical Corporation (collectively, ''the petitioners''). The Department received petition supplements on June 16, 18 and 20, 2003.

In accordance with section 732(b)(1) of the Tariff Act of 1930 (''the Act''), as amended, the petitioners allege that imports of certain colored synthetic organic oleoresinous pigment dispersions (''colored pigment dispersions'') from India are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that imports from India are materially injuring, or are threatening to materially injure, an industry in the United States.

The Department finds that the petitioners filed this petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and they have demonstrated sufficient industry support with respect to the antidumping investigation that they are requesting the Department to initiate. See infra, ''Determination of Industry Support for the Petition.''

Scope of Investigation

The products covered by this investigation are colored synthetic organic pigment dispersions containing pigments classified in either the Azo or Phthalocyanine chemical classes that have been dispersed in an oleoresinous varnish comprised of various combinations of solvents, oils and resins. The subject pigment dispersions are commonly known as ''flush'' or ''flushed color,'' but the base form of the subject pigment dispersions is also included in the scope of this investigation. The subject pigment dispersions are a thick putty or paste that contain by weight typically 20 percent or more pigment dispersed in the varnish, and are used primarily for the manufacture of letterpress and lithographic printing inks. The presence of additives, such as surfactants, antioxidants, wetting agents, and driers, in the subject pigment dispersions does not exclude them from the scope of this investigation.

Excluded from the scope of this investigation are dry powder pigments and pigment press cakes, as well as water and flammable solvent based colored pigment dispersions, which typically are used in manufacturing liquid or fluid inks. Also excluded is Yellow 75, which is typically used to make the yellow paint to line roads.

The merchandise subject to this investigation is classifiable under subheadings 3204.17.6020 (Pigment Blue 15:4), 3204.17.6085 (Pigments Red 48:1, Red 48:2, Red 48:3, and Yellow 174), 3204.17.9005 (Pigment Blue 15:3), 3204.17.9010 (Pigment Green 7), 3204.17.9015 (Pigment Green 36), 3204.17.9020 (Pigment Red 57:1), 3204.17.9045 (Pigment Yellow 12), 3204.17.9050 (Pigment Yellow 13), 3204.17.9055 (Pigment Yellow 74), and 3204.17.9086[1] (Pigments Red 22, Red 48:4, Red 49:1, Red 49:2, Red 52:1, Red 53:1, Yellow 14, and Yellow 83) of the Harmonized Tariff Schedule of the United States (''HTS''). Although the HTS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

As discussed in the preamble to the Department's regulations (*Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 calendar days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Period of Investigation

The anticipated period of investigation is April 1, 2002, through March 31, 2003.

[1] Prior to July 2002, this number was 3204.17.9085.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[2]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

With regard to the definition of domestic like product, the petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information presented by the petitioners, we have determined that there is a single domestic like product, colored pigment dispersions, which is defined in the ''Scope of Investigation'' section above, and we have analyzed industry support in terms of this domestic like product.

In their initial petition and subsequent submissions, the petitioners state that they comprise over 50 percent of U.S. colored pigment dispersions production. The petition identifies nine additional U.S. companies engaged in the production of colored pigment dispersions, none of which have taken a position on (either for or against) the petition. Through data provided by the petitioners and our own independent research, we have determined that the colored pigment dispersions production of these nine companies is not high enough to place the petitioners' industry support in jeopardy. Based on all available information, we agree that the petitioners comprise over 50 percent of all domestic colored pigment dispersions production.

Our review of the data provided in the petition and other information readily available to the Department indicates that the petitioners have established industry support representing over 50 percent of total production of the domestic like product, requiring no further action by the Department pursuant to section 732(c)(4)(D) of the Act. In addition, the Department received no opposition to the petition from domestic producers of the like product. Therefore, the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(I) of the Act are met. Furthermore, the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Thus, the requirements of section 732(c)(4)(A)(ii) of the Act also are met. Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. For more information on our analysis and the data upon which we relied, see Import Administration AD/CVD Enforcement Initiation Checklist (''Initiation Checklist''), Industry Support section and Attachment II, dated June 25, 2003, on file in the Central Records Unit of the main Department of Commerce building.

Constructed Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate this investigation. The sources of data for the deductions and adjustments relating to U.S. price, constructed value (''CV''), and factors of production are discussed in greater detail in the Initiation Checklist. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determination, we may re-examine the information and revise the margin calculations, if appropriate.

Constructed Export Price

The petitioners alleged that the subject colored pigment dispersions produced in India by Hindustan Inks and Resins Ltd. (''Hindustan'') (*i.e.*, the largest Indian producer named in the petition) were sold in the United States through its affiliate Micro Inks. Therefore, the petitioners based U.S. price on constructed export price (''CEP''). According to the data provided by the petitioners, in the United States Micro Inks sells the subject colored pigment dispersions imported from Hindustan in the flush form as imported and as further manufactured into printing ink. The petitioners based CEP prices for colored pigment dispersions sold as imported on invoice prices adjusted for movement expenses, indirect selling expenses, and CEP profit. The CEP prices for further manufactured colored pigment dispersions were based on Micro Inks' listed prices for printing ink adjusted for movement expenses, indirect selling expenses, CEP profit and further manufacturing costs. For margin calculation purposes, we excluded one of the three prices for the sale of flush colored pigment dispersions because we were unable to definitively determine

[2] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (Ct. Int'l Trade 2001), *citing Algoma Steel Corp. Ltd.* v. *United States,* 688 F. Supp. 639, 642–44 (Ct. Int'l Trade 1988) (''the ITC does not look behind ITA's determination, but accepts ITA's determination as to which merchandise is in the class of merchandise sold at LTFV'').

from the invoice if the sale was to a U.S. customer.

Normal Value

The petitioners alleged that neither India nor any third country constitutes a viable market on which to base normal value (''NV''). Therefore, the petitioners based NV on CV, using the factors of production of one of the petitioners, but incorporating values derived largely from publicly available Indian data. Specifically, the petitioners used the U.S. producer's own consumption rates for raw materials, direct labor, electricity, natural gas and water, and applied either publicly available Indian prices or the U.S. producer's own costs. For certain raw materials and electricity, natural gas and water, the petitioners relied upon average market prices obtained from publically available sources. To adjust the U.S. producer's costs associated with direct labor, the petitioners relied upon the Indian labor rate found on the Import Administration website. To calculate overhead, selling, general and administrative expense, and financial expense, the petitioners relied upon amounts reported in the fiscal year 2002 financial statements of Hindustan. The petitioners included in CV an amount for profit which was based on the profit from Hindustan's fiscal year 2002 financial statements. The petitioners converted NV into U.S. dollars using the exchange rates posted on the Department's website.

The estimated dumping margins in the petition for flush form based on a comparison between CEP and CV range from 138 percent to 677 percent.[3] The estimated dumping margins in the petition for further manufactured colored pigment dispersions based on a comparison between CEP and CV range from 189 percent to 685 percent.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of certain colored synthetic organic oleoresinous pigment dispersions from India are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of imports from India of the subject merchandise sold at less than NV.

[3] The margins associated with the excluded invoice were not included in this range. *See* ''Constructed Export Price'' section above.

The petitioners contend that the industry's injured condition is evident in the declining trends in net operating profits, net sales volumes, profit-to-sales ratios, and production employment. The allegations of injury and causation are supported by relevant evidence including U.S. import data, lost sales, and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. See the Initiation Checklist.

Initiation of Antidumping Investigation

Based upon our examination of the petition on certain colored synthetic organic oleoresinous pigment dispersions from India, we have found that it meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of certain colored synthetic organic oleoresinous pigment dispersions from India are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended pursuant to section 733(b)(1)(A) of the Act, we will make our preliminary determination no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the Government of India. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as provided for under 19 CFR 351.203(C)(2).

ITC Notification

We have notified the ITC of our initiation as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine no later than July 21, 2003, whether there is a reasonable indication that imports of Certain Colored Synthetic Organic Oleoresinous Pigment Dispersions from India are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigation being terminated, otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: June 25, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–16669 Filed 7–1–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588–810]

Mechanical Transfer Presses From Japan: Final Results of Antidumping Duty Administrative Review.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 7, 2003, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on mechanical transfer presses (MTPs) from Japan (68 FR 11039). This review covers shipments of this merchandise to the United States during the period of February 1, 2001 through January 31, 2002.

We gave interested parties an opportunity to comment on our preliminary results. We received a letter from the respondent stating that it had no comments. We received no other comments.

EFFECTIVE DATE: July 2, 2003.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith or Doug Campau, Office of Antidumping/Countervailing Duty Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–5255 or (202) 482–1395, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 2003, the Department published the preliminary results of its administrative review of the antidumping duty order on MTPs from Japan. *See Mechanical Transfer Presses from Japan: Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 11039 (March 7, 2003). In the *Preliminary Results*, we found that U.S. sales were not made below normal value by the respondent. We gave interested parties an opportunity to comment on our preliminary results. We received a letter from the respondent stating it had no comments. The Department received no other comments and no requests for a hearing. The

Department has now completed this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Antidumping Duty Order

Imports covered by this antidumping duty order include mechanical transfer presses, currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 8462.10.0035, 8466.94.6540 and 8466.94.8540 and formerly classifiable as 8462.99.8035, 8462.21.8085, and 8466.94.5040. The HTSUS subheadings are provided for convenience and Customs purposes only. The written description of the scope of this order is dispositive. The term ''mechanical transfer presses'' refers to automatic metal-forming machine tools with multiple die stations in which the work piece is moved from station to station by a transfer mechanism designed as an integral part of the press and synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be imported assembled or unassembled.

The Department published in the **Federal Register** several notices of scope rulings with respect to MTPs from Japan, determining that (1) spare and replacement parts are outside the scope of the order (*see Notice of Scope Rulings*, 57 FR 19602 (May 7, 1992)); (2) a destack feeder designed to be used with a mechanical transfer press is an accessory and, therefore, is not within the scope of the order (*see Notice of Scope Rulings*, 57 FR 32973 (July 24, 1992)); (3) the FMX cold forging press is within the scope of the order (*see Notice of Scope Rulings*, 59 FR 8910 (February 24, 1994)); and (4) certain mechanical transfer press parts exported from Japan are outside the scope of the order (*see Notice of Scope Rulings*, 62 FR 9176 (February 28, 1997).

Final Results of Review

Since the Department received no comments on the *Preliminary Results*, we continue to find that a margin of zero percent exists for the period February 1, 2001 through January 31, 2002 for Hitachi Zosen Corporation/Hitachi Zosen Fukui Corporation (HZC/H&F).[1] The Department will issue assessment instructions directly to the U.S. Bureau of Customs and Border Protection (Customs) within 15 days of publication of these final results of review.

Cash Deposit Requirements

The following deposit requirements shall be effective upon publication of this notice of final results of administrative review for all shipments of MTPs from Japan entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) since the weighted-average margin for HZC/H&F is zero, the Department shall require no deposit of estimated antidumping duties for subject merchandise exported by HZC/H&F; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair value investigation (LTFV), but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and, (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be the ''all-others'' rate established in the LTFV investigation, which is 14.51 percent. *See Notice of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Mechanical Transfer Presses from Japan*, 55 FR 5642 (February 16, 1990). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under section 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO as explained in the administrative order itself. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: June 25, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–16728 Filed 7–1–03; 8:45 am]

BILLING CODE 3510–DS–S

[1] The Department determined to treat HZC and H&F as a single entity under section 351.401(f) of the regulations. *See Preliminary Results*, 68 FR 11039.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-357–810]

Notice of Final Results and Partial Recision of Antidumping Duty Administrative Review; Oil Country Tubular Goods, Other Than Drill Pipe, from Argentina

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results and Partial Recision of Antidumping Duty Administrative Review.

SUMMARY: On May 6, 2003, the Department of Commerce (the Department) published the preliminary results and preliminary partial recision of antidumping administrative review on oil country tubular goods, other than drill pipe, from Argentina. The review covers two manufacturer/exporters, Siderca S.A.I.C. (Siderca) and Acindar Industria Argentina de Aceros S.A. (Acindar). The period of review is August 1, 2001, through July 31, 2002. We gave interested parties an opportunity to comment on our preliminary results. We received no comments. Furthermore, the Department made no changes in its analysis following publication of the preliminary results. Therefore, the final results of review are unchanged from those presented in the preliminary results of review.

EFFECTIVE DATE: July 2, 2003.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert James, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2924 and (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 6, 2003, the Department published its preliminary results and

preliminary partial recision of antidumping duty administrative review of oil country tubular goods, other than drill pipe, from Argentina. *See Notice of Preliminary Results and Preliminary Partial Recision of Antidumping Duty Administrative Review; Oil Country Tubular Goods, Other Than Drill Pipe, from Argentina*, 68 FR 23964 (May 6, 2003). We gave interested parties an opportunity to comment. No party submitted comments. We have now completed the administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Tariff Act).

Period of Review

The period of review (POR) is August 1, 2001, through July 31, 2002.

Scope of the Review

Oil country tubular goods (OCTG) are hollow steel products of circular cross-section, including oil well casing and tubing of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products).

This scope does not cover casing or tubing pipe containing 10.5 percent or more of chromium. Drill pipe was excluded from this order beginning August 11, 2001. *See Continuation of Countervailing and Antidumping Duty Orders on Oil Country Tubular Goods From Argentina, Italy, Japan, Korea and Mexico, and Partial Revocation of Those Orders From Argentina and Mexico With Respect to Drill Pipe*, 66 FR 38630 (July 25, 2001).

The OCTG subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.30.10, 7304.29.30.20, 7304.29.30.30, 7304.29.30.40, 7304.29.30.50, 7304.29.30.60, 7304.29.30.80, 7304.29.40.10, 7304.29.40.20, 7304.29.40.30, 7304.29.40.40, 7304.29.40.50, 7304.29.40.60, 7304.29.40.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.60.15, 7304.29.60.30, 7304.29.60.45, 7304.29.60.60, 7304.29.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

The HTSUS subheadings are provided for convenience and customs purposes. Our written description of the scope of this order is dispositive.

Partial Recision

On September 25, 2002, we initiated an administrative review of sales made by Siderca and Acindar. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part and Deferral of Administrative Reviews*, 67 FR 60210 (September 25, 2002). However, as noted in the preliminary results, Siderca notified us that it had no shipments of subject merchandise during the POR. We conducted an on-site verification of this information at Siderca's facilities in February 2003, and uncovered no evidence that Siderca had shipments to the United States during the POR. See the Department's March 4, 2003, verification report on file in room B-099 of the Herbert C. Hoover Department of Commerce building. Furthermore, we received no comments concerning Siderca for the final results. Therefore, we are rescinding the review with respect to Siderca. Siderca's cash deposit rate will remain at 1.36 percent, which is the rate established for Siderca in the less-than-fair-value investigation. *See Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Argentina*, 60 FR 33539 (June 28, 1995) and *Antidumping Duty Order: Oil Country Tubular Goods from Argentina*, 60 FR 41055 (August 11, 1995).

Use of Facts Available

We find, in accordance with section 776(a)(2)(A) and (C) and 776(b), that the application of adverse facts available is warranted since Acindar did not respond to our questionnaire, and therefore has not cooperated to the best of its ability. Section 776(a)(2) of the Tariff Act provides that ''if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.''

On September 25, 2002, the Department issued its standard antidumping questionnaire to Acindar. Acindar made no written response to the questionnaire. Therefore, we determine that the use of facts available is warranted pursuant to section 776(a)(2)(A) and (C) of the Tariff Act because Acindar withheld information requested by the Department by not responding to the Department's questionnaire, thereby significantly impeding this proceeding. *See* Memorandum from Fred Baker to the File dated April 1, 2003. Thus, the curative provisions of section 782 of the Tariff Act are not applicable because Acindar did not provide any response.

Section 776(b) of the Tariff Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. 103–316 at 870 (1994). Furthermore, ''an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference.'' *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997), (*Final Rule*).

The Department finds that in not responding to the September 25, 2002, questionnaire, Acindar failed to cooperate by not acting to the best of its ability to comply with requests for information. The Department requires that respondents provide answers to the questionnaire because the Department uses the information to determine accurate dumping margins for the company. Since the information is within the sole control of Acindar, when the company fails to provide such information we cannot otherwise obtain the information necessary to calculate a dumping margin. Further, at no time did Acindar indicate during the POR that it was having difficulty in complying with the Department's request for information. Consequently, Acindar should not be allowed to benefit by its non-cooperation. Therefore, pursuant to section 776(b) of the Tariff Act, we may, in making our determination, use an

adverse inference in selecting from the facts otherwise available. This adverse inference may include reliance on data derived from the petition, a previous determination in an investigation or review, or any other information placed on the record. For this review we have determined to assign 60.73 percent as the facts available rate to Acindar. This rate represents the highest rate for any respondent in any prior segment of this proceeding. *See Oil Country Tubular Goods: Final Results and Partial Recision of Antidumping Duty Administrative Review*, 67 FR 13262 (March 19, 2003).

Information from prior segments of the proceeding constitutes secondary information, and section 776(c) of the Tariff Act provides that the Department shall, to the extent practicable, corroborate secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value. *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316 at 870 (1994) and 19 CFR 351.308(d).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. *See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (Feb. 22, 1996) (where the Department disregarded the highest margin as adverse facts available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin).

As discussed above, it is not necessary to question the reliability of a calculated margin from a prior segment of the proceeding. Further, there are no circumstances indicating that this margin is inappropriate as facts available. In fact, this margin is Acindar's own margin from the 2000–2001 administrative review of OCTG. *See Notice of Final Results and Recision in Part of Antidumping Duty Administrative Review; Oil Country Tubular Goods, Other Than Drill Pipe, From Argentina*, 67 FR 13262 (March 19, 2003). Therefore, we determine that the 60.73 percent rate has probative value for use as adverse facts available.

Final Results of Review

As a result of our determination that it is appropriate to apply adverse facts available to Acindar, we determine that a the weighted-average dumping margin of 60.73 percent exists for Acindar for the period August 1, 2001, through July 31, 2002.

The Department will determine, and the U.S. Bureau of Customs and Border Protection (Customs) shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to Customs within 15 days of publication of these final results of review. We will direct Customs to assess the resulting assessment rate against the entered customs values for the subject merchandise on each entry during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication, as provided by section 751(a)(1) of the Tariff Act: (1) the cash deposit rate for the reviewed company will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, any previous reviews, or the LTFV investigation, the cash deposit rate will be 1.36 percent, the ''all others'' rate established in the LTFV investigation. *See Antidumping Duty Order: Oil Country Tubular Goods from Argentina*, 60 FR 41055 (August 11, 1995).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties or countervailing duties occurred and the subsequent assessment of double antidumping duties or countervailing duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(I)(1) of the Tariff Act.

Dated June 25, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–16665 Filed 7–1–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–861]

Antidumping Duty Order: Polyvinyl Alcohol From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of antidumping duty order.

SUMMARY: Pursuant to section 736(a) of the Tariff Act of 1930, as amended, the Department of Commerce is issuing an

antidumping duty order on polyvinyl alcohol from Japan.

EFFECTIVE DATE: July 2, 2003.

FOR FURTHER INFORMATION CONTACT: Michael Strollo, AD/CVD Enforcement Group I, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0629.

SUPPLEMENTARY INFORMATION:

Scope of Order

The merchandise covered by this investigation is polyvinyl alcohol (PVA). This product consists of all PVA hydrolyzed in excess of 80 percent, whether or not mixed or diluted with commercial levels of defoamer or boric acid, except as noted below.

The following products are specifically excluded from the scope of this investigation:

(1) PVA in fiber form.

(2) PVA with hydrolysis less than 83 mole percent and certified not for use in the production of textiles.

(3) PVA with hydrolysis greater than 85 percent and viscosity greater than or equal to 90 cps.

(4) PVA with a hydrolysis greater than 85 percent, viscosity greater than or equal to 80 cps but less than 90 cps, certified for use in an ink jet application.

(5) PVA for use in the manufacture of an excipient or as an excipient in the manufacture of film coating systems which are components of a drug or dietary supplement, and accompanied by an end-use certification.

(6) PVA covalently bonded with cationic monomer uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.

(7) PVA covalently bonded with carboxylic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, certified for use in a paper application.

(8) PVA covalently bonded with thiol uniformly present on all polymer chains, certified for use in emulsion polymerization of non-vinyl acetic material.

(9) PVA covalently bonded with paraffin uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.

(10) PVA covalently bonded with silan uniformly present on all polymer chains certified for use in paper coating applications.

(11) PVA covalently bonded with sulfonic acid uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(12) PVA covalently bonded with acetoacetylate uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(13) PVA covalently bonded with polyethylene oxide uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(14) PVA covalently bonded with quaternary amine uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(15) PVA covalently bonded with diacetoneacrylamide uniformly present on all polymer chains in a concentration level greater than three mole percent, certified for use in a paper application.

The merchandise under investigation is currently classifiable under subheading 3905.30.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Antidumping Duty Order

On June 18, 2003, pursuant to section 735(b)(1)(A)(ii) of the Tariff Act of 1930, as amended (the Act), the International Trade Commission (the ITC) notified the Department of Commerce (the Department) of its final determination that the industry in the United States producing PVA is threatened with material injury by reason of import of the subject merchandise from Japan. In accordance with section 736(a)(1) of the Act, the Department will direct the U.S. Bureau of Customs and Border Protection (Customs) to assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the U.S. price of the merchandise for all relevant entries of PVA from Japan. In accordance with section 736(b)(2) of the Act, duties shall be assessed on subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination if that determination is based on the threat of material injury and is not accompanied by a finding that injury would have resulted but for the imposition of suspension of liquidation of entries since the Department's preliminary determination. In addition, section 736(b)(2) of the Act requires Customs to refund any cash deposits or bonds of estimated antidumping duties posted since the Department's preliminary antidumping determination if the ITC's final determination is based on a threat of material injury.

Because the ITC's final determination in this case is based on the threat of material injury and is not accompanied by a finding that injury would have resulted but for the imposition of suspension of liquidation of entries since the Department's preliminary determination, section 736(b)(2) of the Act is applicable to this order. Therefore, the Department will direct Customs to assess, upon further advice, antidumping duties on all unliquidated entries of PVA from Japan entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination of threat of material injury in the **Federal Register** and terminate the suspension of liquidation for entries of PVA from Japan entered, or withdrawn from warehouse, for consumption prior to that date. The Department will also instruct Customs to refund any cash deposits made, or bonds posted, between the publication date of the Department's preliminary antidumping determination and the publication of the ITC's final determination.

On or after the date of publication of the ITC's notice of final determination in the **Federal Register**, Customs will require, at the same time as importers would normally deposit estimated duties, cash deposits for the subject merchandise equal to the estimated weighted-average dumping margins listed below. The ''All Others'' rate applies to all exporters of subject merchandise not specifically listed below.

Manufacturer/exporter	Margin (percent)
Denki Kagaku Kogyo Kabushiki Kaisha	144.16
Japan VAM & POVAL Co., Ltd	144.16
Kuraray Co., Ltd	144.16
The Nippon Synthetic Chemical Industry Co., Ltd	144.16
All Others	76.78

This notice constitutes the antidumping duty order with respect to PVA from Japan, pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of Act and 19 CFR 351.211.

Dated: June 25, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–16668 Filed 7–1–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–802]

Certain Preserved Mushrooms from Indonesia: Final Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty new shipper review.

SUMMARY: On April 4, 2003, the Department of Commerce published the preliminary results of the new shipper review of the antidumping duty order on certain preserved mushrooms from Indonesia. The review covers two manufacturers/exporters of the subject merchandise to the United States: PT Karya Kompos Bagas, and PT Eka Timur Raya. The period of review is February 1, 2002, through July 31, 2002.

No interested party submitted comments on the preliminary results. We have made no changes to the margin calculation. Therefore, the final results do not differ from the preliminary results. The final weighted-average dumping margins for the two manufacturers/exporters are listed below in the ''Final Results of Review'' section of this notice.

EFFECTIVE DATE: July 2, 2003.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor or Sophie Castro, AD/CVD Enforcement Group I, Office 2, Import Administration-Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4007, or 482–0588, respectively.

SUPPLEMENTARY INFORMATION:

Background

The new shipper review covers two manufacturers/exporters of the subject merchandise to the United States: PT Karya Kompos Bagas (KKB), and PT Eka Timur Raya (Etira).

On April 4, 2003, the Department of Commerce published in the **Federal Register** the preliminary results of the new shipper review of the antidumping duty order on certain preserved mushrooms from Indonesia (68 FR 16469) (*Preliminary Results*).

We invited interested parties to comment on the preliminary results of the review, however no party submitted comments. The Department has conducted this new shipper review in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (''the Act'').

Scope of the Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis.* ''Preserved mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms'; (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this order is currently classifiable under subheadings 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153, and 0711.51.0000 of the *Harmonized Tariff Schedule of the United States* [1] (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Final Results of the Review

As a result of our new shipper review, we determine that the following weighted-average margin percentages apply for the period February 1, 2002, though July 31, 2002:

Manufacturer/Exporter	Margin (percent)
PT Karya Kompos Bagas	0.00
PT Eka Timur Raya	0.00

Assessment

The Department shall determine, and the U.S. Bureau of Customs and Border Protection (''BCBP'') shall assess, antidumping duties on all appropriate entries. We will issue assessment instructions directly to BCBP within 15 days of publication of these final results of review. For assessment purposes, we do not have the actual entered values for all sales made by Etira. Accordingly, we have calculated importer-specific assessment rates by aggregating any dumping margins calculated for all of Etira's U.S. sales examined and dividing the respective amount by the total quantity of the sales examined. To determine whether the duty assessment rates are *de minimis* (*i.e.*, less than 0.50 percent), in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we have calculated importer-specific *ad valorem* ratios based on export prices. With respect to KKB, we have calculated importer-specific assessment rates for the subject merchandise by aggregating any dumping margins calculated for the examined sales and dividing this amount by the total entered value of the sales examined.

Cash Deposit Requirements

Bonding will no longer be permitted to fulfill security requirements for shipments from certain preserved mushrooms from Indonesia entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of the new shipper review. Furthermore, the following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of review, as provided by section 751(2)(1) and 751(a)(2)(B) of the Act: (1) For subject merchandise produced and exported by Etira or by KKB, no cash deposit will be required; (2) for subject merchandise exported by Etira or KKB but not produced by them, the cash deposit rate will be 11.26 percent, the ''All Others'' rate made effective by the less-than-fair-value investigation. These requirements shall remain in effect until publication of the final results of the next administrative review.

[1] Prior to January 1, 2002, the HTS codes were as follows: 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000

Notification to Importers

This notice serves as the only reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and the terms of an APO is a sanctionable violation.

This new shipper review and notice are published in accordance with sections 751(a)(2)(B) of the Act and 19 CFR 351.214.

Dated: June 25, 2003.

Joseph Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–16666 Filed 7–1–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-560–802]

Certain Preserved Mushrooms from Indonesia: Final Results of Antidumping Duty Administrative Review and Final Determination to Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review and final determination to revoke the order in part.

SUMMARY: SUMMARY: On March 7, 2003, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on certain preserved mushrooms from Indonesia and its intent to revoke the order in part. The review covers two manufacturers/exporters of the subject merchandise to the United States: PT Indo Evergreen Agro Business Corp., and PT Zeta Agro Corporation.[1] The period of review is February 1, 2001, through January 31, 2002.

No interested party submitted comments on the preliminary results. We have made no changes to the margin calculation. Therefore, the final results do not differ from the preliminary results. The final weighted-average dumping margins for the two manufacturers/exporters are listed below in the ''Final Results of Review'' section of this notice.

EFFECTIVE DATE: July 2, 2003.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor or Sophie Castro, AD/CVD Enforcement Group I, Office 2, Import Administration-Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4007, or 482–0588, respectively.

SUPPLEMENTARY INFORMATION:

Background

The review covers two manufacturers/exporters of the subject merchandise to the United States: PT Indo Evergreen Agro Business Corp. (Indo Evergreen), and PT Zeta Agro Corporation (Zeta).

On March 7, 2003, the Department of Commerce published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on certain preserved mushrooms from Indonesia and its intent to revoke the order in part (68 FR 11051) (*Preliminary Results*).

We invited parties to comment on the preliminary results of the review. No interested party submitted comments. The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of the Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis*. ''Preserved mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms''; (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this order is currently classifiable under subheadings 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000 of the *Harmonized Tariff Schedule of the United States*[2] (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Determination to Revoke Order in Part

In accordance with section 351.222(b)(2) of the Department's regulations, we have determined to revoke the antidumping duty order with respect to Zeta, effective as of February 1, 2002. Zeta has sold subject merchandise in commercial quantities at prices not below its normal value for three consecutive annual reviews (*see* Calculation Memorandum for the Preliminary Results for P.T. Zeta Agro Corporation dated February 28, 2003). Moreover, there is no evidence on the record regarding market conditions or other factors to suggest that the order is otherwise necessary to offset dumping with respect to this company.

Final Results of the Review

As a result of our review, we determined that the following weighted-average margin percentages apply for the period February 1, 2001, though January 31, 2002:

Manufacturer/Exporter	Margin (percent)
PT Indo Evergreen Agro Business Corp.	0.30 (*de minimis*)
PT Zeta Agro Corporation	0.00

[1] The administrative review with respect to PT Dieng Djaya and PT Surya Jaya Abadi Perkasa was rescinded on January 9, 2003 (*see* 68 FR 1177).

[2] As of January 1, 2002, the HTS codes are as follows: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153, 0711.51.0000.

Assessment

The Department shall determine, and the U.S. Bureau of Customs and Border Protection (''BCBP'') shall assess, antidumping duties on all appropriate entries. We will issue assessment instructions directly to BCBP within 15 days of publication of these final results of review. In accordance with 19 CFR 351.106(c)(1), we will instruct BCBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.*, less than 0.50 percent). For assessment purposes, we do not have the actual entered value for Indo Evergreen and Zeta because these respondents are not the importers of record for the subject merchandise. Accordingly, we have calculated importer-specific assessment rates by aggregating the dumping margins calculated for all of Indo Evergreen's and Zeta's U.S. sales examined and dividing the respective amounts by the total quantity of the sales examined for each producer. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific *ad valorem* ratios based on export prices.

With regard to Zeta, in accordance with 19 CFR 351.222(f)(3), we will instruct BCBP to proceed with liquidation, without regard to antidumping duties, of all unliquidated entries of certain preserved mushrooms from Indonesia entered, or withdrawn from warehouse, for consumption on or after February 1, 2002. We will further instruct BCBP to refund with interest any estimated duties collected with respect to unliquidated entries of certain preserved mushrooms exported by Zeta.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for Indo Evergreen (Zeta is exempt due to revocation) is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), and therefore the cash deposit rate is 0.00; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 11.26 percent, the ''All Others'' rate made effective by the LTFV investigation. These requirements shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as the only reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and the terms of an APO is a sanctionable violation.

This administrative review and notice are published in accordance with sections 751(a)(1) and 751(d)(1) of the Act and 19 CFR 351.221 and 19 CFR 351.222.

Dated: June 23, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–16667 Filed 7–1–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Publication of quarterly update to annual listing of foreign government subsidies on articles of cheese subject to an in-quota rate of duty.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared its quarterly update to the annual list of foreign government subsidies on articles of cheese subject to an in-quota rate of duty during the period January 1, 2003 through March 31, 2003. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: July 2, 2003.

FOR FURTHER INFORMATION CONTACT: Alicia Kinsey, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: Section 702 of the Trade Agreements Act of 1979 (as amended) (''the Act'') requires the Department of Commerce (''the Department'') to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(h) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies. We hereby provide the Department's quarterly update of subsidies on articles of cheese that were imported during the period January 1, 2003 through March 31, 2003.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: June 25, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

APPENDIX—SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY

Country	Program(s)	Gross [1] subsidy ($/lb)	Net [2] subsidy ($/lb)
Austria	European Union Restitution Payments	$0.14	$0.14
Belgium	EU Restitution Payments	0.01	0.01
Canada	Export Assistance on Certain Types of Cheese	0.23	0.23
Denmark	EU Restitution Payments	0.06	0.06
Finland	EU Restitution Payments	0.14	0.14
France	EU Restitution Payments	0.12	0.12
Germany	EU Restitution Payments	0.05	0.05
Greece	EU Restitution Payments	0.05	0.05
Ireland	EU Restitution Payments	0.06	0.06
Italy	EU Restitution Payments	0.08	0.08
Luxembourg	EU Restitution Payments	0.07	0.07
Netherlands	EU Restitution Payments	0.05	0.05
Norway	Indirect (Milk) Subsidy	0.35	0.35
	Consumer Subsidy	0.16	
		0.16	
		0.51	
Portugal	EU Restitution Payments	0.04	0.04
Spain	EU Restitution Payments	0.06	0.06
Switzerland	Deficiency Payments	0.07	0.07
U.K.	EU Restitution Payments	0.04	0.04

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 03–16731 Filed 7–1–03; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–837]

Notice of Initiation of Countervailing Duty Investigation: Certain Colored Synthetic Organic Oleoresinous Pigment Dispersions From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of Countervailing Duty Investigation.

EFFECTIVE DATE: July 2, 2003.

FOR FURTHER INFORMATION CONTACT: Geoffrey Craig at (202) 482–5256 or Stephen Cho at (202) 482–3798, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Initiation of Investigation

The Petition

On June 5, 2003, the Department of Commerce (''the Department'') received a petition filed in proper form by Apollo Colors Inc., General Press Colors, Ltd., Magruder Color Company, Inc., and Sun Chemical Corporation (collectively, ''the petitioners''). The Department received petition supplements on June 16, June 18, and June 20, 2003.

In accordance with section 702(b)(1) of the Tariff Act of 1930 (''the Act''), as amended, the petitioners allege that manufacturers, producers, or exporters of certain colored synthetic organic oleoresinous pigment dispersions (''colored pigment dispersions'') from India receive countervailable subsidies within the meaning of section 701 of the Act, and that such imports from India are materially injuring, or are threatening to materially injure, an industry in the United States.

The Department finds that the petitioners filed this petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and they have demonstrated sufficient industry support with respect to the countervailing investigation that they are requesting the Department to initiate. *See infra,* ''Determination of Industry Support for the Petition.''

Scope of Investigation

The products covered by this investigation are colored synthetic organic pigment dispersions containing pigments classified in either the Azo or Phthalocyanine chemical classes that have been dispersed in an oleoresinous varnish comprised of various combinations of solvents, oils and resins. The subject pigment dispersions are commonly known as ''flush'' or ''flushed color,'' but the base form of the subject pigment dispersions is also included in the scope of this investigation. The subject pigment dispersions are a thick putty or paste that contain by weight typically 20 percent or more pigment dispersed in the varnish, and are used primarily for the manufacture of letterpress and lithographic printing inks. The presence of additives, such as surfactants, antioxidants, wetting agents, and driers, in the subject pigment dispersions does not exclude them from the scope of this investigation.

Excluded from the scope of this investigation are dry powder pigments and pigment press cakes, as well as water and flammable solvent based colored pigment dispersions, which typically are used in manufacturing liquid or fluid inks. Also excluded is Yellow 75, which is typically used to make the yellow paint to line roads.

The merchandise subject to this investigation is classifiable under subheadings 3204.17.6020 (Pigment Blue 15:4), 3204.17.6085 (Pigments Red 48:1, Red 48:2, Red 48:3, and Yellow 174), 3204.17.9005 (Pigment Blue 15:3), 3204.17.9010 (Pigment Green 7), 3204.17.9015 (Pigment Green 36), 3204.17.9020 (Pigment Red 57:1), 3204.17.9045 (Pigment Yellow 12), 3204.17.9050 (Pigment Yellow 13), 3204.17.9055 (Pigment Yellow 74), and 3204.17.9086 [1] (Pigments Red 22, Red 48:4, Red 49:1, Red 49:2, Red 52:1, Red 53:1, Yellow 14, and Yellow 83) of the Harmonized Tariff Schedule of the United States (''HTS''). Although the HTS subheadings are provided for convenience and customs purposes, the

[1] Prior to July 2002, this number was 3204.17.9085.

written description of the merchandise under investigation is dispositive.

As discussed in the preamble to the Department's regulations (*Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 calendar days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Government of India (''GOI'') for consultations with respect to the petition filed in this proceeding. However, the GOI declined our invitation, and therefore consultations were not held.

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act require that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provide that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provide that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[2]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

With regard to the definition of domestic like product, the petitioners do not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information presented by the petitioners, we have determined that there is a single domestic like product, colored pigment dispersions, which is defined in the ''Scope of Investigation'' section above, and we have analyzed industry support in terms of this domestic like product.

In their initial petition and subsequent submissions, the petitioners state that they comprise over 50 percent of U.S. colored pigment dispersions production. The petition identifies nine additional U.S. companies engaged in the production of colored pigment dispersions, none of which have taken a position on (either for or against) the petition. Through data provided by the petitioners and our own independent research, we have determined that the colored pigment dispersions production of these nine companies is not high enough to place the petitioners' industry support in jeopardy. Based on all available information, we agree that the petitioners comprise over 50 percent of all domestic colored pigment dispersions production.

Our review of the data provided in the petition and other information readily available to the Department indicates that the petitioners have established industry support representing over 50 percent of total production of the domestic like product, requiring no further action by the Department pursuant to section 702(c)(4)(D) of the Act. In addition, the Department received no opposition to the petition from domestic producers of the like product. Therefore, the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and the requirements of section 702(c)(4)(A)(i) of the Act are met. Furthermore, the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Thus, the requirements of section 702(c)(4)(A)(ii) of the Act also are met. Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. For more information on our analysis and the data upon which we relied, see Import Administration AD/CVD Enforcement Initiation Checklist (''Initiation Checklist''), Industry Support section and Attachment II, dated June 25, 2003, on file in the Central Records Unit of the main Department of Commerce building.

Injury Test

Because India is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) applies to these investigations. Accordingly, the ITC must determine whether imports of the subject merchandise from India materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of imports of the subject merchandise.

[2] *See USEC, Inc.* v. *United States*, 132 F. Supp. 2d 1,8 (Ct. Intl Trade 2001), *citing Algoma Steel Corp. Ltd.* v. *United States,* 688 F Supp. 639, 642–44 (Ct. Int'l Trade 1988) (''the ITC does not look behind ITA's determination, but accepts ITAs determination as to which merchandise is in the class of merchandise sold at LTFV'').

The petitioners contend that the industry's injured condition is evident in the declining trends in net operating profits, net sales volumes, profit-to-sales ratios, and production employment. The allegations of injury and causation are supported by relevant evidence including U.S. import data, lost sales, and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by adequate evidence and meet statutory requirements for initiation. See the Initiation Checklist.

Initiation of Countervailing Duty Investigation

The Department has examined the countervailing duty petition on colored pigment dispersions from India and found that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating countervailing duty investigation to determine whether manufacturers, producers, or exporters of colored pigment dispersions receive countervailable subsidies. We will make our preliminary determination no later than 65 days after the date of this initiation, unless this deadline is extended pursuant to section 703(b)(1) of the Act.

We are including in our investigation the following programs alleged in the petition to have provided a countervailable subsidy to manufacturers, producers, or exporters of colored pigment dispersions:

1. Duty Entitlement Passbook Scheme
2. Advance Licenses
3. Duty Free Replenishment Certificate Scheme
4. Import Mechanism (Sale of Licenses)
5. Pre-Shipment and Post-Shipment Export Financing
6. Export Promotion Capital Goods Scheme (''EPCGS'')
7. Benefits for Export Processing Zones/ Export Oriented Units (''EPZ/EOU'')
8. Special Imprest Licenses (Deemed Exports)
9. Incentive Scheme for Export Oriented Park, Export Oriented Units (State of Gujarat Infrastructure Assistance Scheme)
10. Subsidy Scheme for Medium and Large Industries (State of Gujarat Infrastructure Assistance Scheme)
11. Income Tax Exemption Scheme (''ITES'') (Sections 10A, 10B and 80HHC)
12. Re-Discounting of Export Bills Abroad (''EBR'')
13. Pre-Export and Post-Export Credits in Foreign Country
14. Exemption of Export Credit from Interest Taxes
15. Central Value Added Tax (''CENVAT'') Scheme
16. Market Access Initiative (''MAI'')

A discussion of evidence supporting our initiation determination on these programs is contained in the *Initiation Checklist.*

At this time, we are not including in our investigation of colored pigment dispersions the following programs alleged to benefit producers and exporters of the subject merchandise in India.

1. Special Economic Zones (State of Gujarat Infrastructure Assistance Scheme)

According to the petitioners, the State of Gujarat infrastructure provides assistance to industrial units located in special economic zones under its Special Economic Zones scheme. Under the program, industrial units located in SEZs in Gujarat will receive incentives including exemption from electrical duty for ten years and exemption from payment of sales and other levies. Petitioners claim that this program results in revenue forgone by the State of Gujarat and is specific to companies located within a designated geographic region of Gujarat.

In *Final Negative Countervailing Duty Determination; Carbon Steel Wire Rod From Singapore,* 51 FR 3357 (January 27, 1986), we found that the right to locate in an industrial park can confer a subsidy only if the government limits the firms that can locate in the industrial park. The petitioners have provided no information indicating that the State of Gujarat is limiting access to the SEZ. Thus, the petitioners have not provided sufficient evidence that this alleged subsidy is specific within the meaning of section 771(5A) of the Act and section 351.502 of the Department's regulations.

2. Financial Assistance for Upgradation of Quality in SSI/Medium & Large Scale Sector (State of Gujarat Infrastructure Assistance Scheme)

According to the petitioners, the State of Gujarat provides infrastructure assistance to registered industrial units under its Financial Assistance for Upgradation of Quality in SSI/Medium & Large Scale Section. This alleged program applies to ''all industrial units which have been registered as a SSI/ SSEB with respective DICs or/and industries registered under Industries (Development & Regulation) Act, 1951 as amended * * *.'' Under this alleged program, eligible industrial units are eligible for government reimbursements of up to 50 percent for expenditures such as consultant fees and equipment for research and development, and testing equipment. Petitioners claim that this alleged program results in a direct transfer of funds from the State of Gujarat that benefit the recipients in the amount of the infrastructure expenses paid.

The petitioners have provided no information indicating that the benefits provided under this program are specific. In particular, there is no information that the eligible companies comprise a specific group of industries within the meaning of section 771(5A) of the Act and section 351.502 of the Department's regulations.

3. GOI Loans, Loan Guarantees, and Loan Forgiveness

According to the petitioners, the Indian Ministry of Finance extends loan guarantees to selected Indian companies on an *ad hoc* basis and continues to extend loan guarantees to non-steel industrial sectors on an *ad hoc* basis. Petitioners assert that the GOI has been found to provide loans on terms that are more favorable than commercially available. Petitioners also claim that the GOI has forgiven past loans in some cases. Lastly, the petitioners allege that Hindustan and other Indian producers and exporters of subject merchandise have received countervailable subsidies in the forms of GOI loans, loan guarantees, and loan forgiveness.

The petitioners have provided no information to support their supposition that manufacturers and exporters of the subject merchandise received loans, loan guarantees, or debt forgiveness.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i)) of the Act, a copy of the public version of the petition has been provided to the representatives of the Government of India. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as provided for under 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine no later than July 21, 2003, whether there is a reasonable indication that imports of Certain Colored Synthetic Organic Oleoresinous Pigment Dispersions from India are causing material injury, or threatening to cause material injury, to a U.S. industry. A

negative ITC determination will result in the investigation being terminated, otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: June 25, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–16670 Filed 7–1–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Request for nominations of members to serve on the Visiting Committee on Advanced Technology.

SUMMARY: NIST invites and requests nomination of individuals for appointment to the Visiting Committee on Advanced Technology (VCAT). The terms of some of the members of the VCAT will soon expire. NIST will consider nominations received in response to this notice for appointment to the Committee, in addition to nominations already received.

DATES: Please submit nominations on or before July 17, 2003.

ADDRESSES: Please submit nominations to Nancy Miles, Administrative Coordinator, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 1000, Gaithersburg, MD 20899–1000. Nominations may also be submitted via FAX to (301) 869–8972.

Additional information regarding the Committee, including its charter, current membership list, and executive summary may be found on its electronic Home page at: *http://www.nist.gov/director/vcat/vcat.htm.*

FOR FURTHER INFORMATION CONTACT: Nancy Miles, Administrative Coordinator, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 1000, Gaithersburg, MD 20899–1000, telephone (301) 975–2300, fax (301) 869–8972; or via e-mail at *nancy.miles@nist.gov.*

SUPPLEMENTARY INFORMATION

VCAT Information

The VCAT was established in accordance with 15 U.S.C. 278 and the Federal Advisory Committee Act (5 U.S.C. app. 2).

Objectives and Duties

1. The Committee shall review and make recommendations regarding general policy for NIST, its organization, its budget, and its programs, within the framework of applicable national policies as set forth by the President and the Congress.

2. The Committee functions solely as an advisory body, in accordance with the provisions of the Federal Advisory Committee Act.

3. The Committee shall report to the Director of NIST.

4. The Committee shall provide a written annual report, through the Director of NIST, to the Secretary of Commerce for submission to the Congress on or before January 31 each year. Such report shall deal essentially, though not necessarily exclusively, with policy issues or matters which affect the Institute, or with which the Committee in its official role as the private sector policy adviser of the Institute is concerned. Each such report shall identify areas of research and research techniques of the Institute of potential importance to the long-term competitiveness of United States industry, which could be used to assist United States enterprises and United States industrial joint research and development ventures. The Committee shall submit to the Secretary and the Congress such additional reports on specific policy matters as it deems appropriate.

Membership

1. The Committee is composed of fifteen members that provide representation of a cross-section of traditional and emerging United States industries. Members shall be selected solely on the basis of established records of distinguished service and shall be eminent in one or more fields such as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. No employee of the Federal Government shall serve as a member of the Committee.

2. The Director of the National Institute of Standards and Technology shall appoint the members of the Committee, and they will be selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance.

Miscellaneous

1. Members of the VCAT are not paid for their service, but will, upon request, be allowed travel expenses in accordance with 5 U.S.C. 5701 *et seq.*, while attending meetings of the Committee or of its subcommittees, or while otherwise performing duties at the request of the chairperson, while away from their homes or a regular place of business.

2. Meetings of the VCAT take place in the Washington, DC metropolitan area, usually at the NIST headquarters in Gaithersburg, Maryland, and once each year at the NIST headquarters in Boulder, Colorado. Meetings are one or two days in duration and are held quarterly.

3. Committee meetings are open to the public except for approximately one hour, usually at the beginning of the meeting, a closed session is held in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. All other portions of the meetings are open to the public.

Nomination Information

1. Nominations are sought from all fields described above.

2. Nominees should have established records of distinguished service and shall be eminent in fields such as business, research, new product development, engineering, labor, education, management consulting, environment and international relations. The category (field of eminence) for which the candidate is qualified should be specified in the nomination letter. Nominations for a particular category should come from organizations or individuals within that category. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on federal advisory boards and federal employment. In addition, each nomination letter should state that the person agrees to the nomination, acknowledge the responsibilities of serving on the VCAT, and will actively participate in good faith in the tasks of the VCAT. Besides participation at meetings, it is desired that members be able to devote the equivalent of two days between meetings to either developing or researching topics of potential interest, and so forth in furtherance of their Committee duties.

3. The Department of Commerce is committed to equal opportunity in the

workplace and seeks a broad-based and diverse VCAT membership.

Dated: June 25, 2003.

Karen H. Brown,

Deputy Director.

[FR Doc. 03–16655 Filed 7–1–03; 8:45 am]

BILLING CODE 3510–CN–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Advanced Technology Program (ATP) Advisory Committee

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Request for nominations of members to serve on the Advanced Technology Program Advisory Committee.

SUMMARY: NIST invites and requests nomination of individuals for appointment to the Advanced Technology Program Advisory Committee. NIST will consider nominations received in response to this notice for appointment to the Committee, in additional to nominations already received.

DATES: Please submit nominations on or before July 17, 2003.

ADDRESSES: Please submit nominations to Mr. Marc Stanley, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 4700, Gaithersburg, MD 20899–4700. Nominations may also be submitted via FAX to 301–869–1150.

Additional information regarding the Committee, including its charter and current membership list may be found on its electronic Home page at: *http://www.atp.nist.gov/atp/adv_com/ac_menu.htm.*

FOR FURTHER INFORMATION CONTACT: Mr. Marc Stanley, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 4700, Gaithersburg, MD 20899–4700; telephone 301–975–4644, fax 301–301–869–1150; or via e-mail at *marc.stanley@nist.gov.*

SUPPLEMENTARY INFORMATION: The Committee will advise the Director of the National Institute of Standards and Technology (NIST) on ATP programs, plans, and policies.

The Committee will consist of not fewer than six nor more than twelve members appointed by the Director of NIST and its membership will be balanced to reflect the wide diversity of technical disciplines and industrial sectors represented in ATP projects.

The Committee will function solely as an advisory body, in compliance with the provisions of the Federal Advisory Committee Act.

Authority: Federal Advisory Committee Act: 5 U.S.C. App.2 and General Services Administration Rule: 41 CFR subpart 101–6.10.

Dated: June 25, 2003.

Karen H. Brown,

Deputy Director.

[FR Doc. 03–16656 Filed 7–1–03; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Information Security and Privacy Advisory Board; Request for Nominations

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Request for nominations of members to serve on the Information Security and Privacy Advisory Board.

SUMMARY: NIST invites and requests nominations of individuals for appointment to the Information Security and Privacy Advisory Board (ISPAB). NIST will consider nominations received in response to this notice for appointment to the Board, in addition to nominations already received.

DATES: The nomination period is open-ended.

ADDRESSES: Please submit nominations to Joan Hash, ISPAB Secretary, NIST, 100 Bureau Drive, M.S. 8930, Gaithersburg, MD 20899–8930. Nominations may also be submitted via fax to 301–948–2733, Attn: ISPAB Nominations.

Additional information regarding the Board, including its charter and current membership list, may be found on its electronic Home page at: *<http://csrc.nist.gov/ispab/>.*

FOR FURTHER INFORMATION CONTACT: Joan Hash, ISPAB Designated Federal Official, NIST, 100 Bureau Drive, M.S. 8930, Gaithersburg, MD 20899–8930; telephone 301–975–3357; telefax: 301–926–2733; or via e-mail at *joan.hash@nist.gov.*

SUPPLEMENTARY INFORMATION:

I. ISPAB Information

The ISPAB was originally chartered as the Computer System Security and Privacy Advisory Board (CSSPAB) by the Department of Commerce pursuant to the Computer Security Act of 1987 (Pub. L. 100–235). As a result of the E-Government Act of 2002 (Pub. L. 107–347), Title III, the Federal Information Security Management Act of 2002, Section 21 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–4, the Board's charter was amended. This amendment included the name change of the Board.

Objectives and Duties

The objectives and duties of the ISPAB are:

1.To identify emerging managerial, technical, administrative, and physical safeguard issues relative to information security and privacy.

2. To advise the NIST, the Secretary of Commerce and the Director of the Office of Management and Budget on information security and privacy issues pertaining to Federal Government information systems, including thorough review of proposed standards and guidelines developed by NIST.

3. To annually report its findings to the Secretary of Commerce, the Director of the Office of Management and Budget, the Director of the National Security Agency, and the appropriate committees of the Congress.

4. To function solely as an advisory body, in accordance with the provisions of the Federal Advisory Committee Act.

Membership

The ISPAB is comprised of twelve members, in addition to the Chairperson. The membership of the Board includes:

(1) Four members from outside the Federal Government eminent in the information technology industry, at least one of whom is representative of small or medium sized companies in such industries;

(2) Four members from outside the Federal Government who are eminent in the fields of information technology, or related disciplines, but who are not employed by or representative of a producer of information technology equipment; and,

(3) Four members from the Federal Government who have information system management experience, including experience in information security and privacy, at least one of these members shall be from the National Security Agency.

Miscellaneous

Members of the ISPAB are not paid for their service, but will, upon request, be allowed travel expenses in accordance with Subchapter I of Chapter 57 of Title 5, United States Code, while otherwise performing duties at the request of the Board

Chairperson, while away from their homes or a regular place of business.

Meetings of the Board are two to three days in duration and are held quarterly. The meetings primarily take place in the Washington, DC metropolitan area but may be held at such locations and at such time and place as determined by the majority of the Board.

Board meetings are open to the public and members of the press usually attend. Members do not have access to classified or proprietary information in connection with their Board duties.

II. Nomination Information

Nominations are being accepted in all three categories described above.

Nominees should have specific experience related to information security or electronic privacy issues, particularly as they pertain to Federal information technology. Letters of nominations should include the category of membership for which the candidate is applying and a summary of the candidate's qualifications for that specific category. Also include (where applicable) current or former service on Federal advisory boards and any Federal employment. Each nomination letter should state that the person agrees to the nomination, acknowledges the responsibilities of serving on the ISPAB, and that they will actively participate in good faith in the tasks of the ISPAB.

Besides participation at meetings, it is desired that members be able to devote a minimum of two days between meetings to developing draft issue papers, researching topics of potential interest, and so forth in furtherance of their Board duties.

Selection of ISPAB members will not be limited to individuals who are nominated. Nominations that are received and meet the requirements will be kept on file to be reviewed as Board vacancies occur.

Nominees must be U.S. citizens.

The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse ISPAB membership.

Dated: June 25, 2003.

Karen H. Brown,

Acting Director, NIST.

[FR Doc. 03–16658 Filed 7–1–03; 8:45 am]

BILLING CODE 3510–CN–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology (NIST), Department of Commerce.

ACTION: Request for nominations of members to serve on the Judges Panel of the Malcolm Baldrige National Quality Award.

SUMMARY: NIST invites and requests nomination of individuals for appointment to the Judges Panel of the Malcolm Baldrige National Quality Award (Judges Panel). The terms of some of the members of the Judges Panel will soon expire. NIST will consider nominations received in response to this notice for appointment to the Committee, in addition to nominations already received.

DATES: Please submit nominations on or before July 17, 2003.

ADDRESSES: Please submit nominations to Harry Hertz, Director, National Quality Program, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899–1020. Nominations may also be submitted via FAX to (301) 948–3716. Additional information regarding the Committee, including its charter, current membership list, and executive summary may be found on its electronic Home page at: *http://www.quality.nist.gov.*

FOR FURTHER INFORMATION CONTACT: Harry Hertz, Director, National Quality Program and Designated Federal Official, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899–1020; telephone (301) 975–2361; FAX (301) 948–3716; or via e-mail at *harry.hertz@nist.gov.*

SUPPLEMENTARY INFORMATION:

I. Judges Panel Information

The Judges Panel was established in accordance with 15 U.S.C. 3711a(d)(1), the Federal Advisory Committee Act (5 U.S.C. app. 2), The Malcolm Baldrige National Quality Improvement Act of 1987 (Pub. L. 101–107).

Objectives and Duties

1. The Judges Panel will ensure the integrity of the Malcolm Baldrige National Quality Award selection process by reviewing the results of examiners' scoring of written applications, and then voting on which applicants merit site visits by examiners to verify the accuracy of quality improvements claimed by applicants.

2. The Judges Panel will ensure that individuals on site visit teams for the Award finalists have no conflict of interest with respect to the finalists. The Panel will also review recommendations from site visits, and recommend Award recipients.

3. The Judges Panel will function solely as an advisory body, and will comply with the provisions of the Federal Advisory Committee Act.

4. The Panel will report to the Director of NIST.

Membership

1. The Judges Panel is composed of at least nine, and not more than twelve, members selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance. There will be a balanced representation from U.S. service and manufacturing industries, education, and health care and will include members familiar with quality improvement in their area of business. No employee of the Federal Government shall serve as a member of the Judges Panel.

2. The Judges Panel will be appointed by the Secretary of Commerce and will serve at the discretion of the Secretary. The term of office of each Panel member shall be three years. All terms will commence on March 1 and end on February 28 of the appropriate year.

Miscellaneous

1. Members of the Judges Panel shall serve without compensation, but may, upon request, be reimbursed travel expenses, including per diem, as authorized by 5 U.S.C. 5701 *et seq.*

2. The Judges Panel will meet four times per year. Additional meetings may be called as deemed necessary by the NIST Director or by the Chairperson. Meetings are one to four days in duration. In addition, each Judge must attend an annual three-day Examiner training course.

3. Committee meetings are closed to the public pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409, and in accordance with section 552b(c)(4) of title 5, United States Code. Since the members of the Judges Panel examine records and discuss Award applicant data, the meeting is likely to disclose trade secrets; and commercial or financial information obtained from a person may be privileged or confidential.

II. Nomination Information

1. Nominations are sought from all U.S. service and manufacturing

industries, education, and health care as described above.

2. Nominees should have established records of distinguished service and shall be familiar with the quality improvement operations of manufacturing companies, service companies, small businesses, education and health care organizations. The category (field of eminence) for which the candidate is qualified should be specified in the nomination letter. Nominations for a particular category should come from organizations or individuals within that category. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on federal advisory boards and federal employment. In addition, each nomination letter should state that the person agrees to the nomination, acknowledge the responsibilities of serving on the Judges Panel, and will actively participate in good faith in the tasks of the Judges Panel. Besides participation at meetings, it is desired that members be able to devote the equivalent of seventeen days between meetings to either developing or researching topics of potential interest, reading Baldrige applications, and so forth, in furtherance of their Committee duties.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse Judges Panel membership.

Dated: June 25, 2003.

Karen H. Brown,

Deputy Director.

[FR Doc. 03–16653 Filed 7–1–03; 8:45 am]

BILLING CODE 3510–CN–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Board of Overseers of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Request for nominations of members to serve on the Board of Overseers of the Malcolm Baldrige National Quality Award.

SUMMARY: NIST invites and requests nomination of individuals for appointment to Board of Overseers of the Malcolm Baldrige National Quality Award (Board). The terms of some of the members of the Board will soon expire. NIST will consider nominations received in response to this notice for appointment to the Committee, in addition to nominations already received.

DATES: Please submit nominations on or before July 17, 2003.

ADDRESSES: Please submit nominations to Harry Hertz, Director, National Quality Program, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899–1020. Nominations may also be submitted via FAX to 301–948–3716. Additional information regarding the Committee, including its charter, current membership list, and executive summary may be found on its electronic Home page at: *http://www.quality.nist.gov.*

FOR FURTHER INFORMATION CONTACT: Harry Hertz, Director, National Quality Program and Designated Federal Official, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899–1020; telephone 301–975–2361; FAX—301–948–3716; or via e-mail at *harry.hertz@nist.gov.*

SUPPLEMENTARY INFORMATION:

I. Board of Overseers of the Malcolm Baldrige National Quality Award Information

The Board was established in accordance with 15 U.S.C. 3711a(d)(2)(B), pursuant to the Federal Advisory Committee Act (5 U.S.C. app.2).

Objectives and Duties

1. The Board shall review the work of the private sector contractor(s), which assists the Director of the National Institute of Standards and Technology (NIST) in administering the Award. The Board will make such suggestions for the improvement of the Award process as it deems necessary.

2. The Board shall provide a written annual report on the results of Award activities to the Secretary of Commerce, along with its recommendations for the improvement of the Award process.

3. The Board will function solely as an advisory committee under the Federal Advisory Committee Act.

4. The Board will report to the Director of NIST and the Secretary of Commerce.

Membership

1. The Board will consist of approximately eleven members selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance, and for their preeminence in the field of quality management. There will be a balanced representation from U.S. service and manufacturing industries, education and health care. The Board will include members familiar with the quality improvement operations of manufacturing companies, service companies, small businesses, education, and health care. No employee of the Federal Government shall serve as a member of the Board of Overseers.

2. The Board will be appointed by the Secretary of Commerce and will serve at the discretion of the Secretary. The term of office of each Board member shall be three years. All terms will commence on March 1 and end on February 28 of the appropriate year.

Miscellaneous

1. Members of the Board shall serve without compensation, but may, upon request, be reimbursed travel expenses, including per diem, as authorized by 5 U.S.C. 5701 *et seq.*

2. The Board will meet twice annually, except that additional meetings may be called as deemed necessary by the NIST Director or by the Chairperson. Meetings are one day in duration.

3. Board meetings are open to the public. Board members do not have access to classified or proprietary information in connection with their Board duties.

II. Nomination Information

1. Nominations are sought from the private sector as described above.

2. Nominees should have established records of distinguished service and shall be familiar with the quality improvement operations of manufacturing companies, service companies, small businesses, education, and health care. The category (field of eminence) for which the candidate is qualified should be specified in the nomination letter. Nominations for a particular category should come from organizations or individuals within that category. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on federal advisory boards and federal employment. In addition, each nomination letter should state that the person agrees to the nomination, acknowledges the responsibilities of serving on the Board, and will actively participate in good faith in the tasks of the Board. Besides participation at meetings, it is desired that members be able to devote the equivalent of seven days between meetings to either developing or researching topics of potential interest, and so forth, in furtherance of their Board duties.

3. The Department of Commerce is committed to equal opportunity in the

workplace and seeks a broad-based and diverse Board membership.

Dated: June 25, 2003.

Karen H. Brown,

Deputy Director.

[FR Doc. 03–16654 Filed 7–1–03; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Manufacturing Extension Partnership National Advisory Board (MEPNAB)

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Request for nominations of members to serve on the Manufacturing Extension Partnership National Advisory Board.

SUMMARY: NIST invites and requests nomination of individuals for appointment to the Manufacturing Extension Partnership National Advisory Board. NIST will consider nominations received in response to this notice for appointment to the Board, in addition to nominations already received.

DATES: Please submit nominations on or before July 17, 2003.

ADDRESSES: Please submit nominations to Ms. Carrie Hines, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 4800, Gaithersburg, MD 20899–4800. Nominations may also be submitted via FAX to 301–963–6556.

Additional information regarding the Board, including its charter and current membership list may be found on its electronic Home page at *http://www.mep.nist.gov/index-nist.html.*

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Hines, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 4800, Gaithersburg, MD 20899–4800; telephone 301–975–3360, fax 301–963–6556; or via e-mail at *carrie.hines@nist.gov.*

SUPPLEMENTARY INFORMATION: The Board will advise the Director of the National Institute of Standards and Technology (NIST) o MEP programs, plans, and policies.

The Board will consist of nine individuals appointed by the Director of the National Institute of Standards and Technology (NIST) under the advisement of the Director of MEP. Membership on the Board shall be balanced to represent the views and needs of customers, providers, and others involved in industrial extension throughout the United States.

The Board will function solely as an advisory body, in compliance with the provisions of the Federal Advisory Committee Act.

Authority: Federal Advisory Committee Act: 5 U.S.C. App. 2 and General Services Administration Rule: 41 CFR subpart 101–6.10.

Dated: June 25, 2003.

Karen H. Brown

Deputy Director.

[FR Doc. 03–16657 Filed 7–1–03; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062603A]

Proposed Information Collection; Comment Request; Northeast Region Sea Scallop Exemption Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 2, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Peter Christopher, 978–281–9288, or at *Peter.Christopher@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Sea scallop fishermen wishing to fish in exemption areas are subject to certain vessel monitoring system (VMS) and communications requirements. The information requirements are: (1) VMS purchase and installation, (2) documentation and verification of VMS installation, (3) automated position reports from the VMS twice per hour, (4) daily reporting of catch and related information, (5) notification of intent to participate in the fishery 15 days prior to the opening of the exemption area, and (6) notification at least 5 days prior to leaving on a fishing trip to allow for observer assignment.

II. Method of Collection

Verification of VMS installation is made by submission of a paper document. Other reporting is done electronically via the VMS unit's e-mail messaging system.

III. Data

OMB Number: 0648–0416.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations, individuals or households, and not-for-profit institutions.

Estimated Number of Respondents: 267.

Estimated Time Per Response: 1 hour for VMS installation; 5 minutes for a VMS documentation/verification requirement; 5 seconds for an automated VMS position report; 10 minutes for daily transmittal of catch and related information; and 2 minutes for a notification of intent to participate in the fishery or a notification before leaving on a fishing trip.

Estimated Total Annual Burden Hours: 2,950.

Estimated Total Annual Cost to Public: $195,000.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 25, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–16780 Filed 7–1–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062603B]

Proposed Information Collection; Comment Request; Information for Share Transfer in the Wreckfish Fishery

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 2, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Robert Sadler, 727–570–5326, or *Robert.Sadler@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The individual transferable quota system in the wreckfish fishery is based on percentage shares. Persons holding shares may sell or otherwise transfer them to others, but information about the proposed transfer must first be provided to NOAA. The information is needed to manage the quota system, and information about the sales price is used in economic analyses.

II. Method of Collection

The information is submitted in paper form.

III. Data

OMB Number: 0648–0262.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations, individuals or households.

Estimated Number of Respondents: 4.

Estimated Time Per Response: 15 minutes.

Estimated Total Annual Burden Hours: 1.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 25, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–16781 Filed 7–1–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Science Advisory Board

AGENCY: Office of Oceanic and Atmospheric Research, NOAA, Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on long- and short-range strategies for research, education, and application of science to resource management. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

Time and date: The meeting will be held Tuesday, July 15, 2003, from 10 a.m. to 5 p.m.; and Wednesday, July 16, 2003, from 8 a.m. to 4 p.m. These times and the agenda topics described below may be subject to change. Refer to the web page listed below for the most up-to-date meeting agenda.

Place: The meeting will be held both days at the Key Bridge Marriott Hotel, 1401 Lee Highway, Arlington, VA.

Status: The meeting will be open to public participation with a 30-minute time period set aside on Wednesday, July 16 for direct verbal comments or questions from the public. The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Written comments (at least 35 copies) should be received in the SAB Executive Director's Office by July 3, 2003, to provide sufficient time for SAB review. Written comments received by the SAB Executive Director after July 3, 2003, will be distributed to the SAB, but may not be reviewed prior to the meeting date. Approximately thirty (30) seats will be available for the public including five (5) seats reserved for the media. Seats will be available on a first-come, first-served basis.

Matters to be considered: The meeting will include the following topics: (1) Updates on the Climate Change Science Plan, Interagency Climate Programs and the Earth Observing Summit, (2) Fiscal Year 2006 Program Priorities, (3) the NOAA Research Council, (4) the National Centers for Environmental Prediction, (5) the Consortium for Oceanographic Research and Education, (6) the NOAA Education Council, (7) Cooperative Science Centers at Minority Serving Institutions, (8) the SAB Review Panel Report on the Cooperative Institute for Marine and Atmospheric Sciences, and (9) public statements.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Uhart, Executive Director, Science Advisory Board, NOAA, Rm. 11142, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–713–9121, Fax: 301–713–0163, e-mail: *Michael.Uhart@noaa.gov*); or visit the

NOAA SAB website at *http://www.sab.noaa.gov.*

Alexander E. MacDonald,

Assistant Administrator (Acting), OAR.

[FR Doc. 03–16625 Filed 7–1–03; 8:45 am]

BILLING CODE 3510–KB–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060503B]

Permits; Foreign Fishing

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

ACTION: Notice to U.S. vessel owners of need for break-bulk refrigerated cargo vessels.

SUMMARY: NMFS provides notice to U.S. vessel owners of the need for break-bulk refrigerated cargo vessels to support approved foreign fishing operations in the U.S. Exclusive Economic Zone (EEZ).

ADDRESSES: Additional information on this action may be obtained from NMFS, Office of Sustainable Fisheries, International Fisheries Division, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Robert A. Dickinson, Office of Sustainable Fisheries, (301) 713–2276.

SUPPLEMENTARY INFORMATION: Under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson-Stevens Act), any person may submit an application requesting a permit authorizing a vessel other than a vessel of the United States to engage in fishing consisting solely of transporting fish or fish products at sea from a point within the EEZ or, with the concurrence of a State, within the boundaries of that State, to a point outside the United States.

Potential joint venture (JV) partners have reported that they will need to have a number of break-bulk refrigerated cargo vessels permitted under section 204(d) of the Magnuson-Stevens Act to support approved foreign fishing operations in the EEZ. The JV partners have reported that arrangements for such support vessels must generally be made on short notice immediately prior to the need for transport services. The JV partners have also reported that they are not aware of the availability of any U.S.-flag break-bulk refrigerated cargo vessels and that it will therefore be necessary for them to employ foreign break-bulk refrigerated cargo vessels to support their operations.

In the interest of expediting the issuance of required permits and in accordance with section 204(d)(3) of the Magnuson-Stevens Act, the JV partners have requested and received from the New England Fishery Management Council and the Mid-Atlantic Fishery Management Council, a recommendation that any break-bulk refrigerated cargo vessels required to support approved foreign fishing operations in the EEZ be permitted under section 204(d) of the Magnuson-Stevens Act.

In accordance with section 204(d)(3)(D) of the Magnuson-Stevens Act, NMFS is notifying interested parties of the need of the JV partners for break-bulk refrigerated cargo vessels to transship processed fishery products at-sea and transport the products to points outside the United States. Further information about the requirements of the JV partners is available from NMFS (see **ADDRESSES**). Owners or operators of vessels of the United States who purport to have vessels with adequate capacity to perform the required transportation at fair and reasonable rates should indicate their interest in doing so to NMFS (see **ADDRESSES**). NMFS will provide notice of such interest to any 204(d) permit applicant(s) and consider such interest in making a determination in accordance with section 204(d)(3)(D) of the Magnuson-Stevens Act.

In consideration of the Councils' recommendation, the apparent lack of available U.S.-flag break-bulk refrigerated cargo vessels (as reported by the JV partners), and the requirement to process and issue on short notice permits requested in accordance with section 204(d) of the Magnuson-Stevens Act, until an owner or operator of a vessel of the United States having adequate capacity to perform the required transportation at fair and reasonable rates is identified, NMFS intends to approve as expeditiously as possible all complete applications for 204(d) transshipment permits submitted by U.S. JV partners in support of approved foreign fishing operations in the EEZ.

Dated: June 26, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–16779 Filed 7–1–03; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Notice of Availability of Funds for AmeriCorps*VISTA Program Grants

AGENCY: Corporation for National and Community Service.

ACTION: Notice of funding availability.

SUMMARY: The Corporation for National and Community Service (hereinafter the 'Corporation') announces the availability of approximately $3,000,000 in fiscal year 2003 funds to award AmeriCorps*VISTA program grants to eligible nonprofit and public organizations. The Corporation anticipates making between 5 and 15 AmeriCorps*VISTA program grants under this announcement. Each grant budget will support a minimum of 15 and a maximum of 50 AmeriCorps*VISTA members on a full-time basis for one year of service. The Corporation will make awards covering a period not to exceed one year with a potential for an additional two years of funding, contingent upon satisfactory performance, the availability of funds, and other criteria established in the award agreement. These estimates are projections for the guidance of potential applicants. The Corporation is not bound by any estimate in this notice. Publication of this announcement does not obligate the Corporation to award any specific number of grants or to obligate the entire amount of funds available, or any part thereof, for grants under the AmeriCorps*VISTA program. Applicable regulations include the uniform administrative requirements for grants and agreements with institutions of higher education, hospitals, and other nonprofit organizations, 45 CFR part 2543 or the uniform administrative requirements for grants and cooperative agreements to State and local governments, 45 CFR part 2541.

AmeriCorps*VISTA assigns individuals 18 years and older, on a full-time, year-long basis, to public and private nonprofit organizations whose goals are in accord with AmeriCorps*VISTA's legislative mission. (42 U.S.C. 4951) The purpose of these program grants is to create and expand opportunities for low income individuals in one of the following broad areas: (1) Children and youth; (2) welfare to work; (3) financial asset development; (4) seniors in poverty, and (5) homeland security. AmeriCorps*VISTA Projects in these initiatives will focus on (1) local or state organizations working alone or in conjunction with local affiliates that share a vision and common goal of

working with low-income communities to achieve long-lasting antipoverty objectives; (2) promotion of partnerships and collaboration between the public and private sectors including businesses, community-based organizations (secular and faith-based) and other service programs; (3) recruitment, training, and coordination of local volunteers; (4) mobilization of resources needed to support the project; and (5) development of a sustainable capacity in local communities. While there is no specific match requirement, the level of matching contributions will also be considered in final application selection.

Eligible applicants for AmeriCorps*VISTA program grants supporting these initiatives must be private non-profit or public organizations. AmeriCorps*VISTA sponsoring organizations may apply without affecting the status of their current projects. However, applicants must differentiate between this grant's proposed activities and those of the currently-funded program or pending application. Eligible nonprofit and public organizations, including those that have not applied for federal assistance from the Corporation in the past, as well as interested community-based organizations (secular and faith-based), are encouraged to apply.

Note: This notice is not a complete description of the activities to be funded or of the application requirements. For supplementary information and application guidelines go to the Corporation's Web site at *http://www.cns.gov/whatshot/notices.html.* You can also find more information about AmeriCorps*VISTA project sponsorship in general at *http://www.americorps.org/vista/sponsorinfo.html.*

DATES: Applications must be received at the Corporation by 5 p.m. on August 15, 2003. We anticipate announcing selections under this Notice no later than September 12, 2003.

ADDRESSES: Submit your application to the following address: Corporation for National and Community Service, 1201 New York Avenue NW., Stop 9100, Washington, DC 20525. Due to delays in delivery of regular mail to government offices, there is no guarantee that an application sent by regular mail will arrive in time to be considered. We therefore suggest that you use U.S.P.S. priority mail or a commercial overnight delivery service to make sure that you meet the deadline. We will not accept an application that is submitted via facsimile. Applications for AmeriCorps*VISTA will not be accepted via eGrants at this time.

FOR FURTHER INFORMATION CONTACT: Kelly Daly at (202) 606–5000 ext. 378, or by e-mail at *vista@americorps.org.* The TDD number is 202–565–2799. For a printed copy of this NOFA and the supplementary information and application guidelines (available on-line), contact Ms. Daly at (202) 606–5000 ext. 378. Upon request, this information will be made available in alternate formats for people with disabilities.

Dated: June 26, 2003.

David Caprara,

*Director, AmeriCorps*VISTA.*

[FR Doc. 03–16623 Filed 7–1–03; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Notice of Availability of Funds for AmeriCorps*VISTA Program Grants in the Southwest Cluster

AGENCY: Corporation for National and Community Service.

ACTION: Notice of funding availability.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation'') announces the availability of approximately $1,200,000 in fiscal year 2003 funds to award AmeriCorps*VISTA program grants to eligible nonprofit and public organizations providing services in the Corporation's Southwest cluster (AR, AZ, CO, KS, LA, MO, NM, OK, TX).). Applicant organizations are not required to be geographically-based in the nine-state southwest cluster, so long as the proposed grant activities will provide services within one or more of those nine states. The Corporation anticipates making between 5 and 8 AmeriCorps*VISTA program grants under this announcement. Each grant budget will support a minimum of 15 and a maximum of 40 AmeriCorps*VISTA members on a full-time basis for one year of service. The Corporation will make awards covering a period not to exceed one year with a potential for an additional two years of funding, contingent upon satisfactory performance, the availability of funds, and other criteria established in the award agreement. These estimates are projections for the guidance of potential applicants. The Corporation is not bound by any estimate in this notice. Publication of this announcement does not obligate the Corporation to award any specific number of grants or to obligate the entire amount of funds available, or any part thereof, for grants under the AmeriCorps*VISTA program. Applicable regulations include the uniform administrative requirements for grants and agreements with institutions of higher education, hospitals, and other nonprofit organizations, 45 CFR part 2543 or the uniform administrative requirements for grants and cooperative agreements to State and local governments, 45 CFR Part 2541.

AmeriCorps*VISTA assigns individuals 18 years and older, on a full-time, year-long basis, to public and private nonprofit organizations whose goals are in accord with AmeriCorps*VISTA's legislative mission. (42 U.S.C. 4951) The purpose of these program grants is to create and expand opportunities for individuals in one of the following two areas: (1) homeland security and (2) seniors in poverty.

Preference will be given to AmeriCorps*VISTA Projects serving as ''umbrella sponsorships'' where the applicant provides fiscal and programmatic capacity on behalf of small, community-based (secular and faith based) organizations, and/or local sites of the sponsoring organization. Applicants should be local, state or national organizations working alone or in conjunction with local affiliates that share a vision and common goal of working with low-income communities to achieve long-lasting antipoverty objectives. Proposed projects should focus on:

(1) Promotion of partnerships and collaboration between the public and private sectors including businesses, community-based organizations (secular and faith-based) and other service programs;

(2) Recruitment, training, and coordination of local volunteers;

(3) Mobilization of resources needed to support the project; and

(4) Development of a sustainable capacity in local communities.

While there is no specific match requirement, the level of matching contributions will also be considered in the final application selection.

Eligible applicants for AmeriCorps*VISTA program grants supporting these initiatives must be private non-profit or public organizations. AmeriCorps*VISTA sponsoring organizations may apply without affecting the status of their current projects. However, applicants must differentiate between this grant's proposed activities and those of the currently-funded program or pending application. Projects should be state-based (one legal applicant with site(s) in one or more of the nine states in the Southwest region—AR, AZ, CO, KS, LA, MO, NM, OK, TX) to be considered.

Eligible nonprofit and public organizations, including those that have not applied for federal assistance from the Corporation in the past, as well as interested community-based organizations (secular and faith-based), are encouraged to apply.

Note: This notice is not a complete description of the activities to be funded or of the application requirements. For supplementary information and application guidelines go to the Corporation's Web site at *http://www.cns.gov/whatshot/notices.html.* You can also find more information about AmeriCorps*VISTA project sponsorship in general at *http://www.americorps.org/vista/sponsorinfo.html.*

DATES: Applications must be received at the Corporation by 5 p.m. on August 4, 2003. We anticipate announcing selections under this Notice no later than September 8, 2003.

ADDRESSES: Submit your application to the following address: Corporation for National and Community Service, 120 South Federal Place, #315, Santa Fe, NM 87501. Due to delays in delivery of regular mail to government offices, there is no guarantee that an application sent by regular mail will arrive in time to be considered. We therefore suggest that you use U.S.P.S. priority mail or a commercial overnight delivery service to make sure that you meet the deadline. We will not accept an application that is submitted via facsimile. Applications for AmeriCorps*VISTA will not be accepted via eGrants at this time.

FOR FURTHER INFORMATION CONTACT: Kathie Ferguson at (303) 312–7959. or *kferguso@cns.gov.* The TDD number is 202–565–2799. For a printed copy of this NOFA and the supplementary information and application guidelines (available on-line), contact Ms. Ferguson at (303) 312–7959. Upon request, this information will be made available in alternate formats for people with disabilities.

Dated: June 26, 2003.

Cindy R. Salavantis,

Acting Director, Office of Field Liaison.

[FR Doc. 03–16624 Filed 7–1–03; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Naval Research Advisory Committee

AGENCY: Department of the Navy, DOD.

ACTION: Notice of closed meeting.

SUMMARY: The Naval Research Advisory Committee (NRAC) Panel on Electromagnetic (EM) Gun Technology Assessment will meet to provide a technical assessment of the status of EM Gun technology and the potential for achieving the revolutionary performance associated with this concept for Naval applications. From these discussions the NRAC Panel will review and document the performance capabilities considered necessary to achieve a militarily effective EM Gun system; review and assess the currently demonstrated and projected performance of those technologies necessary to field a durable EM gun with predictable, repeatable performance; evaluate the production feasibility of a projectile that will withstand all launch environmental transients and effectively perform at the target; project rough order of magnitude cost estimates for the non-recurring general projectile development program and the subsequent recurring projectile costs. All sessions of the meeting will be closed to the public.

DATES: The meetings will be held on Monday, July 7, 2003, from 8 a.m. to 5 p.m.; Tuesday, July 8, 2003, from 8 a.m. to 5 p.m. and Wednesday, July 9, 2003, from 8 a.m. to 5 p.m.

ADDRESSES: The meetings will be held at the Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5660.

FOR FURTHER INFORMATION CONTACT: Dennis Ryan, Program Director, Naval Research Advisory Committee, 800 North Quincy Street, Arlington, VA 22217–5660, (703) 696–6769.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2). All sessions of the meeting will be devoted to discussions basic and advanced research and associated science and technology opportunities with respect to concepts and science and technology (S&T) initiatives required to produce a militarily effective Naval EM Gun system. These discussions will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. In accordance with 5 U.S.C. App. 2, section 10(d), the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in 5 U.S.C. section 552b(c)(1). Due to unavoidable delay in administrative processing, the normal 15 days notice could not be provided.

Dated: June 27, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–16840 Filed 7–1–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Naval Research Advisory Committee

AGENCY: Department of the Navy, DOD.

ACTION: Notice of closed meeting.

SUMMARY: The Naval Research Advisory Committee (NRAC) Panel on Technology for FORCEnet will meet to define the concepts and science and technology (S&T) initiatives, including those in the space, atmospheric, surface and subsurface environments, required to achieve the visions of FORCEnet and Sea Power 21. From these discussions the NRAC Panel will recommend appropriate near and far term naval science and technology investments to enhance FORCEnet. All sessions of the meeting will be closed to the public.

DATES: The meeting will be held on Tuesday, July 8, 2003, from 8 a.m. to 5 p.m.; Wednesday, July 9, 2003, from 8 a.m. to 5 p.m.; and Thursday, July 10, 2003, from 8 a.m. to 5 p.m.

ADDRESSES: The meetings will be held at the Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5660.

FOR FURTHER INFORMATION CONTACT: Dennis Ryan, Program Director, Naval Research Advisory Committee, 800 North Quincy Street, Arlington, VA 22217–5660, (703) 696–6769.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2). All sessions of the meeting will be devoted to discussions basic and advanced research and associated science and technology opportunities with respect to concepts and science and technology (S&T) initiatives, including those in the space, atmospheric, surface and subsurface environments, required to achieve the visions of FORCEnet and Sea Power 21. These discussions will contain classified information that is specifically authorized under criteria

established by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. In accordance with 5 U.S.C. App. 2, section 10(d), the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in 5 U.S.C. section 552b(c)(1). Due to unavoidable delay in administrative processing, the normal 15 days notice could not be provided.

Dated: June 27, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–16841 Filed 7–1–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho National Engineering and Environmental Laboratory

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), Idaho National Engineering and Environmental Laboratory. 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: Tuesday, July 15, 2003, 8 a.m.–6 p.m., and Wednesday, July 16, 2003, 8 a.m.–5 p.m.

Public participation sessions will be held on: Tuesday, July 15, 2003, 12:15–12:30 p.m., 5:45–6 p.m., and Wednesday, July 16, 2003, 11:45–12 noon, 4–4:15 p.m.

These times are subject to change as the meeting progresses. Please check with the meeting facilitator to confirm these times.

ADDRESSES: Red Lion Hotel (formerly the West Coast Hotel), 475 River Parkway, Idaho Falls, ID 83402.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy Green Lowe, Idaho National Engineering and Environmental Laboratory (INEEL) Citizens' Advisory Board (CAB) Facilitator, Jason Associates Corporation, 545 Shoup Avenue, Suite 335B, Idaho Falls, ID 83402, Phone (208) 522–1662, X3012 or visit the Board's Internet Home page at *http://www.ida.net/users/cab.*

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the INEEL.

Tentative Agenda Topics: (Agenda topics may change up to the day of the meeting. Please contact Jason Associates for the most current agenda or visit the CAB's Internet site at *http://www.ida.net/users/cab/.*)

Objectives include:

- To meet with the new DOE's Idaho Operations Office (DOE–ID) Site Manager.
- To receive a status report addressing the Environmental Management Program, implementation of the Performance Management Plan for Accelerating Cleanup at the INEEL, and compliance with the Idaho Settlement Agreement.
- To receive informational presentations, participate in facilitated discussions, and/or provide recommendations addressing the end state for the INEEL, including discussion of:

—The Comprehensive Facilities and Land Use Plan and other land use planning documents addressing the INEEL.

—A review of the entire site (by Waste Area Group) describing those end states that have already been determined and identification of those that have not been determined.

—Discussion of how the public will be involved in all pending end state decisions.

- To receive a presentation addressing DOE's contracting strategy for the INEEL.
- To discuss the Long-Term Stewardship Implementation Plan.
- To discuss the Community Relations Plan for the INEEL.
- To receive a presentation addressing the selection of a small business contractor for the INEEL CERCLA Disposal Facility.

Public Participation: This meeting is open to the public. Written statements may be filed with the Board facilitator either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact the Board Chair at the address or telephone number listed above. Request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Jerry Bowman, Assistant Manager for Laboratory Development, Idaho Operations Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Every individual wishing to make public comment will be provided equal time to present their comments. Additional time may be made available for public comment during the presentations. This **Federal Register** notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

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 through Friday except Federal holidays. Minutes will also be available by writing to Ms. Penny Pink, INEEL CAB Administrator, North Wind Environmental, Inc., PO Box 51174, Idaho Falls, ID 83405 or by calling (208) 528–8718.

Issued at Washington, DC on June 27, 2003.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–16720 Filed 7–1–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–111–010, et al.]

Midwest Independent Transmission System Operator, Inc., et al.; Electric Rate and Corporate Filings

June 24, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Midwest Independent Transmission System Operator, Inc.

[Docket Nos. ER02–111–010 and ER02–652–005]

Take notice that on June 19, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing proposed revisions to Schedule 10 (ISO Cost Recovery Adder) of the Midwest ISO Open Access Transmission Tariff (OATT), FERC Electric Tariff, Second Revised Volume No. 1, pursuant to Order of the Federal Energy Regulatory Commission, Midwest Independent Transmission

System Operator Inc., 103 FERC • 61,205.

Midwest ISO states that pursuant to the Settlement reached in these proceedings, the Midwest ISO requests an effective date of March 1, 2003.

The Midwest ISO has requested waiver of the service requirements set forth in 18 CFR 385.2010. The Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at www.midwestiso.org under the heading ''Filings to FERC'' for other interested parties in this matter.

Comment Date: July 10, 2003.

2. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–290–003]

Take notice that on June 20, 2003, the Midwest Independent Transmission System Operator, Inc. (the Midwest ISO) tendered for filing its Revised Process for the Use of Network Resources Outside of the Midwest ISO and Resolving Competing Requests for Transmission Service Among Network Customers and between Point-to-Point and Network Customers as Attachment ''U'' to its Open Access Transmission Tariff in compliance with the Commission's May 21, 2003, Order issued in Midwest Independent Transmission System Operator, Inc., 103 FERC • 61,212.

The Midwest ISO has requested waiver of the requirements set forth in 18 CFR 385.2010. The Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at www.midwestiso.org under the heading Filings to FERC'' for other interested parties in this matter.

Comment Date: July 11, 2003.

3. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–378–001]

Take notice that on June 20, 2003, Midwest Independent Transmission System Operator, Inc.(Midwest ISO), FPL Energy Hancock County Wind, LLC, and Interstate Power and Light Company, a wholly-owned subsidiary of Alliant Energy Corporation (collectively, the Parties) submitted for filing an Amended Interconnection and Operating Agreement.

Midwest ISO states that copies of this filing were served to FPL Energy and Alliant Energy.

Comment Date: July 11, 2003.

4. New York Independent System Operator, Inc.

[Docket No. ER03–647–002]

Take notice that on June 19, 2003, the New York Independent System Operator, Inc. (NYISO) tendered for filing a compliance filing in accordance with the Commission's May 20, 2003 Order accepting for filing tariff revisions in Docket No. ER03–647–000. The NYISO has requested an effective date of June 19, 2003.

The NYISO states it has served a copy of this filing upon all parties that have executed service agreements under the NYISO's Open Access Transmission Tariff or the Services Tariff and upon the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: July 10, 2003.

5. Minnesota Power

[Docket No. ER03–691–001]

Take notice that on June 19, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and Minnesota Power, Inc. (Minnesota Power) filed a revised Network Integration Transmission Service Agreement (NITS Agreement) entered into between Minnesota Power and Great River Energy in compliance with Order No. 614, FERC • 31,096, and as directed by the Commission's May 21, 2003 Letter Order in this proceeding.

The Midwest ISO and Minnesota Power state that all parties on the service list maintained by the Secretary in this proceeding have been served a copy of this filing via United States mail.

Comment Date: July 10, 2003.

6. Susquehanna Energy Products, LLC

[Docket No. ER03–768–002]

Take notice that on June 20, 2003, Susquehanna Energy Products, LLC (Susquehanna Energy) tendered for filing a revised FERC Electric Tariff, Original Volume Number 1, to permit the resale of transmission capacity and Firm Transmission Rights or their equivalents to become effective June 23, 2003. Susquehanna Energy Requests a waiver of the 60-day prior notice requirement and a shortened 10-day public comment period. Susquehanna Energy further requests expedited treatment and a Commission order by July 3, 2003.

Comment Date: July 7, 2003.

7. Ameren Services Company

[Docket No. ER03–968–000]

Take notice that on June 19, 2003, Ameren Services Company (ASC) tendered for filing an executed Service Agreement for Firm Point-to-Point Transmission Services between ASC and Wisconsin Electric Power Co. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Wisconsin Electric Power Co., pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: July 10, 2003.

8. Ameren Services Company

[Docket No. ER03–969–000]

Take notice that on June 19, 2003, Ameren Services Company (ASC) tendered for filing an executed Service Agreement for Firm Point-to-Point Transmission Services between ASC and Constellation Power Source, Inc. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Constellation Power Source, Inc. pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: July 10, 2003.

9. Ameren Services Company

[Docket No. ER03–970–000]

Take notice that on June 19, 2003, Ameren Services Company (ASC) tendered for filing an executed for Network Integration Transmission Agreement and Network Operating Agreement between ASC and Central Illinois Light Company, d/b/a AmerenCILCO. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Central Illinois Light Company, d/b/a AmerenCILCO pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: July 10, 2003.

10. Public Service Company of Colorado

[Docket No. ER03–971–000]

Take notice that on June 19, 2003, Public Service Company of Colorado (PS Colorado) tendered for filing, to be effective August 18, 2003, proposed (1) changes in rates applicable to the following customers: Grand Valley Rural Power Lines, Inc.; Holy Cross

Electric Association, Inc.; Intermountain Rural Electric Association; Yampa Valley Electric Association, Inc.; the Town of Julesburg, Colorado; the City of Burlington, Colorado; and the Town of Center, Colorado; (2) changes in the Fuel Cost Adjustment (FCA) clause applicable to each of these customers and (3) PS Colorado's power supply contracts with each of these customers, integrated and conformed to the requirements of Order No. 614, including rate schedule designations. PS Colorado states that the filing incorporates rates applicable to service to Cheyenne Light, Fuel and Power Company, proposed to be effective January 1, 2004.

PS Colorado states that copies have been served on each of the affected customers, Colorado Public Utilities Commission, the Colorado Office of Consumers Counsel, the Wyoming Public Service Commission and the Wyoming Office of Consumer Advocate. PS Colorado states that copies of the filing are available for public inspection in the offices of PS Colorado in Denver, Colorado.

Comment Date: July 10, 2003.

11. Mid-Continent Area Power Pool

[Docket No. ER03–972–000]

Take notice that on June 19, 2003, the Mid-Continent Area Power Pool (MAPP), on behalf of its members that are subject to Commission jurisdiction as public utilities under Section 201(e) of the Federal Power Act, filed an amendment to Schedule F (FERC Electric Tariff, First Revised Volume No. 1) that would amend Section 2 to eliminate the exclusive use requirement of Schedule F.

MAPP states that a copy of this filing has been served on all MAPP members and the state commissions in the MAPP region.

Comment Date: July 10, 2003.

12. Pacific Gas and Electric Company

[Docket No. ER03–973–000]

Take notice that on June 20, 2003, Pacific Gas and Electric Company (PG&E) tendered for filing an agreement entitled Special Facilities Agreement for the Interconnection of Silicon Valley Power's Single Circuit 230kV Line into Los Esteros Substation (SFA) between PG&E and Silicon Valley Power (SVP).

PG&E states that the SFA states that it permits PG&E to recover its costs for installing, owning, operating and maintaining Special Facilities necessary for the interconnection of SVP's single circuit 230kV line with PG&E's transmission system. PG&E has requested certain waivers.

PG&E states that copies of this filing were served upon SVP, the California Independent System Operator, and the California Public Utilities Commission.

Comment Date: July 11, 2003.

13. Avista Corporation

[Docket No. ER03–974–000]

Take notice that on June 20, 2003, Avista Corporation, tendered for filing with the Federal Energy Regulatory Commission pursuant to section 35.12 of the Commission's Regulations at 8 CFR 35.12, an executed Mutual Monthly Netting and Close-Out Netting Agreement, Rate Schedule No. 301, with Mirant Americas Energy Marketing, LP, effective May 1, 2003.

Avista states that notice of the filing has been served to Mirant Americas Energy Marketing, LP.

Comment Date: July 11, 2003.

14. American Electric Power Service Corporation

[Docket No. ER03–975–000]

Take notice that on June 20, 2003, American Electric Power Service Corporation (AEPSC) as agent for Southwestern Electric Power Company (SWEPCO) tendered for filing pursuant to § 35.15 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.15, a Notice of Cancellation of service agreements between SWEPCO and various entities under SWEPCO FERC Electric Tariff, First Revised Volume No. 5 (Power Sales Tariff) and Notice of Cancellation of a power supply agreement between SWEPCO and the City of Minden, Louisiana under SWEPCO FERC Rate Schedule No. 116 (Minden Power Supply Agreement). The Power Sales Tariff was accepted for filing by the Commission, effective January 1, 1997 in Docket No.

ER96–2342–000 and the Minden Power Supply Agreement was accepted for filing by the Commission, effective May 1, 1995 in Docket ER95–927–000.

AEPSC requests an effective date of June 1, 2003 for the cancellations that are part of its filing. AEPSC states that it has served copies of the filing upon the parties listed in Exhibit 1 and the affected state regulatory commissions.

Comment Date: July 11, 2003.

15. Ameren Services Company

[Docket No. ER03–976–000]

Take notice that on June 20, 2003, Ameren Services Company (ASC) tendered for filing an executed Service Agreement for Firm Point-to-Point Transmission Service between ASC and Columbia, MO Water & Light. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Columbia, MO Water & Light pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: July 11, 2003.

16. Ameren Services Company

[Docket No. ER03–977–000]

Take notice that on June 20, 2003, Ameren Services Company (ASC) tendered for filing an executed Service Agreement for Firm Point-to-Point Service between ASC and Westar Energy, Inc. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Westar Energy, Inc. pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: July 11, 2003.

17. Southwest Power Pool, Inc.

[Docket No. ER03–978–000]

Take notice that on June 20, 2002, Southwest Power Pool, Inc. (SPP), tendered for filing an executed interconnection agreement (IA) between SPP, Blue Canyon Windpower, LLC (Blue Canyon) and Western Farmers Electric Cooperative (WFEC) under the SPP Open Access Transmission Tariff. SPP requests an effective date of May 22, 2003 for this IA.

SPP states that a copy of the filing was served on representatives of Blue Canyon and WFEC.

Comment Date: July 11, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and

interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–16673 Filed 7–1–03; 8:45 am]

BILLING CODE 6717–01–P•

ENVIRONMENTAL PROTECTION AGENCY

[OA–2003–0001; FRL–7521–7]

Agency Information Collection Activities; Submission of EPA ICR No. 1949.02 (OMB No. 2010–0032) to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: National Environmental Performance Track Program. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before August 1, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Robert D. Sachs, Office of Policy, Economics and Innovation, Mail Code 1808T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–566–2884; fax number: 202–566–0966; email address *sachs.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On January 27, 2003, 68 FR 3879, EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no relevant comments.

EPA has established a public docket for this ICR under Docket ID No. OA–2003–0001, which is available for public viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA 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 Office of Environmental Information Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to OMB and EPA within 30 days of this notice, and according to the following detailed instructions: (1) 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 and (2) Submit your comments to EPA online using EDOCKET (our preferred method), by email to *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information Docket, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in 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 claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in 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 go to *http://www.epa.gov/edocket.*

Title: National Environmental Performance Track Program (OMB Control Number 2010–0032, EPA ICR Number 1949.02). This is a request to renew an existing approved collection that is scheduled to expire on June 30, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: EPA announced the National Environmental Performance Track Program on June 26, 2000. The program is designed to recognize and encourage facilities that consistently meet their legal requirements, that have implemented management systems to monitor and improve performance, that have voluntarily achieved environmental improvements beyond compliance, and that publicly commit to specific environmental improvements and report on progress. Applications submitted by facilities are used by EPA and participating regulatory entities to determine whether the applicant qualifies for the program. A total of 304 facilities are current members of this voluntary program. Environmental Performance Track members are also required to submit an annual performance report documenting their environmental performance relative to the commitments they made upon entry into the program. This information is important to determine whether participants are meeting their commitments, as well as to evaluate the effectiveness of the program. The public reporting elements of the program also provide information to the local community.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 268 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of

information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. For this ICR, EPA considers facilities that are members of the Performance Track program to be respondents.

Respondents/Affected Entities: Public and private facilities/entities that consistently meet their legal requirements, that have implemented management systems to monitor and improve performance, that have voluntarily achieved environmental improvements beyond compliance, and that publicly commit to specific environmental improvements and report on progress.

Estimated Number of Respondents: 513, the average calculated from years 1, 2 and 3 projections of 404, 505 and 631 respondents.

Frequency of Response: Annually.

Estimated Total Annual Hour Burden: 109,445.

Estimated Total Annual Cost: $6,735,712 includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is an increase of 58,995 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is based on the estimated growth in membership in the National Environmental Performance Track Program.

Dated: June 18, 2003.

Doreen Sterling, Acting Director,

Collection Strategies Division.

[FR Doc. 03–16732 Filed 7–1–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0006, FRL–7521–9]

Agency Information Collection Activities; Submission of EPA ICR No. 0619.10 (OMB No. 2060–0078) to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Mobile Source Emission Factor On-Highway Recruitment. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before August 1, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Carl Scarbro, Assessment and Standards Division, Office of Transportation and Air Quality, AATC, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 734–214–4209; fax number: 734–214–4939; e-mail address: *scarbro.carl@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On Friday, January 24, 2003 68 FR 3524, EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received a single request for information concerning the ICR. EPA forwarded the requested information to the requestor.

EPA has established a public docket for this ICR under Docket ID No. OAR–2003–0006, which is available for public viewing at the Office of Air and Radiation 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 Office of Air and Radiation Docket is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 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 *a-and-r-docket@epamail.epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Environmental Protection Agency, Mailcode 6102T, 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 in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in 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 claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in 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 go to *http://www.epa.gov/edocket.*

Title: Mobile Source Emission Factor On-Highway Recruitment (OMB Control No. 2060–0078; EPA ICR No. 0619.10). This is a request to renew an existing collection that is scheduled to expire in 06/30/2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The EPA Emissions Factor Program, through contractors, solicits the general public to voluntarily offer their vehicle for emissions testing. There are two methods used to solicit the general public for participation in Emission Factor Program (EFP):

1. Postal cards are sent to a random selection of vehicle owners using State motor vehicle registration lists; and

2. A random selection of motor vehicle owners, who arrive at State inspection stations on an annual or biennial schedule, are solicited.

The legislative basis for the Emission Factors Program is section 103(a)(1)(2)(3) of the Clean Air Act, which requires the Administrator to ''conduct * * * research, investigations, experiments, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, and control of air pollution'' and ''conduct investigations and research and make surveys concerning any specific problem of air pollution in cooperation with any air pollution control agency * * *''

EPA uses the data from the EFP to verify predictions of the computer

model known as MOBILE, which calculates the contribution of mobile source emissions to ambient air pollution. MOBILE is used by EPA, state and local air pollution agencies, the automotive industry, and other parties that are interested in estimating mobile source emissions. These estimates, when generated by governments are the basis for State Implementation Plans (SIPs), and Reasonable Further Progress (RFP) reports for the attainment status assessments for the National Ambient Air Quality Standards (NAAQS).

Furthermore, the EFP data collected under this ICR will be used to construct a new model to replace MOBILE, the ''Multi-scale Motor Vehicle & Equipment Emission System'' (MOVES). MOVES will be based on field sample data as opposed to laboratory simulations. This change is due to recommendations made to EPA by the National Research Council, the Office of Management and Budget and is enabled by the availability of suitable technology for the collection of emission and activity data while the vehicles are being used by their owners/operators.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average about 3 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners of on-highway vehicles.

Estimated Number of Respondents: 420.

Frequency of Response: On Occasion.

Estimated Total Annual Hour Burden: 883.

Estimated Total Respondent Annual Cost: $28,160.

Changes in the Estimates: There is a decrease of 766 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to budget constraints on program which will limit the scope of the collection request.

Dated: June 24, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–16733 Filed 7–1–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0040; FRL–7521–8]

Agency Information: Collection Activities; Submission for OMB Review and Approval; Comment Request; NSPS for Flexible Vinyl and Urethane Coating and Printing, EPA ICR Number 1157.07, OMB Number 2060–0073

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS for Flexible Vinyl and Urethane Coating and Printing, OMB Control Number 2060–0073, EPA ICR Number 1157.07. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before August 1, 2003.

ADDRESSES: Follow the detailed instructions under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, (Mail Code 2223A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION:

EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 26, 2002 (67 FR 60672), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OECA–2003–0040, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, 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 Enforcement and Compliance Docket and Information Center is: (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 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 *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code: 2201T, 1200 Pennsylvania Avenue, 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 comment, whether submitted electronically or on paper, will be available for public viewing in EDOCKET, as EPA receives them without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment placed in EDOCKET. The entire printed comment, including copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available

for public viewing in EDOCKET. For further information about the electronic docket, see EPA's notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket.*

Title: NSPS for Flexible Vinyl and Urethane Coating and Printing (40 CFR part 60, subpart FFF), OMB Control Number 2060–0073, EPA ICR Number 1157.07. This is a request to renew an existing, approved collection that is scheduled to expire on June 30, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The NSPS for Flexible Vinyl and Urethane Coating and Printing, published at 40 CFR part 60, subpart FFF, were proposed on January 18, 1983, and promulgated on June 29, 1984. These standards of performance for this category of new stationary sources of hazardous air pollutants are required by section 111 of the Clean Air Act. Facilities may meet the standards by using materials with a low concentration of Volatile Organic Compounds (VOCs), or by installing emission control devices. The information that is required to be submitted to the Agency or kept at the facility is needed to insure compliance with the regulation. These include initial one-time notifications, performance tests plans and reports and records of maintenance and shutdown, startup, and malfunctions. For facilities that install continuous monitoring system (CMS) there are performance tests, and maintenance reports. Excess emissions reports are submitted semiannually. Responses to the collection of information are mandatory (40 CFR part 60, subpart FFF).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information are estimated to average 14 (rounded) hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Flexible Vinyl and Urethane Coating and Printing Manufacturers.

Estimated Number of Respondents: 20.

Frequency of Response: Semiannually, initially.

Estimated Total Annual Hour Burden: 593.

Estimated Total Capital and Operations & Maintenance (O & M) Annual Costs: $61,000.

Changes in the Estimates: There is an increase of 78 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase in burden from the most recently approved ICR is due to more accurate estimates of existing sources. We have assumed that there will be one new source (respondent) over the three years period of this ICR. The change in respondent cost is also due to a labor rate change where the rate has increased over the three years period of this ICR.

Dated: June 24, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–16734 Filed 7–1–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0212; FRL–7312–9]

Indoxacarb; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0212, must be received on or before August 1, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Rita Kumar, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8291; e-mail address: *kumar.rita@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *EPA Docket.* EPA has established an official public docket for this action under docket ID number OPP–2003–0212. 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal

holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

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 docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0212. The system is an''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov,* Attention: Docket ID number OPP–2003–0212. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2003–0212.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0212. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to The Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be

disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 19, 2003.

Peter Caulkins,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by E. I. Du Pont de Nemours and Company, Du Pont Crop Protection, and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

E. I. Du Pont de Nemours and Company

Du Pont Crop Protection

PP 3F6576

EPA has received a pesticide petition (PP 3F6576) from E. I. Du Pont de Nemours and Company, Du Pont Crop Protection, Wilmington, Delaware, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180, by establishing a tolerance for combined residues of Indoxacarb, [(S)-methyl 7-chloro-2,5-dihydro-2-[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl] amino]carbonyl]indeno[1,2e] [1,3,4]oxadiazine-4a(3H)- carboxylate] and its R-enantiomer [(R)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy) phenyl] amino]carbonyl]indeno [1,2-e] [1,3,4] oxadiazine-4a(3H)- carboxylate] in a 75:25 mixture (DPX MP062), respectively, in or on the raw agricultural commodity as follows: grape, 2 ppm and raisin, 6 ppm. An analytical enforcement method (LC–UV) is available for determining plant residues. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

The active ingredient in the end-use formulation, AvauntÒ, is a 75:25 mixture of two isomers, indoxacarb (DPX–KN128) and IN–KN127. Only one of the isomers, indoxacarb (DPX–KN128), has insecticidal activity. Since the insecticidal efficacy is based on the concentration of indoxacarb (DPX–KN128), the application rates have been normalized on an indoxacarb (DPX–KN128) basis. The proposed tolerance expression includes both indoxacarb (DPX–KN128) and IN–KN127 and the residue method does not distinguish between the enantiomers, therefore, residues are reported as the sum of indoxacarb (DPX–KN128) combined with IN–KN127. Residues of indoxacarb (DPX–KN128) combined with IN–KN127 will be referred to as ''KN128/KN127''.

1. *Plant metabolism* The metabolism of indoxacarb in plants is adequately understood to support these tolerances. Plant metabolism studies in cotton, lettuce, and tomatoes showed no significant metabolites. The only significant residue was parent compound.

2. *Analytical method.* The plant residue enforcement method detects and quantitates indoxacarb in various matrices including sweet corn, lettuce, tomato, broccoli, apple, grape, cottonseed, tomato, peanut and soybean commodity samples by HPLC–UV. The limit of quantitation in the method allows monitoring of crops with indoxacarb residues at or above the levels proposed in these tolerances.

3. *Magnitude of residues—a. Grapes.* Residue studies were conducted at a total of 13 field sites. All studies were done using Avaunt® Insecticide containing 30% active ingredient (300 grams (g) DPX–KN128 per kilogram (kg), weight/weight (w/w). Four broadcast applications of Avaunt®. Insecticide were made at each test site at a maximum rate of 0.11 lb. active ingredient (a.i.) DPX–KN128/acre/application (maximum seasonal use rate of 0.44 lb DPX–KN128/acre). Applications were made approximately 5 days apart. Residues were measured as the combination of DPX-KN128 and IN–KN127 (enantiomers not resolved by the analytical method). Maximum residues of KN128/KN127 in individual duplicate samples were 1.72parts per million (ppm) at a pre-harvest interval (PHI) of 7 days (range 0.066 to 1.72 ppm.

b. *Grape processing.* A *grape* processing study was also performed in California. *Grapes* received four applications of an exaggerated rate of

0.555 lb. of indoxacarb per acre, 5X the labeled rate. Samples were collected from control and treated plots 7 days after the last application. The *grape* samples were then processed using standard *grape* processing procedures. Samples collected at the processing facility were whole fruit, raisins and *grape* juice. The mean KN128/KN127 residues in whole fruit, raisins and *grape* juice treated with the exaggerated rate were 1.34 ppm, 3.66 ppm and <0.01 ppm, respectively.

B. Toxicological Profile

1. *Acute toxicity.* Based on EPA criteria, indoxacarb is classified as follows for toxicity categories:

Guideline	Title	Results	Category
81–1	Acute oral toxicity	LD_{50}:1,730 milligrams/kilogram (mg/kg) (M Rat) LD_{50}: 268 mg/kg/(F Rat)	Category II
81–2	Acute dermal toxicity	LD_{50}: >5,000 mg/kg (Rat)	Category IV
81–3	Acute inhalation toxicity	LC_{50}:>5.5 (milligrams/per Liter (mg/L) (M Rat) (70% MUP)	Category IV
81–4	Primary eye irritation	Effects reversed within 72 hours (Rabbit)	Category III
81–5	Primary dermal irritation	No irritation (Rabbit)	Category IV
81–6	Skin sensitization	Sensitizer (Guinea Pig)	

Formulated products are slightly less acutely toxic than indoxacarb.

In an acute neurotoxicity study, indoxacarb exhibited decreased forelimb grip strength, decreased foot splay, and some evidence of slightly reduced motor activity, but only at the highest doses tested. The no adverse effects level (NOAEL) was 100 mg/kg for males and 12.5 mg/kg for females based on body weight effects in females >50 mg/kg.

2. *Genotoxicty.* Indoxacarb has shown no genotoxic activity in the following listed *in-vitro*and *in-vivo*tests:

i. Ames—Negative

ii. *In-vitro* mammalian gene mutation (CHO/HGPRT)—Negative

iii. *In-vitro* unscheduled DNA synthesis—Negative

iv. *In-vitro* chromosomal aberration—Negative

v. *In-vivo* mouse micronucleus—Negative

3. *Reproductive and developmental toxicity.* The results of a series of studies indicated that there were no reproductive, developmental or teratogenic hazards associated with the use of indoxacarb. In a 2-generation rat reproduction study, the parental NOAEL was 1.5 mg/kg/day. The parental NOAEL was based on observations of reduced weight gain and food consumption for the higher concentration groups of the F0 generation, and potential treatment-related changes in spleen weights for the higher groups of the F1 generation. There was no effect on mating or fertility. The NOAEL for fertility and reproduction was 6.4 mg/kg/day. The offspring NOAEL was 1.5 mg/kg/day, and was based on the reduced mean pup weights noted for the F1 litters of the higher concentration groups. The effects on pup weights occurred only at a maternal effect level and may have been due to altered growth and nutrition in the dams. In studies conducted to evaluate developmental toxicity potential, indoxacarb was neither teratogenic nor uniquely toxic to the conceptus (i.e., not considered a developmental toxin). Developmental studies conducted in rats and rabbits demonstrated that the rat was more susceptible than the rabbit to the maternal and fetal effects of DPX–MP062. Developmental toxicity was observed only in the presence of maternal toxicity. The NOAEL for maternal and fetal effects in rats was 2 mg/kg/day based on body weight effects and decreased food consumption at 4 mg/kg/day. The NOAEL for developmental effects in fetuses was >4 mg/kg/day. In rabbits, the maternal and fetal NOAELS were 500 mg/kg/day based on body weight effects, decreased food consumption in dams and decreased weight and delayed ossification in fetuses at 1,000 mg/kg/day.

4. *Subchronic toxicity.* Subchronic (90-day) feeding studies were conducted with rats, mice, and dogs. In a 90-day feeding study in rats, the NOAEL was 3.1 and 2.1 mg/kg/day for males and females, respectively. In male rats, the NOAEL was based on decreased body weight and nutritional parameters, mild hemolytic anemia and decreased total protein and globulin concentration. In female rats, the NOAEL was based on decreased body weight and food efficiency.

In a subchronic neurotoxicity study in rats, there was no evidence of neurotoxicity at 11.9 and 6.09 mg/kg/day, the highest dose tested for males and females, respectively. The subchronic NOAEL in dogs (5.0 mg/kg/day, M/F) was based on hemolytic anemia. Erythrocyte values for most dogs were within a range that would be considered normal for dogs in a clinical setting. Mice were less sensitive to indoxacarb than the rats or dogs. NOAELs (23 mg/kg/day, males, 16 mg/kg/day, females) were based on mortality (males only); increased reticulocytes and Heinz bodies and decreased body weight, weight gain, food consumption, food efficiency; and increased clinical signs (leaning to one side and/or with abnormal gait or mobility) (females only). In a 28-day repeated dose dermal study, the NOAEL was 50 mg/kg/day based on decreased body weights, body weight gains, food consumption, and food efficiency in females, and changes in hematology parameters, the spleen and clinical signs of toxicity in both sexes in rats.

5. *Chronic toxicity.* Chronic studies with indoxacarb were conducted on rats, mice, and dogs to determine oncogenic potential and/or chronic toxicity of the compound. Effects generally similar to those observed in the 90-day studies were seen in the chronic studies. Indoxacarb was not oncogenic in rats or mice. The chronic NOAEL in male rats was 5 mg/kg/day based on body weight and nutritional effects. In females, the NOAEL of 2.1 mg/kg/day was based on body weight and nutritional changes, as well as biologically significant hematologic changes at 3.6 mg/kg/day and above.

Hemolytic effects were present only through the 6-month evaluation and only in females. The regenerative nature of indoxacarb-induced hemolytic anemia was demonstrated by the absence of significant changes in indicators of circulating erythrocyte mass at later evaluations. In mice, the chronic NOAEL of 2.6 mg/kg/day for males was based on deceased body weight and weight gain effects and food efficiency at 13.8 mg/kg/day and above. The NOAEL for females was 4.0 mg/kg/day based on body weight nutritional effects, neurotoxicity, and clinical signs at 20 mg/kg/day. In dogs, the chronic NOAEL was about 2.3 and 2.4 mg/kg/day in males and females, respectively based on hemolytic effects similar to those seen in the subchronic dog study.

6. *Animal metabolism—i. Livestock animal metabolism.* Animal metabolism has been studied in the rat, hen, and cow and is well understood. In contrast to crops, indoxacarb is extensively metabolized in animals.

ii *Poultry.* In poultry, hens were fed at 10 ppm/day for 5 days, 87–88% of the total administered dose was excreted; parent comprised 51–54% of the total dose in excreta. Concentration of residues in eggs were low, 0.3–0.4 of the total dose, as was the concentration of residues in muscle, 0.2% of the total dose. Parent and metabolite IN–JT333 were not detected in egg whites; only insecticidally inactive metabolites were identified. Parent and IN–JT333 were found in egg yolks; however, their concentrations were very low-0.01-0.02 ppm. Concentrations of parent and IN–JT333 in muscle were at or below the limit of quantitation, (LOQ) (0.01 ppm).

iii. *Cattle. For the cow study,* the cattle were fed at 10 ppm/day for 5 days; approximately 20% of the total administered dose was excreted in urine and 53–60% was excreted in feces in 5 days. Four-tenths to 1.2% of the total dose in urine was parent indicating extensive metabolism; parent represented 46–68% of the fecal activity. Thus, most residues were not absorbed; those residues that were absorbed were extensively metabolized. Less than 1% of the total administered dose was in milk, most of which was parent compound. The insecticidally active metabolite IN–JT333 was not found in milk. Residues in muscle represented less than 0.01% of the total administered dose most of which was parent. IN–JT333 was not detected in muscle. No other metabolites were seen above 10% of the dose, thus only parent and IN–JT333 were monitored in the cattle feeding study.

iv. *Cattle feeding study.* A cattle feeding study was conducted with indoxacarb at doses of 7.5 ppm, 22.5 and 75 ppm. The mean KN128/KN127 concentrations were proportional to the dosing level in whole milk, skim milk, cream, muscle, fat, liver and kidney. Based on final residue values for the respective commodities contributing to the cattle diet, the anticipated dietary burden in dairy cattle is 51.7 ppm and the anticipated dietary burden in beef cattle is 49.1 ppm. The proposed grape use will not increase the animal dietary burden. Based on standard curves constructed from data in the cattle feeding study, KN128/KN127 concentrations at the 51.7 ppm feeding level are 0.123 ppm for whole milk, 0.033 ppm for skim milk and 1.46 ppm for cream. The KN128/KN127 concentrations at the 49.1 ppm feeding level are 0.046 ppm for muscle, 1.37 ppm for fat, 0.012 ppm for liver and 0.026 ppm for kidney. Tolerances have been established at 1.5 ppm in fat (cattle, goat, horse, sheep and hog), 0.05 ppm in meat, 0.03 ppm in meat by-products, 0.15 ppm in milk and 4.0 ppm in milk fat.

7. *Metabolite toxicology.* In rats, indoxacarb was readily absorbed at low dose (5 mg/kg), but saturated at the high dose (150 mg/kg). Indoxacarb was metabolized extensively, based on very low excretion of parent compound in bile and extensive excretion of metabolized dose in the urine and feces. Some parent compound remained unabsorbed and was excreted in the feces. No parent compound was excreted in the urine. The retention and elimination of the metabolite IN-JT333 from fat appeared to be the overall rate determining process for elimination of radioactive residues from the body. Metabolites in urine were cleaved products (containing only one radiolabel), while the major metabolites in the feces retained both radiolabels. Major metabolic reactions included hydroxylation of the indanone ring, hydrolysis of the carboxylmethyl group from the amino nitrogen and the opening of the oxadiazine ring, which gave rise to cleaved products. Metabolites were identified by mass spectral analysis, NMR, ultraviolet (UV), and/or by comparison to standards chemically synthesized or produced by microsomal enzymes.

8. *Endocrine disruption. Lifespan, and multigenerational bioassays in mammals*, and *acute and subchronic studies* on aquatic organisms and wildlife did not reveal endocrine effects. Any endocrine related effects would have been detected in this definitive array of required tests. The probability of any such effect due to agricultural uses of indoxacarb is negligible.

C. Aggregate Exposure

Tolerances for indoxacarb are proposed to support agricultural use on grapes. There are residential uses of indoxacarb pending (fire ant bait), however, the risk from that use has been found to be negligible.

1. *Dietary exposure.* The chronic reference dose (RfD) of 0.02 mg/kg bwt/day is based on a NOAEL of 2.0 mg/kg bwt/day from the subchronic rat feeding study, the subchronic rat neurotoxicity study, and the chronic/carcinogenicity study, using an uncertainty factor of 100. The acute RfD for the general population is 0.12 mg/kg/day, based on the NOAEL of 12.5 mg/kg in the acute neurotoxicity study and an uncertainty factor of 100. The acute RfD for females 13–50 years of age is 0.02 mg/kg/day, based on the NOAEL of 2 mg/kg/day observed in the developmental rat toxicity study and using an uncertainty factor of 100.

i. *Food. Chronic dietary exposure assessment.* Chronic dietary exposure resulting from the currently approved use of indoxacarb on apples, Crop group 5 (brassica vegetables), cotton, pears, peppers, sweet corn, tomatoes, eggplant, alfalfa, head and leaf lettuce, peanuts, potatoes, soybeans, cranberries (current Section 18 use) and the proposed use on grapes are well within acceptable limits for all sectors of the population. The Chronic Module of the Dietary Exposure Evaluation Model (DEEM™, Exponent, Inc., formerly Novigen Sciences, Inc., Version 7.76) was used to conduct the assessment with the reference dose (RfD) of 0.02 mg/kg/day. The analysis used overall mean field trial values, processing factors and projected peak percent crop treated values. Secondary residues in milk, meat and poultry products were also included in the analysis. The chronic dietary exposure to indoxacarb is 0.000089 mg/kg/day, and utilizes 0.4% of the RfD for the overall U.S. population. The exposure of the most highly exposed subgroup in the population, children age 1–6 years, is 0.000238 mg/kg/day, and utilizes 1.2% of the RfD. The table below lists the results of this analysis, which indicate large margins of safety for each population subgroup and very low probability of effects resulting from chronic exposure to indoxacarb.

Subgroup	Maximum Dietary Exposure (mg/kg/day)	% RfD
U.S Population	0.000089	0.4

Subgroup	Maximum Dietary Exposure (mg/kg/day)	% RfD
Non-Nursing Infants (<1 year old)	0.000063	0.3
Children (1–6 years)	0.000238	1.2
Children (7–12 years)	0.000126	0.6
Females (13+, nursing)	0.000073	0.4
Males (13–19 years)	0.000090	0.5

ii. *Acute dietary exposure.* Acute dietary exposure resulting from the currently approved use of indoxacarb on apples, Crop Group 5 (brassica vegetables), cotton, pears, peppers, sweet corn, tomatoes, eggplant, alfalfa, head and leaf lettuce, peanuts, soybeans, potatoes, cranberries (current Section 18 use) and the proposed use on grapes are well within acceptable limits for all sectors of the population. The Dietary Exposure Evaluation Model (DEEM™, Exponent, Inc., formerly Novigen Sciences, Inc., Version 7.76) was used to conduct the assessment. Margins of exposure (MOE) were calculated based on an acute NOAEL of 2 mg/kg/day for women of childbearing age and a NOAEL of 12 mg/kg/day for children and the general population (Pesticide Fact Sheet for Indoxacarb). The Tier 3 analysis used distributions of field trial residue data adjusted for projected peak percent crop treated. Secondary residues in milk, meat and poultry products were also included in the analysis. The results of this analysis are given in the table below. The percent of the acute population adjusted dose (a PAD) for all population subgroups shows that an adequate margin of safety exists in each case. Thus, the acute dietary safety of indoxacarb for established and the follow-on use clearly meets the Food Quality Protection Act (FQPA) standard of reasonable certainty of no harm and presents acceptable acute dietary risk.

Subgroup	99.9th Percentile of exposure	
	Exposure (mg/kg/day)	% Acute population adjusted dose (aPAD)
U.S. population	0.008795	7.3
All infants	0.024729	20.6
Non-nursing (<1 year)	0.026036	21.7
Children (1–6 years)	0.013973	11.6
Children (7–12 years)	0.006882	5.7
Females (13–19 years)	0.005119	25.6
Females (20+, not pregnant or nursing)	0.005358	26.8
Females (13–50 years)	0.005307	26.5

iii. *Drinking water.* Indoxacarb is highly unlikely to contaminate groundwater resources due to its immobility in soil, low water solubility, high soil sorption, and moderate soil half-life. Based on the PRZM/EXAMS and SCI–GROW models the estimated environmental concentrations (EECs) of indoxacarb and its R-enantiomer for acute exposures are estimated to be 6.84 parts per billion (ppb) for surface water and 0.0025 ppb for ground water. The EECs for chronic exposures are estimated to be 0.316 ppb for surface water and 0.0025 ppb for ground water. Drinking water levels of comparisons (DWLOCs), theoretical upper allowable limits on the pesticide's concentration in drinking water, were calculated to be much higher than the EEC's. The chronic DWLOC's ranged from 198 to 697 ppb. The acute DWLOC's ranged from 440 to 3,890 ppb. Thus, exposure via drinking water is acceptable.

2. *Non-dietary exposure.* Indoxacarb product registrations for residential non-food uses are pending. Non-occupational, non-dietary exposure for DPX–MP062 has been estimated to be extremely small. Therefore, the potential for non-dietary exposure is insignificant.

D. Cumulative Effects

EPA's consideration of a common mechanism of toxicity is not necessary at this time because there is no indication that toxic effects of indoxacarb would be cumulative with those of any other chemical compounds. Oxadiazine chemistry is new, and indoxacarb has a novel mode of action compared to currently registered active ingredients.

E. Safety Determination

1. *U.S. population.* Dietary and occupational exposure will be the major routes of exposure to the U.S. population, and ample margins of safety have been demonstrated for both situations. The chronic dietary exposure to indoxacarb is 0.000089 mg/kg/day, which utilizes 0.4% of the RfD for the overall U.S. population, using mean field trial values, processing factors and projected peak percent crop treated values. The percent of the acute population adjusted dose (7.3% aPAD) for the overall U.S. population shows that an adequate margin of safety exists. Using only pesticide handlers exposure data base (PHED) data levels A and B (those with a high level of confidence), margin of exposure (MOEs) for occupational exposure are 650 for mixer/loaders and 1,351 for airblast applicators (worst-case). Based on the completeness and reliability of the toxicity data and the conservative exposure assessments, there is a reasonable certainty that no harm will result from the aggregate exposure of residues of indoxacarb including all anticipated dietary exposure and all other non-occupational exposures.

2. *Infants and children.* Chronic dietary exposure of the most highly exposed subgroup in the population, children age 1–6 years, is 0.000238 mg/kg/day or 1.2% of the RfD. For infants (non-nursing, <1 yr.), the exposure accounts for 0.3% of the RfD. For acute exposure at the 99.9th percentile (based on a Tier 3 assessment) the exposure was 0.013973 mg/kg/day (11.6% a PAD) for children 1–6 and 0.026036 mg/kg/day (21.7% a PAD) for non-nursing infants. There are residential uses of indoxa carb pending, but exposure is calculated to be extremely minimal. The estimated levels of indoxa carb in drinking water are well below the below the DWLOC. Based on the completeness and reliability of the toxicity data, the lack of toxicological endpoints of special concern, the lack of any indication that children are more sensitive than adults to indoxa carb, and the conservative exposure assessment, there is a reasonable certainty that no harm will result to infants and children from the aggregate exposure of residues of indoxa carb, including all anticipated dietary exposure and all other non-occupational exposures. Accordingly, there is no need to apply an additional safety factor for infants and children.

F. International Tolerances

To date, no international tolerances exist for indoxacarb.

[FR Doc. 03–16739 Filed 7–1–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0211; FRL–7312–8]

Dinotefuran; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0211, must be received on or before August 1, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Rita Kumar, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8291; e-mail address: *kumar.rita@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0211. 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

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 docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA's Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this

unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0211. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov,* Attention: Docket ID Number OPP–2003–0211. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0211.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0211. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 20, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petitions is printed below as required by FFDCA section 408(d)(3). The summary of the petitions was prepared by the petitioner and represents the view of the petitioner. The petitions summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Mitsui Chemicals, Inc.

PP 2F6427 and 3F6566

EPA has received pesticide petitions (2F6427 and 3F6566) from Mitsui Chemicals, Inc., Chiyoda-ku, Tokyo, Japan, proposing pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of dinotefuran, (*RS*)-1-methyl-2-nitro-3-(tetrahydro-3-furylmethyl)guanidine and its major metabolites, 1-methyl-3-(tetrahydro-3-furylmethyl)guanidine,

and 1-methyl-3-(tetrahydro-3-furylmethyl)-urea, in or on fruiting vegetables, leafy vegetables, head and stem brassica vegetables, cotton, cucurbits, grapes, and potato. The tolerances are set at the following value: Fruiting vegetables, 0.7 part per million (ppm); leafy vegetables, 5.0 ppm; tomato paste, 1.0 ppm; cucurbits, 0.5 ppm; head and stem brassica vegetables, 1.4 ppm; grape, 0.8 ppm; raisin, 2.5 ppm; potato, 0.05 ppm; chips, 0.10 ppm; granules, 0.15 ppm; cotton seed undelinted at 0.2 ppm, and cotton gin byproducts at 7.0 ppm. Tolerances for meat, milk, and byproducts is set at 0.05 ppm. This new active ingredient has been accepted by EPA as a reduced risk chemical. EPA has determined that the petitions contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions.

A. Residue Chemistry

1. *Plant metabolism*. The primary metabolic pathways of dinotefuran in plants (rice, apple, potato, oilseed, rape, and lettuce) were similar to those described for animals, with certain extensions of the pathway in plants. Parent compound, dinotefuran, and two metabolites, 1-methyl-3-(tetrahydro-3-furymethyl)guanidine and 1-methyl-3-(tetrahydro-3-furymethyl)-urea were major metabolites in all crops. The metabolism of dinotefuran in plants and animals is understood for the purposes of the proposed tolerances. Parent dinotefuran and the metabolites, 1-methyl-3-(tetrahydro-3-furymethyl)guanidine and 1-methyl-3-(tetrahydro-3-furymethyl)-urea are the residues of concern for tolerance setting purposes.

2. *Analytical method*. Mitsui Chemicals, Inc., has submitted practical analytical methodology for detecting and measuring levels of dinotefuran and its metabolites, 1-methyl-3-(tetrahydro-3-furylmethyl)guanidine and 1-methyl-3-(tetrahydro-3-furylmethyl)-urea, in or on raw agricultural commodities (RACs). The high performance liquid chromotography (HPLC) method was validated for determination of, dinotefuran, 1-methyl-3-(tetrahydro-3-furylmethyl)guanidine, and 1-methyl-3-(tetrahydro-3-furylmethyl)-urea in or on tomatoes, peppers, cucurbits, brassica, grapes, potatoes, and lettuce for raw agricultural commodity matrices and in or on tomato paste, puree, grape juice, raisins, potato chips, granules, and wet peel for processed commodity matrices. After extraction with a water/acetonitrile mixture and clean up with hexane and extraction columns, concentrations of dinotefuran and its metabolites were quantified after HPLC separation by mass spectrometry/molecular size (MS/MS) detection. The limit of quantitation (LOQ) was 0.01 ppm for all matrices.

The HPLC method was validated for the determination of dinotefuran and 1-methyl-3-(tetrahydro-3-furylmethyl)-urea in or on cotton (undelinted seed, gin trash, meal, hulls, refined oil), and leafy vegetables. After extraction with a water/acetonitrile mixture and clean up dinotefuran, 1-methyl-3-(tetrahydro-3-furylmethyl)guanidine, and 1-methyl-3-(tetrahydro-3-furylmethyl)-urea were quantified after HPLC separation by MS/MS detection. For undelinted seed, gin trash, meal, and hulls, a LOQ of 0.05 milligram/kilogram (mg/kg) and a working range from 0.05 to 0.50 mg/kg were successfully validated for dinotefuran, 1-methyl-3-(tetrahydro-3-furylmethyl)guanidine, and 1-methyl-3-(tetrahydro-3-furylmethyl)-urea. For refined oil, a LOQ of 0.01 mg/kg and a working range from 0.01 to 0.10 mg/kg were successfully validated for dinotefuran, 1-methyl-3-(tetrahydro-3-furylmethyl)guanidine, and 1-methyl-3-(tetrahydro-3-furylmethyl)-urea. An HPLC method was validated for the determination of dinotefuran, 1-methyl-3-(tetrahydro-3-furylmethyl)guanidine, and 1-methyl-3-(tetrahydro-3-furylmethyl)-urea, in lettuce. After extraction with water/acetonitrile mixture and clean-up, dinotefuran was quantified after HPLC separation by ultraviolet ray (UV) detection, 1-methyl-3-(tetrahydro-3-furylmethyl)guanidine, and 1-methyl-3-(tetrahydro-3-furylmethyl)-urea by MSD. A LOQ 0.010 mg/kg and a working range from 0.01 to 5.00 mg/kg were successfully validated from dinotefuran, 1-methyl-3-(tetrahydro-3-furylmethyl)guanidine, and 1-methyl-3-(tetrahydro-3-furylmethyl)-urea. All of the above methods have been independently validated.

3. *Magnitude of residues*. Crops in residue trials were treated at maximum label rates and harvested at the specified minimum treatment to harvest intervals. The residue method for dinotefuran, 1-methyl-3-(tetrahydro-3-furylmethyl)guanidine, and 1-methyl-3-(tetrahydro-3-furylmethyl)-urea, in all components utilized HPLC separation with MS/MS detection.

For cucurbit vegetables (crop group 9), residue trials were conducted for each of the three representative crops, cucumbers, melons, and squash. The proposed tolerance in or on cucurbit vegetables for combined residues of dinotefuran, 1-methyl-3-(tetrahydro-3-furylmethyl)guanidine, and 1-methyl-3-(tetrahydro-3-furylmethyl)-urea, is 0.5 ppm. The maximum combined residue found for the representative cucurbit vegetable crops was 0.44 ppm for a melon sample.

For leafy vegetables (crop group 4), residue trials were conducted for each of the four representative crops, celery, leaf lettuce, head lettuce, and spinach, at six locations. The proposed tolerance in or on leafy vegetables for combined residues of dinotefuran, 1-methyl-3-(tetrahydro-3-furylmethyl)guanidine, and 1-methyl-3-(tetrahydro-3-furylmethyl)-urea, is 5.0 ppm. The maximum combined residue found for the representative leafy vegetable crops was 4.36 ppm for a spinach sample.

Residue trials for cotton were conducted at 13 locations and undelinted cotton seed samples were collected and analyzed. Cotton gin byproducts (gin trash) samples were obtained for 7 of the locations. Processing studies with analyses of cotton seed meal, hulls, and oil were performed with cotton seed harvested at two locations that were both treated with 5X the maximum label rate. The proposed tolerance for combined residues of dinotefuran, 1-methyl-3-(tetrahydro-3-furylmethyl)guanidine, and 1-methyl-3-(tetrahydro-3-furylmethyl)-urea, in or on cotton seed undelinted is 0.2 ppm. All cotton seed residue samples had combined residues of less than 0.2 ppm. The proposed tolerance for cotton gin byproducts is 7.0 ppm for combined residues of dinotefuran and its two major metabolites. The maximum combined residues for cotton gin byproducts in these trials was 6.4 ppm. Processing studies established that residues of dinotefuran and its metabolites, 1-methyl-3-(tetrahydro-3-furylmethyl)guanidine, and 1-methyl-3-(tetrahydro-3-furylmethyl)-urea, did not concentrate in cotton seed meal, oil, or hulls. Therefore, tolerances are not proposed for these processing fractions.

Residue trials for grapes were conducted at 13 locations and 2 grape juice and raisin processing studies were performed with grapes from exaggerated treatment rate applications. The proposed tolerance for combined residues of dinotefuran, 1-methyl-3-(tetrahydro-3-furylmethyl)guanidine, and 1-methyl-3-(tetrahydro-3-furylmethyl)-urea, in or on grapes is 0.8 ppm. The maximum combined residue for an individual grape residue sample was 0.73 ppm and the highest average field trial (HAFT) for grapes had

combined residues of 0.55 ppm. The proposed tolerance for raisins is 2.5 ppm for combined residues of dinotefuran and its two major metabolites based on the average concentration factor of 4.0 for processing grapes to raisins. The grape juice processing studies established an average concentration factor of 1.3 for residues of dinotefuran and its metabolites 1-methyl-3-(tetrahydro-3-furylmethyl)guanidine, and 1-methyl-3-(tetrahydro-3-furylmethyl)-urea, because the product of multiplying the grape HAFT times the average concentration factor for processing grapes into juice is less than the proposed grape tolerance, a separate tolerance is not proposed for grape juice.

For potatoes, residue trials were performed at 17 locations and 2 studies processing potatoes into chips, granules, and wet peel were performed with potatoes that were treated with exaggerated application rates. The proposed tolerance for combined residues of dinotefuran and its metabolites 1-methyl-3-(tetrahydro-3-furylmethyl)guanidine, and 1-methyl-3-(tetrahydro-3-furylmethyl)-urea, on potatoes is 0.05 ppm. The maximum combined residues found on potatoes were less than 0.05 ppm with maximum residues of dinotefuran less than 0.03 ppm. The HAFT result was 0.04 ppm of combined residues. The average concentration factors for processing potatoes into chips, granules, and wet peel were 2.2, 3.65, and less than 1 respectively. No separate tolerance is proposed for wet peel. Based on the average concentration factors and the HAFT, tolerances for combined residues of dinotefuran, 1-methyl-3-(tetrahydro-3-furylmethyl)guanidine, and 1-methyl-3-(tetrahydro-3-furylmethyl)-urea, are proposed for potato chips at 0.1 ppm and for potato granules at 0.15 ppm.

For fruiting vegetables (crop group 8) residue trials were conducted for the three representative commodities, tomatoes, bell pepper, and non-bell pepper. The proposed tolerance for combined residues of dinotefuran, 1-methyl-3-(tetrahydro-3-furylmethyl)guanidine, and 1-methyl-3-(tetrahydro-3-furylmethyl)-urea, in or on fruiting vegetables is 0.7 ppm. The maximum combined residue for the representative fruiting vegetables was 0.58 ppm on peppers. The HAFT result for combined residues on tomatoes was 0.20 ppm. Three studies for processing tomatoes into tomato puree and tomato paste were performed with tomatoes that were treated at exaggerated application rates. The average concentration factors determined in these studies were 1.8 for processing tomatoes into puree and 4.8 for processing tomatoes into paste. Since the product of the average concentration factor for puree and the HAFT for tomatoes is less than the proposed tolerance for fruiting vegetables, no separate tolerance is proposed for tomato puree. A combined tolerance of 1.0 ppm is proposed for tomato paste, based on the average concentration factor for processing of 4.8 and the HAFT of 0.20 ppm for tomatoes.

For vegetables, brassica head, and stem crop subgroup (crop subgroup 5–A), residue trials were conducted with three representative crops, broccoli, cauliflower, and cabbage. The proposed tolerance for combined residues of dinotefuran, 1-methyl-3-(tetrahydro-3-furylmethyl)guanidine, and 1-methyl-3-(tetrahydro-3-furylmethyl)-urea, 1-methyl-3-(tetrahydro-3-furylmethyl)guanidine, and 1-methyl-3-(tetrahydro-3-furylmethyl)-urea, on stem and head brassica vegetables is 1.4 ppm. The maximum combined residue in field trials was 1.25 ppm on broccoli.

Metabolism studies in livestock and poultry (nature of residue studies with goats and hens), established that dinotefuran was rapidly metabolized and excreted and that there was very little transmittal of residues of dinotefuran and its metabolites to meat, milk, or eggs. For goats fed 10 ppm of radiolabeled dinotefuran, the total radioactive residues (TRR) in meat and milk were less than 0.05 ppm.

The maximum livestock dietary burden from feeding cotton commodities and potatoes (which all contain residues at the proposed tolerance levels) was 1.9 ppm for beef cattle and 1.9 ppm for dairy cattle. To provide for the possible transmittal of the residues of dinotefuran and its metabolites, 1-methyl-3-(tetrahydro-3-furylmethyl)guanidine, and 1-methyl-3-(tetrahydro-3-furylmethyl)-urea, in cattle and other livestock, tolerances are proposed for combined residues of dinotefuran, 1-methyl-3-(tetrahydro-3-furylmethyl)guanidine, and 1-methyl-3-(tetrahydro-3-furylmethyl)-urea, in milk at 0.05 ppm, in meat (from cattle, goats, hogs, horses, and sheep) at 0.05 ppm and in meat byproducts, including fat, liver, and kidney, (from cattle, goats, hogs, horses, and sheep) at 0.05 ppm. These proposed tolerances are based on the results of a cow feeding study where dairy cows received dosages of combined residues of dinotefuran and its metabolites and 1-methyl-3-(tetrahydro-3-furylmethyl)-urea, representing 5ppm (1X), 15 ppm (3X), and 50 ppm (10X) in the daily diet. The dosages contained dinotefuran, 1-methyl-3-(tetrahydro-3-furylmethyl)guanidine, and 1-methyl-3-(tetrahydro-3-furylmethyl)-urea, in a 3:1:1 ratio, thus, the 5 ppm level contained 3 ppm of dinotefuran, 1 ppm of 1-methyl-3-(tetrahydro-3-furylmethyl)guanidine, and 1 ppm of 1-methyl-3-(tetrahydro-3-furylmethyl)-urea. The dosing period was 29 to 30 days, whole milk, skim milk, and cream were analyzed through the collection period and meat, fat, and edible tissues were analyzed at conclusion of the dosing period.

There were only low levels of residues transmitted to milk, meat, fat, and edible tissues in the study. No dinotefuran residues (<0.01 ppm) were measured in milk from 5 ppm dosage cows. Maximum residues of dinotefuran in milk were 0.012 ppm in the 3X level cows and 0.032 ppm in the 10X level cows. No detectable residues of parent dinotefuran were found in muscle, fat, or edible tissues from cows at any dosage level. Milk, muscle, fat, and edible tissues were also analyzed for 1-methyl-3-(tetrahydro-3-furylmethyl)guanidine, and 1-methyl-3-(tetrahydro-3-furylmethyl)-urea, the two dinotefuran metabolites included in the combined residues in the proposed tolerance expression. Transmittal of quantifiable residues of 1-methyl-3-(tetrahydro-3-furylmethyl)guanidine was found at the 1X dosage level with maximum residues of 0.013 ppm of 1-methyl-3-(tetrahydro-3-furylmethyl)guanidine in milk and at the 10X level with 0.011 ppm of 1-methyl-3-(tetrahydro-3-furylmethyl)guanidine in milk and 0.02 ppm of 1-methyl-3-(tetrahydro-3-furylmethyl)guanidine in muscle, liver, and kidney. Quantifiable residues of 1-methyl-3-(tetrahydro-3-furylmethyl)-urea were found in the 1X dosage level, with 1-methyl-3-(tetrahydro-3-furylmethyl)-urea residues up to 0.02 ppm in whole milk and 1-methyl-3-(tetrahydro-3-furylmethyl)-urea residues of 0.011 to 0.012 in muscle, liver, and kidney. The 1-methyl-3-(tetrahydro-3-furylmethyl)-urea residues increased proportional to dosage with the 10X level having 1-methyl-3-(tetrahydro-3-furylmethyl)-urea residues of up to 0.24 ppm in milk, 0.13 ppm in muscle, 0.07 ppm in fat, 0.12 ppm in liver, and 0.18 ppm in kidney. In the cow feeding study at the 1X dosage level comprising combined residues of dinotefuran, 1-methyl-3-(tetrahydro-3-furylmethyl)guanidine, and 1-methyl-3-(tetrahydro-3-furylmethyl)-urea of 5 ppm of diet, the total combined residues for milk, muscle, fat, liver, and kidney were each less than 0.05 ppm. Since the maximum theoretical combined

residues from the proposed uses of dinotefuran on cotton and potatoes would be 1.9 ppm, for dairy and beef cattle, the proposed tolerances in milk, meat, and meat byproducts, would be sufficient to provide for potential transmittal of residues from livestock diets containing residues of dinotefuran and its metabolites.

The maximum theoretical poultry dietary burden from feeding cotton commodities containing residues of dinotefuran and its metabolites at the proposed tolerance levels was calculated to be 0.09 ppm. Since the TRR in meat and eggs from hens fed 10 ppm of radiolabeled dinotefuran in the poultry metabolism study was less than 0.05 ppm it can be concluded that there is no reasonable expectation of transmittal of finite residues of dinotefuran and its metabolites to meat and eggs, for poultry fed cotton commodities treated with dinotefuran. Therefore no tolerances are proposed for combined residues of dinotefuran and its metabolites in poultry or eggs.

B. Toxicological Profile

1. *Acute toxicity*. Dinotefuran has low acute oral, dermal, and inhalation toxicity. The oral lethal dose $(LD)_{50}$ in rats is 2,450 mg/kg, the dermal LD_{50} is >2,000 mg/kg and the inhalation 4-hour lethal concentration $(LC)_{50}$ is >4.09 milligrams/Liter (mg/L) air. Dinotefuran is not a skin sensitizer in guinea pigs, but is slightly irritating to the skin and eyes of rabbits. End-use formulations of dinotefuran have similar low acute toxicity profiles.

2. *Genotoxicity*. Dinotefuran and its metabolites do not induce gene mutations in bacterial and mammalian cells, chromosome aberrations in mammalian cells or deoxyribonucleic acid (DNA) damage in bacterial cells in *in vitro* test systems. Similarly, it does not exhibit a clastogenic effect *in vivo* in the mouse micronucleus test. Therefore, there is no evidence to suggest a genotoxic hazard at any of the three main levels of genetic organization.

3. *Reproductive and developmental toxicity*. In rat and rabbit developmental toxicity studies with dinotefuran, there was no evidence of teratogenicity or other embryotoxic effects at the highest dose levels, although maternal toxicity was evident. There were no treatment-related effects on litter parameters at any dose level in either species. In rats, 1,000 mg/kg produced decreased food consumption, body weight gain, and increased water intake. In rabbits, 300 mg/kg produced hypoactivity, prone position, panting, flushing of the nose and ears, tremors, reduced weight gain, food consumption, and water intake. Necropsy revealed pale brown discoloration of liver and gray/white plaques in the stomach at 125 and 300 mg/kg. The no adverse effect level (NOAEL) values in maternal rats and rabbits were 300 and 52 mg/kg/day, respectively. The NOAEL values in rats and rabbits for embryonic development and teratogenicity were the highest dose levels administered, 1,000 and 300 mg/kg/day, respectively. In a 2-generation study, parental animals of both sexes and both generations showed reduced body weight gain and food consumption at the highest dose level evaluated (10,000 ppm), but there was no effect of treatment at any dose level in either generation on reproductive performance indicators. There were no treatment-related effects at any dose level on the histopathological appearance of the reproductive organs of either sex. Similarly, there were no effects at any dose level in either generation on quantitative ovarian histopathology or on sperm counts, motility and morphology. Reduced spleen weight in probit dose extrapolation model (P) generation animals and reduced thyroid weight in F1 generation parental females were apparent at 10,000 ppm. F1 pup behavioral and sexual development was unaffected by treatment at all dose levels but pup weight gain during lactation was reduced at 10,000 ppm in both generations. Furthermore, the spleen weight of F1 generation progeny was reduced at 10,000 ppm. Based on reduced weight gain and food consumption in parental animals at 10,000 ppm and reduced pre-weaning weight gain in the offspring, the NOAEL value for parental animals and offspring is 241 mg/kg.

4. *Subchronic toxicity*. Dinotefuran was evaluated in a 13-week oral (diet) toxicity studies in rats, mice, and dogs. No specific target organs were identified in any species. In the rat study, a NOAEL of 500 ppm (34/38 mg/kg/day for males and females) was established, based on minimal growth retardation in females and adrenal cortical vacuolation in males. A NOAEL was established at 5,000 ppm (336/384 mg/kg/day for males/females) based on marked growth retardation at 25,000 ppm (adrenal cortical vacuolation not adverse). In the mouse study, a NOAEL of 25,000 ppm (4,442/5,414 mg/kg/day for males/females) was established based on growth retardation at 50,000 ppm. In the dog study, a NOAEL of 8,000 ppm (307/323 mg/kg/day in males/females) was established based on growth retardation. Dinotefuran was also evaluated for dermal and inhalation toxicity for 4 weeks in rats. Daily inhalation exposure of rats for 6 hours/day for 4 weeks did not elicit toxicologically significant effects at any exposure concentration up to and including the highest technically achievable concentration (2.08 mg/L) with a low mass median aerodynamic diameter) (MMAD≤±GSM of 2.03 μm±3.60. Dinotefuran was well tolerated and there were no treatment-related effects on clinical condition, hematology, and clinical chemistry profiles, organ weights, macroscopic, and microscopic pathology. Dermal application for 4 weeks at dose levels up to 1,000 mg/kg/day did not elicit any local or systemic effects on any of the parameters examined. Therefore, no target organs were identified in the rat either by dermal or inhalation exposure.

5. *Neurotoxicity*. Dinotefuran did not produce any functional or histomorphological evidence of neurotoxicity in acute (gavage) and 13–week (dietary) neurotoxicity studies in rats. The NOAEL for neurotoxicity in the acute study was 1,500 mg/kg, the highest dose level administered. The NOAEL for neurotoxicity in the 13–week dietary study was 50,000 ppm (3,413/3,806 mg/kg/day for males and females). The NOAEL for all effects in this study was 5,000 ppm (327/400 mg/kg/day for males and females) based on reduced body weight gain and food consumption.

6. *Chronic toxicity*. Chronic toxicity studies with dinotefuran have been conducted in rats, mice, and dogs. In common with the subchronic studies in these species, no specific target organs could be identified. In the 52-week dog study, a NOAEL of 559/512 mg/kg/day for males/females was established based on decreased weight gain in both sexes and decreased food consumption in females. In the 78-week mouse study, a NOAEL of 345/441 mg/kg/day for males/females was established, based on decreased weight gain and a decrease in circulating platelet counts. In the 104-week rat study, a NOAEL of 991/127 mg/kg/day for males/females was established. This was based on a decrease in weight gain in females.

7. *Carcinogenicity*. The carcinogenic potential of dinotefuran has been evaluated in rats and mice. Survival incidences in the oncogenicity studies were unaffected by treatment at all dose levels. There were no treatment-related effects on the nature and incidence of neoplastic and adverse non-neoplastic histomorphological findings in either species at any dose level. Therefore, the NOAEL values for all effects, 991/127 mg/kg/day (male/female rats) and 345/441 mg/kg/day (male/female mice) are based on reduced weight gain, and also

on reduced numbers of platelets in mice.

8. *Animal metabolism*. In the rat, dinotefuran is rapidly and almost completely absorbed from the gastrointestinal tract into the general circulation, and is widely distributed throughout the tissues and fluids of the body. Elimination is rapid, predominantly by urinary excretion and almost complete within 7 days of administration. There is no evidence for tissue accumulation. Dinotefuran is rapidly transferred to maternal milk and widely distributed into fetal tissues but rapidly eliminated from them. More than 90% of orally and intravenously administered dinotefuran is eliminated as unchanged parent molecule, which is also the major radioactive component in plasma, milk, bile, and most tissues. The major route of metabolism is an initial enzymatic hydroxylation of the tetrahydrofuran ring to form isomers of 6-hydroxy-5-(2-hydroxyethyl)-1-methyl-1,3-diazinane-2-ylidine-*N*-nitroamine, followed by further oxidation, reduction and acetylation of 6-hydroxy-5-(2-hydroxyethyl)-1-methyl-1,3-diazinane-2-ylidine-*N*-nitroamine, to produce possible isomers of 1-methyl-2-nitro-3-(2-oxotetrahydro-3-furylmethyl)guanidine, 1-[4-hydroxy-2-(hydroxymethyl)butyl]-3-methyl-2-nitroguanidine, 6-hydroxy-5-(2-hydroxyethyl)-1-methyl-1, 3-diazinane-2-ylidene-*N*-nitroamine acetyl conjugate and 3-hydroxymethyl-4- (3-methyl-2-nitroguanidine) butyric acid. Several minor pathways of metabolism of dinotefuran were identified in animals. The absorption, distribution, metabolism and elimination of dinotefuran is unaffected by sex and treatment regimen. In hens and goats, the metabolite profile was similar as in plant metabolism.

9. *Metabolite toxicology*. The metabolism profile for dinotefuran supports the use of an analytical enforcement method that accounts for parent dinotefuran, and 1-methyl-3-(tetrahydro-3-furymethyl)guanidine and 1-methyl-3-(tetrahydro-3-furymethyl)-urea. Other metabolites are considered of equal or lesser toxicity than parent compound.

10. *Endocrine disruption*. Dinotefuran does not belong to a class of chemicals known or suspected of having adverse effects on the endocrine system. There is no evidence that dinotefuran has any effect on endocrine function in developmental or reproduction studies. Furthermore, histological investigation of endocrine organs in chronic dog, rat, and mouse studies did not indicate that the endocrine system is targeted by dinotefuran.

C. Aggregate Exposure

1. *Dietary exposure*. Chronic dietary exposure assessments were conducted using a Tier I approach. This Tier I assessment incorporated tolerance level residues and 100% crop-treated in the EXP estimated dietary intake trends evaluation system (EXPedite™ system, Version 4.1). EXPedite™ utilized the food consumption data derived from the 1994–1996 U.S. Department of Agriculture (USDA) Continuing Surveys of Food Intake by Individuals (CSFII) with the 1998 supplemental children's survey. The resulting exposures were compared to a RfD of 1.27 mg/kg/day, which was based on the female NOAEL of 127 mg/kg/day from the 104-week rat study and a 100–fold uncertainty factor. Chronic dietary exposure estimates for the overall U.S. population and 25 population subgroups are well below the chronic RfD. Results of these analyses are summarized below.

TABLE 1.—CHRONIC DIETARY RISK (DEEM™) ANALYSIS OF DINOTEFURAN

Population Subgroup	Mg/Kg Bwt/Day	%RfD
U.S. population	0.004109	0.32%
All infants (<1–year old)	0.002815	0.22%
Non-nursing infants	0.003438	0.27%
Children (1 to 6)	0.007247	0.57%
Children (7 to 12)	0.004348	0.34%
Females (13 to 50)	0.003350	0.26%
Males 13+ years	0.003173	0.25%

There are no acute toxicity concerns with dinotefuran as there is no toxicological endpoint attributable to a *single* exposure in the dinotefuran toxicology data base, including the rat and rabbit developmental studies. Therefore, only chronic dietary exposures have been assessed.

2. *Non-dietary exposure*. Mitsui also requests registrations for the use of dinotefuran on cats, turf, ornamentals, indoor foggers, and ready to use sprays. Mitsui has considered potential non-dietary and aggregate (non-dietary + dietary) exposures to adults, adult females, and toddlers (1 to 3 years of age) for these uses.

Applicator and post-application exposures can result from dermal and inhalation routes for both adults and toddlers. Additionally, toddlers can be exposed through the post-application incidental ingestion route via hand-to-mouth behavior. Based on the label instructions and typical use patterns of these product types, only short-term and intermediate-term exposure scenarios should be considered for dinotefuran products. However, since there are no toxicological endpoints attributable to a single or possible multiple exposures in a very short duration, as in a short-term scenario, only the intermediate-term exposure scenario has been evaluated for this document.

Dermal exposures for applicator and post-application activities were not assessed because the very high dermal NOAEL (>1,000 mg/kg/day) for dinotefuran indicates that dermal exposures are not of concern. Short-term oral (e.g., incidental ingestion) exposures for toddlers, as mentioned above, were not assessed because there are no toxicological endpoints attributable to a single exposure or multiple exposures during a very short-term time frame in the dinotefuran toxicology data base. Since the oral endpoint is used to calculate inhalation risks, short-term inhalation exposures for toddlers and adults were also not evaluated since there is no toxicological endpoint attributable to a short-term endpoint. Intermediate-term inhalation exposures for applicator and post-application activities also were not assessed because the very high inhalation NOAEL (>7,000 mg/kg/day) for dinotefuran indicates that inhalation exposures are not of concern. Therefore, only intermediate-term oral (incidental ingestion) exposures for toddlers were assessed. These exposures were assessed for each individual dinotefuran product, as well as for the aggregation of all products. In the aggregate assessment, it was assumed that the toddlers would be exposed to residues resulting from the agricultural uses (chronic dietary), all within 1-day.

These non-dietary assessments were conducted using equations and default parameters from EPA's Residential Standard Operation Procedures (SOPs) (EPA, 1997 and 2001) and maximum application rates. Although these exposures are based on the intermediate-term time frame, the residue on the day of application was used in the SOP equations in order to maintain an extra level of conservatism. This assumption implies that the toddlers are exposed to residue levels, which are equivalent to levels resulting on the day of application, every day over an intermediate-term time frame. The resulting oral and aggregate exposures were compared to the NOAEL

of 307 mg/kg/day observed in the 13-week dog study. These risk estimates (margin of exposures (MOE)) for toddlers (1 to 3 years of age) are summarized below. From the results below, Mitsui concludes there is reasonable certainty of no harm associated with the aggregate (dietary + non-dietary) exposure to dinotefuran.

TABLE 2.—INTERMEDIATE-TERM AGGREGATE MOES

Exposure Routes	Dietary	RTU Spray	Fogger	Turf	Cat	Aggregate
Toddlers (1 to 3 years old)						
Dietary	184,163	NA	NA	NA	NA	184,163
Incidental Ingestion	NA	23,356	11,431	80,050	1,850	1,410
Total						1,410

3. *Drinking water exposure*. EPA uses the drinking water level of comparison (DWLOC) as a theoretical upper limit on a pesticide's concentration in drinking water when considering total aggregate exposure to a pesticide in food, drinking water, and residential uses. DWLOCs are not regulatory standards for drinking water; however, EPA uses DWLOCs in the risk assessment process as a surrogate measure of potential exposure from drinking water. In the absence of monitoring data for pesticides, it is used as a point of comparison against conservative model estimates of a pesticides concentration in water.

An estimate of the drinking water environmental concentration (DWEC) in ground water and surface water for dinotefuran has been made for this notice of filing. The DWEC of dinotefuran in ground water was estimated to be 0.94 part per billion (ppb) using screening concentration in ground water (SCI–GROW) (the screening model for ground water), and the DWEC for surface water was estimated to be 6.24 ppb (for chronic and intermediate-term aggregate assessments) using FQPA Index Reservoir Screening Tool (FIRST).

To calculate the DWLOC for chronic aggregate exposure relative to a chronic toxicity endpoint, the chronic dietary food exposure from EXPedite™, as addressed above, was subtracted from the reference dose (RfD) to obtain the acceptable chronic exposure to dinotefuran in drinking water. DWLOCs, as presented below, were then calculated using default body weights and drinking water consumption figures.

TABLE 3.—CHRONIC AGGREGATE DRINKING WATER ASSESSMENT

Population Subgroup	Dietary Mg/Kg Bwt/Day	Maximum Water Exposure Mg/Kg Bwt/Day	Kg Bwt	SCI–GROW (ppb)	FIRST (ppb)	DWLOC (ppb)
U.S. population	0.004109	1.265891	70	0.94	6.24	44,306
All infants (<1–year old)	0.002815	1.267185	10	0.94	6.24	12,672
Non-nursing infants	0.003438	1.266562	10	0.94	6.24	12,666
Children (1 to 6)	0.007247	1.262753	20	0.94	6.24	25,255
Children (7 to 12)	0.004348	1.265652	40	0.94	6.24	50,626
Females (13 to 50)	0.003350	1.266650	60	0.94	6.24	38,000
Males (13+ years)	0.003173	1.266827	70	0.94	6.24	44,339

Chronic RfD used in assessments - 1.27 mg/kg bwt/day

The estimated average concentration of dinotefuran in surface water is 6.24 ppb. This value is less than the lowest DWLOC for dinotefuran as a contribution to chronic aggregate exposure (12,666 ppb for non-nursing infants, the most highly exposed population group for the chronic scenario). Therefore, taking into account the proposed uses, it can be concluded with reasonable certainty that residues of dinotefuran in food and drinking water will not result in unacceptable levels of human health risk.

To calculate the DWLOC for the intermediate-term aggregate exposure relative to a sub-chronic toxicity endpoint, the chronic dietary food exposure from EXPedite™ plus the intermediate-term non-dietary exposures were subtracted from the NOAEL, divided by the target MOE (100), to obtain the acceptable intermediate-term exposure to dinotefuran in drinking water. DWLOCs, as presented below, were then calculated using default body weights and drinking water consumption figures.

TABLE 4.—INTERMEDIATE-TERM AGGREGATE DRINKING WATER ASSESSMENT

Population Subgroup	NOAEL/MOE Mg/Kg/Day	Aggregate Exposure Mg/Kg/Day	Maximum Water Exposure mg/kg/day	SCI–GROW (ppb)	FIRST (ppb)	DWLOC (ppb)
Toddlers (1 to 3)[1]	0.307	0.217	2.852	0.94	6.24	42,785

[1] Assume 70kg bodyweight

The estimated average concentration of dinotefuran in surface water is 6.24 ppb. This value is less than the DWLOC for dinotefuran as a contribution to intermediate-term aggregate exposure (42,785 ppb). Therefore, taking into account the proposed uses, it can be concluded with reasonable certainty that residues of dinotefuran in residential environments and in food and drinking water will not result in unacceptable levels of human health risk.

D. Cumulative Effects

The potential for cumulative effects of dinotefuran and other substances that have a common mechanism of toxicity has also been considered. Dinotefuran belongs to a pesticide chemical class known as the neonicotinoids and subclass nitroguanadines. There is no reliable information to indicate that toxic effects produced by dinotefuran would be cumulative with those of any other chemical including another pesticide. Therefore, Mitsui believes it is appropriate to consider only the potential risks of dinotefuran in an aggregate risk assessment.

E. Safety Determinations

1. *U.S. population*. Using the chronic exposure assumptions and the proposed RfD described above, the dietary exposure to dinotefuran for the U.S. population (48 states, all seasons) was calculated to be 0.32% of the RfD of 1.27 mg/kg/day. The resulting DWLOC, 44,306 ppb, is much greater than the estimated average concentration of dinotefuran in surface water, 6.24 ppb. Therefore, taking into account the proposed uses, it can be concluded with reasonable certainty that residues of dinotefuran in residential environments and in food and drinking water will not result in unacceptable levels of human health risk.

2. *Infants and children*. FFDCA section 407 provides that EPA shall apply an additional safety factor for infants and children to account for prenatal and postnatal toxicity and the completeness of the data base. Only when there is no indication of increased sensitivity of infants and children and when the data base is complete, may the extra safety factor be removed. In the case of dinotefuran, the toxicology data base is complete. There is no indication of increased sensitivity in the data base overall, and specifically, there is no indication of increased sensitivity in the developmental and multi-generation reproductive toxicity studies. Therefore, Mitsui concludes that there is no need for an additional safety factor; the RfD of 1.27 mg/kg/day and sub-chronic NOAEL of 307 mg/kg/day are protective of infants and children.

Using the chronic exposure assumptions and the proposed RfD described above, the dietary exposure to dinotefuran for infants and children (1 to 6 years) was calculated to be 0.57% of the reference dose of 1.27 mg/kg bwt/day. The resulting DWLOC for non-nursing infants, 12,666 ppb, is much greater than the estimated average concentration of dinotefuran in surface water, 6.24 ppb.

Using the intermediate-term exposure assumptions and the proposed NOAEL described above, the intermediate-term aggregate exposure to dinotefuran for the toddlers (1 to 3 years) resulted in an MOE of 1,410. The resulting DWLOC, 42,785 ppb, is much greater than the estimated average concentration of dinotefuran in surface water, 6.24 ppb. Therefore, taking into account the proposed uses, it can be concluded with reasonable certainty that residues of dinotefuran in residential environments and in food and drinking water will not result in unacceptable levels of human health risk.

F. International Tolerances

No codex maximum residue levels have been established for residues of dinotefuran on any crops at this time.

[FR Doc. 03–16737 Filed 7–1–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0226; FRL–7315–2]

Copper Hydroxide; Notice of Filing of a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0226, must be received on or before August 1, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6304; e-mail address: *boyle.kathryn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0226. 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

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 docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0226. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov,* Attention: Docket ID Number OPP–2003–0226. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0226.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0226. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 23, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

Syngenta Crop Protection

PP 2E6471

EPA has received a pesticide petition (PP 2E6471) from Syngenta Crop Protection, P.O. Box 18300, Greensboro, North Carolina, 27419–8300 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for copper (II) hydroxide in or on raw agricultural commodities. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. Copper hydroxide is exempt from the requirement of a tolerance (40 CFR 180.1021(b)) for use as a broad-spectrum foliar fungicide on growing crops. It is used at application rates greater than an order of magnitude higher than the proposed use as a formulation inert. As such, the metabolism and magnitude of the residue is well understood at application rates much higher than in the current petition.

2. *Analytical method*. Copper ions are released from copper hydroxide by solubilization in the presence of moisture. A method for copper is listed in the January 2002 Pesticide Analytical Volume II.

3. *Magnitude of residues*. Copper hydroxide is exempt from the requirement of a tolerance (CFR 180.1021(b)) for use as a broad-spectrum foliar fungicide on growing crops. It is used as a fungicide at application rates greater than an order of magnitude higher than the proposed use as a formulation inert. As such, the metabolism and magnitude of the residue is well understood at application rates much higher than in the current petition. Copper is naturally found at significant levels in many different types of foods.

B. Toxicological Profile

Copper hydroxide is a versatile and safe material which is used almost everywhere where copper is needed in chemistry. Copper hydroxide is used directly in the planting and ceramics industry, and in agriculture as a fungicide and bactericide. It is widely used as a manufacturing intermediate in numerous applications, for example to make copper compounds, for the production of pigments containing copper, in the manufacture of copper fibers, in galvanizing, metallurgy, pyrotechnics, and electronics, to name just a few applications. Copper ions are released from copper hydroxide by solubilization in the presence of moisture. Copper is ubiquitous in nature and is a necessary nutritional element for both animals (including humans), and plants. Copper is found naturally in the food we eat, in soils, in the water we drink, in the air we breathe and in our bodies. It is one of 26 elements found essential to life. The copper ion is present in the adult human body at levels of 70–150 milligrams (mg).

Due to its being used in small percentages in the proposed formulations, oral ingestion of quantifiable amounts of copper will not result from use of copper hydroxide as an inert. Copper compounds are irritating to the gastric mucosa. Ingestion of large amounts of copper results in prompt emesis. This protective reflex reduces the amount of copper ion available for absorption into the human body. Additionally, at high levels humans are also sensitive to the taste of copper. Because of this organoleptic property, oral ingestion would also serve to limit high doses. Only a small percentage of ingested copper is absorbed, and most of the absorbed copper is excreted. The copper ion occurs naturally in many foods and the metabolism of copper is well understood. There are several factors unique to copper which indicate that additional studies are not needed to regulate copper hydroxide as an inert in pesticide formulations. One of the foremost of these is the fact that copper is a required nutritional element for both plants and animals. It appears that more evidence is available to define the adverse effects of a deficiency in the diet than to show the toxic effects of an excess intake. In fact, no account has been found in the literature reviewed which describes a toxic effect to normal humans from ingestion of common foodstuffs containing copper. Because copper toxicity to man through the diet has been shown in normal persons, little is known about the minimum levels of dietary copper necessary to cause evidence of adverse effects. This situation is likely due, to an effective homoeostatic mechanism that is involved in the dietary intake of copper and that protects man from excess body copper. This complex mechanism integrates absorption, retention, and excretion to stabilize the copper body burden. Given that copper is ubiquitous and is routinely consumed as part of the daily diet, it is unlikely that with current exposure patterns there would be any long-term adverse effects. The hydroxide ion is also ubiquitous in plants, animals including humans, and the environment. The use of copper hydroxide as an inert will not result in any increased burden on the environment or living organisms.

C. Aggregate Exposure

1. *Dietary exposure.* Twelve Food and Drug Administration (FDA) total diet studies, conducted from mid 1982–1984, examined dietary intake of copper for age groups 14–16, 25–30, and 60–65 years. The copper intake ranged from 0.77 (14–16 year old females) to 1.24 mg/day (25–30 year old males). Use of copper hydroxide as an inert at rates at an order of magnitude lower than current pesticide rates will not result in any quantifiable increase in exposure to copper from dietary sources.

i. *Food.* The main source of copper for infants, children, and adults, regardless of age, is the diet. Copper is typically present in mineral rich foods like vegetables (potato, legumes (beans and peas)), nuts (peanuts and pecans), grains (wheat and rye), fruits (peach and raisins), and chocolate in levels ranging from 0.3 to 3.9 parts per million (ppm). A single day's diet may contain 10 mg or more of copper. The daily recommended allowance of copper for adults nutritional needs is 2 mg.

ii. *Drinking water.* Copper is a natural element found in the earth's crust. As a result, most of the world's surface water and ground water that is used for drinking purposes contains copper. Naturally occurring copper in drinking water is safe for human consumption, even in rare instances where it is at levels high enough to impart a metallic taste to the water. The Agency has set a maximum contaminant level for copper at 1.3 ppm. Use of copper hydroxide as an inert at rates at an order of magnitude lower than current pesticide rates will not result in any quantifiable increase in exposure to copper from drinking water.

2. *Non-dietary exposure.* Copper is a naturally occurring element present in the earth's crust, and it is therefore naturally occurring in soil, water and air. Soils would be considered copper deficient if they contain less than 2 ppm available copper in the context of plant health. Air concentrations of copper are relatively low. A study based on several thousand samples assembled by EPA's Environmental Monitoring Systems Laboratory showed copper levels ranging from 0.003 to 7.32 micrograms per cubic meter. Use of copper hydroxide as an inert at rates at an order of magnitude lower than current pesticide rates will not result in quantifiable increase in exposure to copper from non-dietary sources.

D. Cumulative Effects

Exposure to copper occurs over a lifetime from numerous sources and does not result in any known toxicity. Use of copper hydroxide as an inert will not result in quantifiable increase in cumulative exposure to copper.

E. Safety Determination

1. *U.S. population.* Copper is an essential trace element for which the National Academy of Sciences has issued a recommended daily allowance of up to 3 mg/day for adults. Accordingly, there is reasonable certainty that no harm will result from aggregate exposure of the U.S. population to copper. The use of copper hydroxide as an inert in pesticide formulations will not result in any measurable increase in exposure to copper.

2. *Infants and children.* Copper is also a component of the diet of infants and children and also an essential element of their diet. The use of copper hydroxide as an inert in pesticide formulations will not result in any measurable increase in exposure of infants and children to copper.

F. International Tolerances

There does not appear to be any international tolerances for copper or copper hydroxide, and no CODEX maximum residue levels has been established for any food crops at this time.

[FR Doc. 03–16738 Filed 7–1–03; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7521–6]

Public Water Supply Supervision Program Revision for the Commonwealth of Puerto Rico

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative approval and solicitation of request for a public hearing for Public Water Supply Supervision Program Revision for the Commonwealth of Puerto Rico

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has determined to approve an application by the Commonwealth of Puerto Rico to revise its Public Water Supply Supervision Primacy Program to incorporate regulations no less stringent than the EPA's National Primary Drinking Water Regulations (NPDWR) for the following: Lead and Copper Rule Technical Correction; Final Rule, promulgated by EPA on June 30, 1994 (59 FR 33860), Synthetic Organic Chemicals and Inorganic Chemicals; Final Rule, promulgated by EPA on July 1, 1994 (59 FR 34320), Analytical Methods Technical Corrections; Final Rule, promulgated by EPA on December 5, 1994 (59 FR 62456), Analytical Methods Technical Corrections; Final Rule, promulgated by EPA on June 29, 1995 (60 FR 34083), Analytical Methods for Radionuclides Technical Corrections, promulgated by EPA on

March 5, 1997 (62 *FR* 10168), Revisions to State Primacy Requirements to Implement Safe Drinking Water Act Amendments; Final Rule (Primacy Revisions), promulgated by EPA on April 28, 1998 (63 *FR* 23362), Revision of Existing Variance and Exemption Regulations To Comply With Requirements of the Safe Drinking Water Act; Final Rule, promulgated by EPA on August 14, 1998 (63 *FR* 43834), Consumer Confidence Reports; Final Rule, promulgated by EPA on August 19, 1998 (63 *FR* 44512), along with 3 separate Technical Corrections to the Consumer Confidence Reports, promulgated as follows: December 16, 1998 (63 *FR* 69475 and 63 *FR* 69516), June 29, 1999 (64 *FR* 34732) and September 14, 1999 (64 *FR* 49671); Final Rule, Suspension of Unregulated Contaminant Monitoring Requirements for Small Public Water Systems, promulgated by EPA January 8, 1999 (64 *FR* 1494), the Disinfectants and Disinfection Byproducts; Final Rule, and Interim Enhanced Surface Water Treatment; Final Rule, both promulgated December 16, 1998 (63 *FR* 69390 and 63 *FR* 69478, respectively), and the Analytical Methods for Chemical and Microbiological Contaminants and Revisions to Laboratory Certification Requirements; Final Rule, promulgated by EPA December 1, 1999 (64 *FR* 67450). Effective March 6, 2000, the Puerto Rico Department of Health (PRDOH) promulgated the General Regulation of Environmental Health (Regulation #6090) giving the Secretary of PRDOH broad discretion to enact and/or adopt regulations deemed necessary to protect the Commonwealth's drinking water. Regulation #6090 also allowed for incorporation by reference of federally promulgated regulations. The revised regulation has been submitted by the Commonwealth in an application to revise its approved Public Water Supply Supervision Primacy Program (approved primacy program). The application demonstrates that Puerto Rico has adopted drinking water regulations which satisfy the NPDWRs for the above. The USEPA has determined that Puerto Rico's regulations are no less stringent than the corresponding Federal Regulations and that Puerto Rico continues to meet all requirements for primary enforcement responsibility as specified in 40 CFR 142.10.

DATES: This determination to approve the Commonwealth's primacy program revision application is made pursuant to 40 CFR 142.12(d)(3). It shall become final and effective August 1, 2003 unless (1) a timely and appropriate request for a public hearing is received or (2) the Regional Administrator elects to hold a public hearing on her own motion. Any interested person, other than Federal Agencies, may request a public hearing. A request for a public hearing must be submitted to the Regional Administrator at the address shown below by August 1, 2003. If a substantial request for a public hearing is made within the requested thirty day time frame, a public hearing will be held and a notice will be given in the **Federal Register** and a newspaper of general circulation. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on her own motion, this determination shall become final and effective August 1, 2003.

Any request for a public hearing shall include the following information: (1) Name, address and telephone number of the individual organization or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement on information that the requesting person intends to submit at such hearing; (3) the signature of the individual making the request or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: Requests for Public Hearing shall be addressed to:

Regional Administrator, U.S. Environmental Protection Agency, Region 2, 290 Broadway, New York, New York 10007–1866.

All documents relating to this determination are available for inspection between the hours of 9 a.m. and 4:30 p.m. Monday through Friday, at the following offices: Puerto Rico Department of Health, Public Water Supply Supervision Program, 9th Floor, Suite 903, Nacional Plaza Building, 431 Ponce De Leon Avenue, Hato Rey, Puerto Rico, 00917.

U.S. Environmental Protection Agency, Region 2, 24th Floor, Drinking Water Section, 290 Broadway, New York, New York 10007–1866.

FOR FURTHER INFORMATION CONTACT: Michael J. Lowy, Drinking Water Section, U.S. Environmental Protection Agency, Region 2, (212) 637–3830.

Authority: (Section 1413 of the Safe Drinking Water Act, as amended, 40 U.S.C. 300g–2, and 40 CFR 142.10, 142.12(d) and 142.13)

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 03–16735 Filed 7–1–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Requirement Submitted to OMB for Emergency Review and Approval

June 25, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 1, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all comments to Kim A. Johnson, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3562 or via Internet at *Kim_A._Johnson@omb.eop.gov*, and Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the

information collections contact Les Smith at 202–418–0217 or via Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Commission has requested emergency OMB review of this collection with an approval by June 30, 2003.

OMB Control Number: 3060–0787.

Type of Review: Revision of a currently approved collection.

Title: Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94–129, FCC 03–42.

Form Number: N/A.

Respondents: Business or other for-profit entities; Individuals or households; State, local, or tribal government.

Number of Respondents: 35,035.

Estimated Time per Response: 1 to 10 hours.

Frequency of Response: Recordkeeping; on occasion and biennial reporting requirements; third party disclosure.

Total Annual Burden: 145,869 hours.

Total Annual Cost: $51,187,500.

Needs and Uses: On March 17, 2003, the FCC released the *Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking,* CC Docket No. 94–129, FCC 03–42 (*Third Order on Reconsideration*), in which the Commission revised and clarified certain rules to implement Section 258 of the 1996 Act. On May 23, 2003, the Commission also released an Order (CC Docket No. 94–129, FCC 03–116) clarifying certain aspects of the *Third Order on Reconsideration.* The rules and requirements implementing Section 258 can be found primarily at 47 CFR part 64. The modified and revised rules will strengthen the ability of our rules to deter slamming, while protecting consumers from carriers that may take advantage of consumer confusion over different types of telecommunications services. This *Third Order on Reconsideration* also contains a *Further Notice of Proposed Rulemaking,* in which we seek comment on rule modifications with respect to third party verifications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–16627 Filed 7–1–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 03–1959]

NPCR, Inc. d/b/a Nextel Partners Petition for Designation as an Eligible Telecommunications Carrier in Certain Rural and Non-Rural Service Areas in the State of Virginia

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: In this document, the Wireline Competition Bureau seeks comment on the NPCR, Inc. d/b/a/ Nextel Partners (Nextel Partners) petition. Nextel Partners is seeking designation as an eligible telecommunications carrier (ETC) to receive federal universal service support for service offered in those portions of Nextel Partners' licensed service area located in rural and non-rural areas in Virginia.

DATES: Comments are due on or before July 14, 2003. Reply comments are due on or before July 21, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Andy Firth, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division (202) 418–2694, TTY (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, CC Docket No. 96–45, released June 16, 2003. On April 23, 2003, NPCR, Inc. d/b/a/ Nextel Partners (Nextel Partners) filed with the Commission a petition under section 214(e)(6) of the Communications Act of 1934, as amended, seeking designation as an eligible telecommunications carrier (ETC) to receive federal universal service support for service offered in those portions of Nextel Partners' licensed service area located in rural and non-rural areas in Virginia. Nextel Partners contends that the Virginia State Corporation Commission (Virginia Commission) lacks jurisdiction to consider Nextel Partners' petition because wireless carriers are not subject to state jurisdiction in Virginia. Hence, according to Nextel Partners, the Commission has jurisdiction under section 214(e)(6) to consider and grant its petition. Nextel Partners also maintains that it satisfies all the statutory and regulatory prerequisites for ETC designation.

The petitioner must provide copies of its petition to the Virginia Commission. The Commission will also send a copy of this Public Notice to the Virginia Commission by overnight express mail to ensure that the Virginia Commission is notified of the notice and comment period.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments as follows: Comments are due on or before July 14, 2003, and reply comments are due on or before July 21, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998.

Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, comments must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form your <e-mail address>.'' A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m.a to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of

before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

Parties also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street SW., Room 5–B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054.

Pursuant to § 1.1206 of the Commission's rules, 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which ex parte communications are permitted subject to disclosure.

Federal Communications Commission.

Paul Garnett,

Acting Assistant Division Chief, Wireline Competition Bureau, Telecommunications Access Policy Division.

[FR Doc. 03–16628 Filed 7–01–03; 8:45 am]

BILLING CODE 6712—01—M

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 03–90; FCC 03–142]

Application by Qwest Communications International, Inc. for Authorization To Provide In-Region, InterLATA Services in Minnesota

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In the document, the Federal Communications Commission (Commission) grants the section 271 application of Qwest Communications International, Inc. for authorization to provide in-region, interLATA services in Minnesota. The Commission grants Qwest's application based on its conclusion that Qwest has satisfied all of the statutory requirements for entry, and fully opened its local exchange markets to competition.

DATES: Effective July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Gail Cohen, Senior Economist, Wireline Competition Bureau, at (202) 418–0939 or via the Internet at *gcohen@fcc.gov*. The complete text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Further information may also be obtained by calling the Wireline Competition Bureau's TTY number: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in WC Docket No. 03–90, FCC 03–142, adopted June 25, 2003 and released June 26, 2003. The full text of this order may 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*. It is also available on the Commission's website at *http://www.fcc.gov/Bureaus/Wireline_Competition /in-region_applications*.

Synopsis of the Order

1. *History of the Application*. On March 28, 2003, Qwest filed an application with the Commission, pursuant to section 271 of the Telecommunications Act of 1996, to provide in-region, interLATA service in the state of Minnesota.

2. *The State Commission's Evaluation*. The Minnesota Public Utilities Commission (Minnesota Commission), following an extensive review process, determined that Qwest satisfied 12 of the 14 checklist items, but did not reach a collective determination with respect to checklist items 2 and 14, pertaining to unbundled network elements (UNEs) and resale, respectively, and public interest issues.

3. *The Department of Justice's Evaluation*. The Department of Justice filed its evaluation on May 2, 2003, recommending approval of the application, although deferring to the Commission's prior decision regarding the relevance of unfiled interconnection agreements on the section 271 process. The Department of Justice concludes opportunities are available to competing carriers serving business and residential customers, and although only a small portion of residential customers are served via the UNE-Platform, the Department of Justice does not believe there are any material obstacles to such entry.

Primary Issues in Dispute

4. *Checklist Item 2—Unbundled Network Elements*. Section 251(c)(3) requires incumbent LECs to provide ''nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.'' Based on the evidence in the record, we conclude that Qwest has satisfied the requirements of checklist item 2.

5. *Operations Support Systems*. The Commission concludes that Qwest meets its obligation to provide access to its OSS—the systems, databases, and personnel necessary to support the network elements or services. Nondiscriminatory access to OSS ensures that new entrants have the ability to order service for their customers and communicate effectively with Qwest regarding basic activities such as placing orders and providing maintenance and repair services for customers. The Commission finds that Qwest provides access to each of the primary OSS functions (pre-ordering, ordering, provisioning, maintenance and repair, and billing, as well as change management and technical assistance), in order for competitive LECs to compete and in accordance with the Act. In particular, although the Minnesota Commission could not reach consensus on this checklist item due to billing issues related to UNE-Star, the Commission concludes that Qwest does provide non-discriminatory access to billing functions in accordance with the Act.

6. *UNE Combinations*. Pursuant to section 271(c)(2)(B)(ii) a BOC must also provide nondiscriminatory access to network elements in a manner that allows other carriers to combine such elements, and demonstrate that it does not separate already combined elements, except at the specific request of a competing carrier. Based on the evidence in the record, and upon Qwest's legal obligations under interconnection agreements, Qwest demonstrates that it provides to competitors combinations of already-combined network elements as well as nondiscriminatory access to unbundled network elements in a manner that allows competing carriers to combine those elements themselves.

7. *Pricing of Unbundled Network Elements*. The Commission finds, as did the Minnesota Commission, that Qwest's UNE rates in Minnesota are just, reasonable, and nondiscriminatory as required by section 252(d)(1). Thus, Qwest's UNE rates in Minnesota satisfy checklist item 2.

Other Checklist Items.

8. *Checklist Item 1—Interconnection.* Based on the evidence in the record, the Commission finds that Qwest demonstrates that it provides access and interconnection on terms and conditions that are just, reasonable and nondiscriminatory, in accordance with the requirements of section 251(c)(2), and as specified in section 271, and applied in the Commission's prior orders.

9. *Checklist Item 4—Unbundled Local Loops.* The Commission concludes that Qwest provides unbundled local loops in accordance with the requirements of section 271 and our rules. The Commission's conclusion is based on its review of Qwest's performance for all loop types—which include voice grade loops, xDSL-capable loops, and high capacity loops—as well as hot cut provisioning and our review of Qwest's processes for line sharing and line splitting. As of December 31, 2002, competitors have acquired from Qwest and placed into use approximately 106,827 stand-alone unbundled loops in Minnesota.

10. *Checklist Item 14—Resale.* Section 271(c)(2)(B)(xiv) of the Act requires that a BOC make ''telecommunications services * * * available for resale in accordance with the requirements of section 251(c)(4) and section 252(d)(3).'' Based on the evidence in the record, we conclude that Qwest satisfies the requirements of this checklist item. Qwest has demonstrated that it has satisfied its legal obligation to make retail telecommunications services available for resale to competitive LECs at wholesale rates. Although the Minnesota Commission did not reach consensus on this checklist item, the Commission concludes that Qwest does provide nondiscriminatory access to this checklist item.

11. *Checklist Items 3, 5–13.* An applicant under section 271 must demonstrate that it complies with item 3 (poles, ducts, and conduits), item 5 (unbundled transport) item 6 (unbundled local switching), item 7 (E911/operator services/directory assistance), item 8 (white pages), item 9 (numbering administration), item 10 (data bases and signaling), item 11 (number portability), item 12 (local dialing parity), and item 13 (reciprocal compensation). Based on the evidence in the record, and in accordance with Commission rules and orders concerning compliance with section 271 of the Act, the Commission concludes that Qwest demonstrates that it is in compliance with checklist items 3, 5, 6, 7, 8, 9, 10, 11, 12, and 13 in Minnesota.

Other Statutory Requirements

12. *Section 272 Compliance.* Qwest provides evidence that it maintains the same structural separation and nondiscrimination safeguards in Minnesota as it does in the other twelve states where Qwest has already received section 271 authority. Based on the record before us, the Commission concludes that Qwest has demonstrated that it will comply with the requirements of section 272.

13. *Public Interest Analysis.* The Commission concludes that approval of this application is consistent with the public interest. From its extensive review of the competitive checklist, which embodies the critical elements of market entry under the Act, the Commission finds that barriers to competitive entry in the local exchange markets have been removed and the local exchange markets in Minnesota are open to competition.

14. *Section 271(d)(6) Enforcement Authority.* The Commission also finds that the performance monitoring and enforcement mechanisms developed in Minnesota along with other factors, provide meaningful assurance that Qwest will continue to satisfy the requirements of section 271 after entering the long distance market.

15. *Section 271(d)(6) Enforcement Authority.* The Commission concludes that, working with the State Commission, we will closely monitor Qwest's post-approval compliance to ensure that Qwest continues to meet the conditions required for section 271 approval. It stands ready to exercise its various statutory enforcement powers quickly and decisively if there is evidence that market-opening conditions have not been sustained.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–16707 Filed 7–1–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011803–002.

Title: Maersk Sealand/Evergreen Slot Exchange Agreement.

Parties: A.P. Moller-Maersk A/S, Evergreen Marine Corporation, Ltd.

Synopsis: The amendment re-allocates the parties' space commitments.

Agreement No.: 011854–001.

Title: GreenSea Joint Service Agreement.

Parties: Green Chartering AS, Seatrade Group N.V.

Synopsis: The subject agreement modification would expand the geographic scope to include the westbound trade from ports in Continental Europe to ports on the East and Gulf Coasts of the United States.

Agreement No.: 011857.

Title: Crowley Liner Services and Frontier Liner Services, Inc. Slot Charter and Sailing Agreement.

Parties: Crowley Liner Services, Frontier Liner Services, Inc.

Synopsis: The agreement establishes a slot charter and sailing arrangement in the trade between ports on the U.S. Atlantic Coast and ports in the Dominican Republic. Expedited Review is Requested.

Agreement No.: 200616–003.

Title: Port of Miami Terminal Operating Company Marine Terminal Agreement.

Parties: P&O Ports North America, Inc., P&O Ports Florida Inc., Florida Stevedoring, Inc., Continental Stevedoring & Terminals, Inc.

Synopsis: The agreement amendment reflects the addition and deletion of members.

By Order of the Federal Maritime Commission.

Dated: June 26, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–16630 Filed 7–1–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 03–07]

FSL International, Inc., and Hiu-Leung Yeung, and Full Service Logistics, Inc., and Mei Fung Tsang—Possible Violations of Sections 10(a)(1), 10(b)(2), 10(b)(11) and Sections 19(a) and (b) of the Shipping Act of 1984 and 46 CFR Part 515; Order of Investigation and Hearing

June 26, 2003.

Notice is given that on June 26, 2003, the Federal Maritime Commission served an Order of Investigation and Hearing on FSL International, Inc. (''FSL International''), Hiu-Leung Yeung, Full Service Logistics, Inc. (''Full Service Logistics''), and Mei Fung Tsang. From May 1, 1999 through February 18, 2003, FSL International, a California corporation, was a tariffed and bonded

ocean transportation intermediary (''OTI'') licensed as a non-vessel-operating common carrier (''NVOCC''). The president of FSL International is Hiu-Leung ''John'' Yeung. Full Service Logistics, a California corporation, was granted an OTI (NVOCC) license on February 20, 2003. The CEO of Full Service Logistics is Mei Fung ''Ten'' Tsang.

It appears that, on and after July 4, 2001, FSL International knowingly and willfully obtained transportation of property at less than the applicable rates and charges set forth in service contracts published by Mitsui OSK Lines and Hyundai Merchant Marine Co. With respect to numerous shipments for which FSL International issued its own NVOCC bill of lading, it appears that FSL International provided service at rates and charges other than those set forth in its published tariff. After receiving a Notice and Demand Letter from the Commission for civil penalties stemming from its alleged violations, FSL International's principal John Yeung proposed, as an alterative, to discontinue business operation no later than February 9, 2003, and to surrender the OTI license for revocation. The license of FSL International was revoked on February 19, 2003. On or about April 23, 2003, the Commission's Los Angeles Area Representative determined that FSL International continued to conduct business. It appears that FSL International continued to serve as a shipper with respect to numerous export shipments while operating from the offices and utilizing the personnel and resources of Full Service Logistics. It appears that Full Service Logistics may have facilitated access by FSL International to its service contracts. It also appears that, Full Service Logistics may have known of or permitted John Yeung to hold himself out as an authorized employee or officer of Full Service Logistics and to perform NVOCC services under its name and license.

This proceeding therefore seeks to determine: (1) Whether FSL International and Full Service Logistics and their principals, John Yeung and Mei Fung Tsang, violated section 10(a)(l) of the Shipping Act of 1984 (''1984 Act'') by directly or indirectly obtaining transportation at less than the service contract rates and charges otherwise applicable; (2) whether FSL International and Full Service Logistic, in their capacity as common carriers, violated section 10(b)(2) of the 1984 Act by charging, demanding, collecting or receiving different compensation than the rates and charges in their NVOCC tariffs; (3) whether FSL International and John Yeung provided OTI services after revocation of its license, in violation of section 19(a) and (b) of the 1984 Act and 46 CFR part 515; (4) whether Full Service Logistics and Mei Fung Tsang provided OTI services to FSL International after revocation of the latter's OTI license, in violation of section 10(b)(11) of the 1984 Act and 46 CFR part 515; (5) whether, in the event violation of sections 10(a)(1), 10(b)(2), 10(b)(11) and 19(a), (b) of the 1984 Act and CFR part 515 are found, civil penalties should be assessed and, if so, the amount; (6) whether the tariff of Full Service Logistics should be suspended; (7) whether the OTI license of Full Service Logistics should be suspended or revoked, and (8) whether, in the event violations are found, an appropriate cease and desist order should be issued.

The full text of the Order may be viewed on the Commission's Home page at: *http//www.fmc.gov* or at the Office of the Secretary, Room 1046, 800 N. Capitol Street, NW., Washington, DC. Any person may file a petition for leave to intervene in accordance with 46 CFR 502.72.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–16629 Filed 7–1–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 1999F.
Name: Air Van Lines, Inc.
Address: PO. Box 3447, Bellevue, WA 98009.
Date Revoked: April 7, 2003.
Reason: Surrendered license voluntarily.

License Number: 2492NF.
Name: Deka Associates, Inc.
Address: One Clarence Place, Unit 8, San Francisco, CA 94107.
Date Revoked: February 14, 2003.
Reason: Failed to maintain valid bonds.

License Number: 4328N and 4328F.
Name: Demar Freight Forwarding Services, Inc.
Address: 888 North Central, Wood Dale, IL 60191.
Date Revoked: June 4, 2003 and April 27, 2003.
Reason: Failed to maintain valid bonds.

License Number: 4240F.
Name: Elite Freight Forwarders Inc.
Address: 9 Ridgewood Avenue, Glen Ridge, NJ 07208.
Date Revoked: June 12, 2003.
Reason: Failed to maintain a valid bond.

License Number: 16844N.
Name: Estes Express Lines, Inc.
Address: 3901 West Broad Street, Richmond, VA 23230–3962.
Date Revoked: January 7, 2003.
Reason: Surrendered license voluntarily.

License Number: 13692N.
Name: Gallagher Transport International, Inc.
Address: P.O. Box 39005, Denver, CO 80239.
Date Revoked: May 30, 2003.
Reason: Surrendered license voluntarily.

License Number: 3817F.
Name: Intracon Incorporated.
Address: 811 Banyan Drive, Elk Grove Village, IL 60007.
Date Revoked: June 17, 2003.
Reason: Failed to maintain a valid bond.

License Number: 17927N.
Name: J C Freight, Inc. dba JC Trans Freight.
Address: 1293 Johnson Drive, City of Industry, CA 91744.
Date Revoked: June 7, 2003.
Reason: Failed to maintain a valid bond.

License Number: 2889F.
Name: Jorge M. Hernandez dba Atlantic Cargo Services.
Address: 4995 NW. 72nd Avenue, Suite 205, Miami, FL 33166
Date Revoked: May 29, 2003.
Reason: Surrendered license voluntarily.

License Number: 1274F.
Name: Marante Forwarding Co., Inc.
Address: 4182 W 6th Avenue, Hialeah, FL 33012–3814.
Date Revoked: June 4, 2003.
Reason: Failed to maintain a valid bond.

License Number: 3702F.
Name: Midas Express, Inc.
Address: 950 Linden Avenue, South San Francisco, CA 94080.
Date Revoked: May 15, 2003.
Reason: Failed to maintain a valid bond.

License Number: 12295N.
Name: Ocean Concord (U.S.A.), Inc.
Address: 1111 Corporate Center Drive, Suite 204, Monterey Park, CA 91754.
Date Revoked: June 4, 2003.
Reason: Failed to maintain a valid bond.

License Number: 16683F.
Name: S & R Forwarding, Inc.
Address: 1191 East 51st Street, Brooklyn, NY 11234.
Date Revoked: June 7, 2003.
Reason: Failed to maintain a valid bond.

License Number: 17236N.
Name: Simpson's Shipping Enterprise.
Address: 166 West First Street, Mount Vernon, NY 10550.
Date Revoked: June 14, 2003.

Reason : Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 03–16631 Filed 7–1–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants:

Draft Cargoways India Private Limited, 274 Marlin Street, Dix Hills, NY 11746, Officers: Prasad Prabhakar Gokhale, CEO (Qualifying Individual), D. R. Shete, Managing Director.

One World Logistics LLC, 381 Blair Road, Avenel, NJ 07001, Officers: Freddie Amin (Rasik Amin), Import/Export Traffic Manager (Qualifying Individual), Jitendra S. Patel, President.

South Texas Shipping, Inc., 28250 F.M. 2978, Suite 111, Magnolia, TX 77354, Officer: Lynn Patrick Stewart, President (Qualifying Individual).

WSA International, Inc., 1713 Coral Ridge Drive, Coral Springs, FL 33071, Officer: Vanessa Aristud, President (Qualifying Individual).

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Global Tassili Transport Services, Inc. dba GTTS, 8206 Fairbanks, No. Houston, Houston, TX 77064, Officers: Beverly S. Sellentin, Vice President (Qualifying Individual), Benali Belkagemi, President.

Corrigan's Express Freight Corporation, 8900 Bellanca Avenue, Los Angeles, CA 90045, Officers: Warren L. Barnes, CEO (Qualifying Individual), Julian Keeling, President.

American Global Marketing Inc. dba American Global Corp., 1144½ South Doheny Drive, Los Angeles, CA 90035, Officers: Mamdouh (Moe) S. Mokhtar, President, Osana V. Michael, Logistics Manager (Qualifying Individuals).

Ocean Freight Forwarder, Ocean Transportation Intermediary Applicant:

Nankai Transport International (USA), Inc., 8820 Bellanca Avenue, Los Angeles, CA 90045, Officers: Matsuyoshi Jouchi, Vice President (Qualifying Individual), Tsuneharu Tanaka, President/Director.

Dated: June 26, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–16632 Filed 7–1–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
4378F	World 2000 Services, Inc., 8233 NW 66th Street, Miami, FL 33166	May 21, 2003.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 03–16633 Filed 7–1–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 17, 2003.

A. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105–1579:

1. Robert Lee McKean, North Plains, Oregon; to acquire additional voting shares in Albina Community Bancorp, and thereby indirectly acquire Northeast Portland Community Development Trust and Albina Community Bank, all of Portland, Oregon.

Board of Governors of the Federal Reserve System, June 26, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–16651 Filed 7–1–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the

proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 28, 2003.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Alpha Financial Group, Inc., Employee Stock Ownership Plan, Toluca, Illinois; to acquire an additional 6.7 percent, for a total of 39.38 percent, of the voting shares of Alpha Financial Group, Inc., and thereby indirectly acquire Alpha Community Bank, both of Toluca, Illinois.

2. Heartland Financial USA, Inc., Dubuque, Iowa; to acquire 80 percent of Arizona Bank & Trust (in organization), Mesa, Arizona.

B. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105–1579:

1. Wells Fargo & Company, San Francisco, California; to acquire 100 percent of Pacific Northwest Bancorp, Seattle, Washington, and thereby indirectly acquire its wholly-owned subsidiary, Pacific Northwest Bank, Seattle, Washington.

Board of Governors of the Federal Reserve System, June 26, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–16652 Filed 7–1–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act; Meetings

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Monday, July 7, 2003.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR MORE INFORMATION PLEASE CONTACT: Michelle A. Smith, Assistant to the Board; (202) 452–2955.

SUPPLEMENTARY INFORMATION: You may call (202) 452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: June 27, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–16834 Filed 6–30–03; 8:34 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 021 0174]

Nestlé Holdings, Inc., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 25, 2003.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov,* as prescribed in the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: Michael Cowie or Catharine Moscatelli, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2214 or 326–2749.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 25, 2003), on the World Wide Web, at *''http://www.ftc.gov/os/2003/06/index.htm.''* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled ''confidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov.* Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted for public comment from Nestlé Holdings, Inc. (''Nestlé''), Dreyer's Grand Ice Cream Holdings, Inc., and Dreyer's Grand Ice Cream, Inc. (''Dreyer's'') (collectively, ''Proposed Respondents''), an Agreement Containing Consent Order (''Proposed Consent Agreement'') including the Decision and Order (''Proposed Order'') and the Order to Maintain Assets. The Proposed

Respondents have also reviewed a draft complaint. The Commission has now issued the complaint and Proposed Order. The Proposed Consent Agreement is designed to remedy the likely anticompetitive effects arising from the merger of Nestlé and Dreyer's.

II. The Parties and the Transaction

Nestlé S.A., the world's largest food company, is headquartered in Switzerland. Nestlé Holdings, Inc., a wholly owned subsidiary of Nestlé S.A., manufactures, distributes, and sells the Häagen-Dazs brand of superpremium ice cream, as well as such frozen novelty products as Drumstick, Bon Bons, IceScreamers, Dole Fruit Bars, Butterfinger ice cream bars, and the Nestlé Crunch Bar. Sales in 2001 of all Nestlé ice cream products totaled approximately $800 million.

Dreyer's manufactures, distributes, and sells the Dreamery brand of superpremium ice cream, as well as the Godiva brand of superpremium ice cream under a long-term license with Godiva Chocolatier, Inc., and the Starbucks brand of superpremium ice cream products under a joint venture with Starbucks Corporation. Dreyer's also manufactures, distributes and sells such other products as the Dreyer's brand of premium ice cream in thirteen western states and Texas, the Edy's brand of premium ice cream throughout the remaining regions of the United States, and the Whole Fruit line of sorbet. Dreyer's total sales in 2001 were approximately $1.4 billion. As a result of the transaction, Respondent Dreyer's Grand Ice Cream Holdings, Inc., will be the parent of Respondent Dreyer's Grand Ice Cream, Inc.

On June 16, 2002, Nestlé and Dreyer's signed an Agreement and Plan of Merger and Contribution whereby Nestlé and Dreyer's would combine their ice cream businesses. The transaction will increase Nestlé's interest in Dreyer's from 23 percent to approximately 67 percent. At the time Nestlé and Dreyer's announced the merger, the transaction was valued at approximately $2.8 billion.

III. The Complaint

The complaint alleges that the relevant line of commerce (*i.e.*, the product market) in which to analyze the acquisition is the sale of superpremium ice cream to the retail channel. Superpremium ice cream contains more butterfat and less air than premium or economy ice creams. Therefore, superpremium ice cream is higher in fat than the other two segments of ice cream. Ice cream also is differentiated on the quality of ingredients, with superpremium containing more expensive and higher quality inputs. Finally, superpremium ice cream is priced significantly higher than premium or economy ice creams. Superpremium ice cream manufacturers set their prices based on various factors, including the price of other superpremium ice creams. When Dreyer's expanded into superpremium ice cream in 1999, the price of other superpremium ice creams declined.

The complaint alleges that the relevant geographic market in which there are competitive problems related to the acquisition is the United States. The superpremium ice cream market is highly concentrated when measured by the Herfindahl-Hirschman Index (commonly referred to as the ''HHI'').[1] The post-acquisition HHI would increase over 1,600 points, from 3,501 to 4,897 and the merging parties would have a combined market share of over 55%.

The complaint further alleges that entry would not be likely or sufficient to prevent anticompetitive effects in the United States. It would be very difficult for an entrant with a new or unknown brand to successfully take a sufficient amount of sales from superpremium ice cream incumbents to remain profitable. Furthermore, a superpremium ice cream entrant would face great difficulty developing a nationwide Direct Store Delivery (''DSD'') distribution network comparable to either of the merging parties.

The complaint also alleges that Nestlé's acquisition of Dreyer's, if consummated, may substantially lessen competition in the relevant line of commerce in the relevant market in violation of section 7 of the Clayton Act, as amended, 15 U.S.C. 45, by eliminating direct competition between Nestlé and Dreyer's; by eliminating Dreyer's as an important competitive constraint in the relevant market; by increasing the likelihood that the combined Nestlé/Dreyer's will unilaterally exercise market power; and by increasing the likelihood of, or facilitation of, collusion or coordinated interaction in the United States.

IV. The Terms of the Agreement Containing Consent Order

The Proposed Consent Agreement will remedy the Commission's competitive concerns about the proposed acquisition. Proposed Consent Agreement Paragraph II.A. requires that Proposed Respondents divest: (1) All assets, businesses, and goodwill related to the manufacture, marketing, or sale of the Dreamery, Godiva and Whole Fruit brands, and (2) all assets related to Nestlé's distribution of frozen dessert products. These assets, collectively referred to as the ''assets to be divested,'' will be divested to CoolBrands International, Inc. (''CoolBrands'') no later than ten (10) days after Nestlé acquires Dreyer's. Proposed Respondents are not obligated to divest those Nestlé distribution assets that CoolBrands elects not to acquire. Proposed Respondents may license back from CoolBrands the rights to use the ''Whole Fruit'' name for fruit bars for a period not to exceed one (1) year.

The Proposed Consent Agreement requires Proposed Respondents to divest Nestlé's distribution assets to CoolBrands because virtually all superpremium ice cream currently is sold through DSD. This means that the distributor physically places the product on retailers' shelves, and the retailer does not purchase the product until after it is actually delivered to the store.

Paragraph II.B. provides that if the Commission determines that CoolBrands is not an acceptable purchaser of the assets to be divested, or if the divestiture is not accomplished in an acceptable manner, Proposed Respondents shall immediately rescind the sale of the assets to be divested to CoolBrands and divest those assets at no minimum price to another purchaser that receives the prior approval of the Commission within 120 days of the date the Order becomes final.

Paragraph II.C. of the Proposed Consent Agreement requires that, prior to divesting, Proposed Respondents obtain the consent of Godiva Chocolatier, Inc. (''Godiva Chocolatier''), to the assignment of the license agreement between Godiva Chocolatier and Dreyer's for the manufacture, distribution and sale of Godiva ice cream to the acquirer.

Paragraph II.D. of the Proposed Consent Agreement requires Proposed Respondents to maintain the viability and marketability of the assets to be divested. The proposed respondents are also required to maintain the assets pursuant to the Order to Maintain Assets. Paragraph II.E. requires that for a period not to exceed one (1) year from the date that CoolBrands obtains the assets to be divested, Proposed Respondents will supply CoolBrands with the types and quantities of Dreamery, Godiva, and Whole Fruit products that CoolBrands requests at a price no greater than Proposed Respondents' production costs.

[1] The HHI is a measurement of market concentration calculated by summing the squares of the individual market shares of all participants.

Paragraph II.F. further provides that at the request of CoolBrands, Proposed Respondents will distribute Dreamery, Godiva, and Whole Fruit for CoolBrands for a period not to exceed one (1) year in any areas of the U.S. where Dreyer's previously distributed these products. Paragraph II.G. requires Proposed Respondents to provide technical assistance to CoolBrands, as needed, for a period not to exceed one (1) year. Paragraph II.H. requires Proposed Respondents to provide administrative services to CoolBrands, as needed, for a period not to exceed one (1) year.

Paragraph II.I. requires that, for a period not to exceed five (5) years, Proposed Respondents will supply sufficient volumes of additional ice cream products (*e.g.*, premium ice creams or novelty products) to CoolBrands to enable CoolBrands to profitably distribute Dreamery, Godiva, and Whole Fruit superpremium products. This provision was included in the Proposed Consent Agreement because Nestlé's DSD system handles more products than the Dreamery, Godiva, and Whole Fruit superpremium products that CoolBrands is acquiring, and the provision will enable CoolBrands to operate profitably for a limited term while CoolBrands attempts to attract independent distribution business from unaffiliated third parties.

Paragraph II.J. requires that Proposed Respondents modify the joint venture agreement between Dreyer's and Starbucks to allow Starbucks to manufacture, distribute, and sell the Starbucks brand of ice cream and other ice cream products themselves or in collaboration with other third-parties. Under the existing joint venture agreement between Dreyer's and Starbucks, Dreyer's is the sole manufacturer, distributor and salesman for the Starbucks brand of superpremium ice cream.

Paragraph III limits the ways in which Proposed Respondents may utilize an information it acquires with respect to CoolBrands.

Paragraph IV of the Proposed Consent Agreement allows the Commission to appoint an Interim Monitor to monitor compliance with the terms of this Proposed Order. The Proposed Consent Agreement provides the Monitor Trustee with the power and authority to monitor the Proposed Respondents' compliance with the terms of the Proposed Consent Agreement, and full and complete access to personnel, books, records, documents, and facilities of the Proposed Respondents to fulfill that responsibility. In addition, the Interim Monitor may request any other relevant information that relates to the Proposed Respondents' obligations under the Proposed Consent Agreement. The Proposed Consent Agreement precludes Proposed Respondents from taking any action to interfere with or impede the Interim Monitor's ability to perform his or her responsibilities or to monitor compliance with the Proposed Consent Agreement.

The Interim Monitor may hire such consultants, accountants, attorneys, and other assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities. The Proposed Consent Agreement requires the Proposed Respondents to bear the cost and expense of hiring these assistants.

Paragraph V.A. of the Proposed Consent Agreement authorizes the Commission to appoint a divestiture trustee in the event Nestlé fails to divest the assets as required by the Proposed Consent Agreement.

Paragraph VI. of the Proposed Consent Agreement provides that Proposed Respondents allow, Mars, Incorporated (''Mars''), to terminate its agreements and joint ventures with Dreyer's. Mars' agreements with Dreyer's involved Dreyer's manufacturing and distributing ice cream products for Mars. Mars planned to have Dreyer's manufacture and distribute a new superpremium ice cream for Mars. Mars will now be free to enter this market on their own or as part of a new joint venture, or other arrangement, with a third party.

Paragraph VII. of the Proposed Consent Agreement requires Proposed Respondents to permit Unilever's Ben & Jerry's subsidiary to terminate its distribution agreement with Dreyer's by December 31, 2003. The existing distribution agreement between Dreyer's & Ben & Jerry's required Ben & Jerry's to give Dreyer's approximately nine (9) months notice prior to terminating distribution. This provision will reduce the notice period that Ben & Jerry's must provide.

Paragraph VIII. through XII. detail certain general provisions. Paragraph VIII. prohibits Proposed Respondents from acquiring, without providing the Commission with prior notice, any ownership or other interest in Dreamery, Godiva, or Starbucks superpremium ice cream brands or in any of the Nestlé distribution assets that CoolBrands is acquiring, or other DSD distribution assets. These are the assets that Proposed Respondents are divesting. The provisions regarding prior notice are consistent with the terms used in prior orders. The Proposed Consent Agreement does not restrict the Proposed Respondents from developing any new superpremium brands.

Paragraph IX. requires the Proposed Respondents to file compliance reports with the Commission, the first of which is due within thirty (30) days of the date on which the Proposed Consent Agreement becomes final, and every sixty (60) days thereafter until the divestitures are completed. Paragraph X. provides for notification to the Commission in the event of any changes in the corporate Proposed Respondents. Paragraph XI. requires Proposed Respondents to grant access to any authorized Commission representative for the purpose of determining or securing compliance with the Proposed Consent Agreement. Paragraph XII. terminates the Proposed Consent Agreement after ten (10) years from the date the Proposed Order becomes final.

V. Opportunity for Public Comment

The Proposed Consent Agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the Proposed Consent Agreement and the comments received and will decide whether it should withdraw from the agreement or make the Proposed Consent Agreement final.

By accepting the Proposed Consent Agreement subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the Proposed Consent Agreement, including the proposed sale of assets to CoolBrands, in order to aid the Commission in its determination of whether to make the Proposed Consent Agreement final. This analysis is not intended to constitute an official interpretation of the Proposed Consent Agreement nor is it intended to modify the terms of the Proposed Consent Agreement in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Sheila F. Anthony Nestlé S.A./Dreyer's Grand Ice Cream Holdings, Inc./ Dreyer's Grand Ice Cream, Inc.

The Federal Trade Commission has voted to accept a proposed consent agreement designed to remedy the likely anticompetitive effects arising from the merger of Nestlé and Dreyer's. While I concur in the Commission's decision, I

write separately to highlight several lingering concerns.

As explained in greater detail in the Analysis to Aid Public Comment, to remedy overlaps in the ''superpremium'' ice cream businesses of Nestlé and Dreyer's, the parties will be required to divest a package of assets—including Dreyer's Dreamery ice cream and Whole Fruit sorbet brands, Dreyer's license to the Godiva brand,[1] and Nestlé's frozen dessert Direct Store Delivery (DSD) distribution network—to CoolBrands International, Inc. However, Nestlé's DSD system currently handles more product volume than that represented by the products CoolBrands will acquire. Therefore, the proposed consent agreement also requires the merged competitors, for a period of five years, to supply CoolBrands with sufficient volumes of additional ice cream products to enable it profitably to operate the distribution system.

CoolBrands is a qualified buyer whose management team has significant experience in the ice cream business. With respect to the acquisition of the three product brands, CoolBrands has existing manufacturing capacity and expertise, which should facilitate a smooth transition on the manufacturing side. With respect to the acquisition of Nestlé's DSD distribution assets, CoolBrands already has some DSD assets and business of its own, and appears to understand how to operate a DSD network. This is particularly important, because DSD is the method currently used to sell virtually all superpremium ice cream in the United States. In sum, CoolBrands seems well-positioned to make the most of the product and distribution assets it will acquire.

However, the ''mix-and-match'' nature of the divestiture package is far from ideal, especially when compared with the assets to be retained by the combined Nestlé/Dreyer's. Post-merger, Nestlé/Dreyer's will own Nestlé's dominant Häagen-Dazs superpremium ice cream brand as well as Dreyer's superior DSD distribution system. CoolBrands, on the other hand, will end up with one company's less-popular brands and the other company's weaker DSD distribution system.

As Commission staff recently has acknowledged, and as I have maintained throughout my tenure as Commissioner, the divestiture of a complete, autonomous, ongoing business unit minimizes the risks of anticompetitive harm because ''such a remedy requires the Commission and the Bureau to make the fewest assumptions and to draw the fewest conclusions about the market and its participants and about the viability and competitiveness of the proposed package of assets.''[2] In this case, it is a foregone conclusion that the ''mix-and-match'' product and distribution assets to be acquired by CoolBrands are *not* a perfect fit for each other. The proposed consent agreement explicitly recognizes that, absent a short-term commitment of product volume from competitor Nestlé/Dreyer's, CoolBrands would have insufficient volume to operate the Nestlé DSD distribution system profitably. The resulting volume commitments are a more regulatory form of relief than I ordinarily like to see, in large part because they effectively will require the Commission to supervise the superpremium ice cream marketplace for the next five years.

Moreover, there is no guarantee that the CoolBrands DSD distribution system will, in fact, be profitable once the volume commitments terminate. In the meantime, all of the risk of failure is borne by CoolBrands and, ultimately, consumers—not by the parties. Five years from now, Nestlé/Dreyer's almost certainly will retain its leading Häagen-Dazs brand, an excellent DSD distribution system, and plenty of volume to drive through that system. In contrast, if CoolBrands finds itself unable to attract additional DSD product volume from third parties, the company may suffer from decreased profitability. Depending upon the strategic choices CoolBrands might be forced to make, consumers could be faced with fewer, higher-priced superpremium offerings on supermarket shelves.

Every settlement has elements of uncertainty and risk. Our job is to determine whether the risk is small enough to be acceptable. I have voted to accept the proposed settlement based upon staff's extensive investigation of the ice cream industry, as well as CoolBrands' track record. CoolBrands appears capable of attracting enough independent distribution business to fill its excess DSD capacity over time. In addition, CoolBrands always has the option of scaling down its DSD system to more closely match available volume and maintain profitability. Therefore, based upon the evidence available to me at this time, I am reasonably comfortable that things will work out as intended, and that the competitive *status quo* can be attained.

[FR Doc. 03–16700 Filed 7–1–03; 8:45 am]

BILLING CODE 6750–01–P

[1] The parties will not be required to divest Dreyer's license to the Starbucks brand. The combined Nestlé/Dreyer's will retain the existing Starbucks ice cream business. However, the current joint venture between Dreyer's and Starbucks will be modified to make it a non-exclusive joint venture, thereby allowing Starbucks (if it so chooses) to conduct ice cream business apart from the joint venture.

[2] Bureau of Competition, Federal Trade Commission, Statement of the Federal Trade Commission's Bureau of Competition on Negotiating Merger Remedies (Apr. 2, 2003), available at *http://www.ftc.gov/bc/bestpractices/bestpractices030401.htm.*

GENERAL ACCOUNTING OFFICE

Advisory Council on Government Auditing Standards; Government Auditing Standards

AGENCY: General Accounting Office.

ACTION: Notice of document availability.

SUMMARY: David M. Walker, Comptroller General of the United States and head of the U.S. General Accounting Office (GAO), on Wednesday, June 25, 2003, announced the release of a new edition of ''Government Auditing Standards'' commonly referred to as the Yellow Book. GAO's publication of ''Government Auditing Standards'' provides a framework for ensuring the competence, integrity, objectivity, and independence of government audits at a time of urgent need for integrity in the auditing profession and for transparency and accountability in the management of limited government resources. This fourth revision since the standards were first published in 1972 will guide audits of financial and program management not only in Federal agencies, but also State and local governments, and nonprofit organizations that receive Federal funds. Bringing the 1994 edition up to date after an extensive process of consultation with auditors and stakeholders, the standards incorporate amendments on computer-based information systems, auditor communication, and auditor independence. The revision strengthens audit requirements for identifying fraud, illegal acts, and noncompliance; redefines the types of audits and services covered; provides consistency of requirements across types of audits; and gives clear guidance to auditors as they work toward a government that is efficient, effective, and accountable to the people.

New standards are applicable for financial audits and attestation engagements of periods ending on or after January 1, 2004, and for performance audits beginning on or after January 1, 2004. Early applications is permissible and encouraged.

''Government Auditing Standards'' is available on the GAO Web site at

www.gao.gov/govaud/ybk01.htm. Printed copies will be available from the U.S. Government Printing Office. Also posted on the Web site is a list of major changes from the 1994 edition.

FOR FURTHER INFORMATION CONTACT: Marcia Buchanan, Assistant Director, Government Auditing Standards, 202–512–9321.

Jeanette M. Franzel,

Director, Financial Management and Assurance.

[FR Doc. 03–16716 Filed 7–1–03; 8:45 am]

BILLING CODE 1610–03–M

GENERAL SERVICES ADMINISTRATION

Notice of Intent To Prepare an Environmental Impact Statement for the San Ysidro Border Station Expansion

AGENCIES: General Services Administration (GSA), California Department of Transportation (CalTrans), and Federal Highway Administration (FHWA).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) for the upgrade and expansion of the existing San Ysidro Border Station.

SUMMARY: The action to be evaluated by this EIS is the upgrade and expansion of the existing San Ysidro Border Station, located in San Ysidro, California, to relieve the substantial increase of traffic congestion at the southern terminus of I–5; to implement new mandated border entry/exit programs, in accordance with the legislative requirements of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996; to further the reorganization of the Federal Inspection Services into an agency of Homeland Security; and, to maintain control over ever present illegal activities at the border.

Alternatives

Four build alternatives for the proposed project are currently under consideration and will be analyzed in the EIS for potential environmental impacts. In addition, as required be NEPA, the ''No Build'' alternative will be analyzed. In an effort to provide effective border control services to both Mexico and the United States (U.S.), and to streamline traffic along I–5 between Mexico and the U.S., several potential developments outside of the scope of this project are being taken into consideration during the planning stages of the proposed project. One of these potential developments involves the Mexican Federal Government's plan to develop a new non-commercial port of entry at El Chaparral, located directly south of the decommissioned U.S. Virginia Avenue Commercial Vehicle Inspection facility. The San Ysidro Border Station would need to align with, or connect to, the El Chaparral facility. A second local area project which would affect the development of the proposed project is the San Ysidro Intermodal Transportation Center, which will improve the trolley terminus to the east of the existing San Ysidro Border Station. The proposed transportation center also includes general hardscape and landscape improvements, as well as upgrades to existing parking lots and roadways. This development would establish the area east of the existing San Ysidro Border Station as the main hub for the local population and any individuals wishing to cross the U.S./Mexico border.

Public Involvement

The views and comments of the public are necessary in determining the scope and content of the environmental analysis in connection with the proposed project. A scoping meeting for the proposed project will be held on Wednesday, July 23, 2003 from 3 p.m. to 7 p.m. at the San Ysidro Multi-Cultural Center, located at 4345 Otay Mesa Road in San Ysidro, CA. Interested parties may attend to present questions and concerns that they believe should be addressed in the EIS. Release of the Draft EIS for public comment and the public meeting will be announced in the local news media as these dates are established.

FOR FURTHER INFORMATION CONTACT: General Services Administration, Pacific Rim Region, Ramón D. Riesgo, Border Station Program, Desert Service Center, 401 West ''A'' Street, Suite 2075, San Diego, CA 92101–8843, (619) 557–5092.

Steve J. Scavo,

Acting Director, Desert Service Center.

[FR Doc. 03–16784 Filed 7–1–03; 8:45 am]

BILLING CODE 6620–27–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–03–88]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Hemostatic Disorders in Families—New—National Center for Infectious Diseases (NCID), Centers for Diseases Control and Prevention (CDC). Disorders of hemostasis are primarily due to alteration in the balance of the normal hemostatic mechanism, which provides for the appropriate formation and breakdown of the clot. Disruption in this balance causes bleeding disorders and thrombotic disorders, both of which are multifactorial, resulting from the interaction of genetic and environmental risk factors. Disorders that are transmitted in families, such as hemophilia and protein S deficiency, are due to specific mutations, but many different mutations are known to cause each disease. Since different mutations may cause variation in severity and clinical course of the disease, population studies capture a heterogeneous group. Modification of the primary gene defect by acquired factors and by action of other genes to produce further variability in clinical expression of the disease may be less apparent in populations. Study of family members allows for control of one significant parameter, gene defect, in order for the effects of other variables to be examined.

Diagnosis of a hemostatic disorder through measurement of coagulation factors or genetic testing is not always predictive of clinical disease, yet

individuals given such a diagnosis may undergo prospective treatment for surgical procedures or even lifelong anticoagulation. The reasons that some individuals with a particular gene defect experience symptoms while others with the same defect do not is poorly understood. An understanding of additional risk factors involved would result in more appropriate targeting of therapy and reduce unnecessary treatment with blood products or drugs with significant side effects.

The primary objective of this study is to identify risk factors related to intra-familial differences in manifestations of hemostatic diseases, including bleeding disorders, such as von Willebrand disease and platelet storage pool disease, and thrombotic disorders, such as protein C deficiency and protein S deficiency.

This is a descriptive study of families with bleeding or thrombotic disorders. The goal is to identify families with 5–10 members affected with a bleeding or thrombotic disorder. Family members who have the same abnormal gene will be compared as to their clinical symptoms or lack thereof and differences in physiologic and genetic markers which may be related to the disorder under study. Data will be collected for at least five years for descriptive and hypothesis generating purposes.

Ten families a year will qualify for this study; up to 100 members will be enrolled. Participants will be asked to be interviewed by a trained interviewer with questions on demographics, medical history, behavioral and lifestyle factors, and family history; have 35 milliliters (about 2.5 tablespoons) of blood drawn from a vein in the arm. The blood will undergo testing of appropriate coagulation parameters and physiologic variables such as blood groups. The tests chosen will depend upon the disorder present in the family. Participants will also be asked to give study staff access to previous laboratory results collected at other institutions or at CDC, provide contact information for family members thought to have symptoms of bleeding or clotting, and allow his or her diagnosis to be disclosed to family members. There is no cost to the respondents.

Respondents	No. of respondents	No. of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Male	50	2	30/60	50
Female	50	2	30/60	50
Total				100

Thomas A. Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–16676 Filed 7–1–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03032]

Addressing Asthma From a Public Health Perspective; Notice of Availability of Funds Amendment

A notice announcing the availability of fiscal year (FY) 2003 funds for cooperative agreements for ''Addressing Asthma From a Public Health Perspective'' published in the **Federal Register** on May 28, 2003, Volume 68, Number 102, pages 31707–31720. The notice is amended as follows:

On page 31707, third column, at the end of the first paragraph, insert the following, ''If the applicant is not the State health department, but is another department responsible for the State asthma program, or a *bona fide* agent of the State health department, they must include documentation to indicate their status. This documentation should include: (1) A letter from the State health department designating the applicant organization as their *bona fide* agent, or as the organization responsible for asthma programs within the State; and/or (2) any official documentation showing that the applicant organization maintains responsibility for the State asthma program. The documentation must be placed directly behind the face page of the application form.''

Dated: June 26, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–16681 Filed 7–1–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03102]

Expanding Existing Surveillance Systems To Include Pfiesteria, Other Harmful Algal Blooms, and Marine Toxins; Notice of Availability of Funds

Application Deadline: August 1, 2003

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301 of the Public Health Service Act, [42 U.S.C. section 241], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement program for Expanding Existing Surveillance Systems to Include Pfiesteria, Other Harmful Algal Blooms, and Marine Toxins. This program addresses the ''Healthy People 2010'' focus area Environmental Health.

The purpose of the program is to assist state and local public health departments with expanding surveillance activities for adverse human health outcomes and exposure to waters contaminated with not only Pfiesteria, but also other harmful algae, their toxins, or other marine toxins.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Environmental Health (NCEH): Increase the capacity of state and local health departments to deliver environmental health services in their communities.

C. Eligible Applicants

Applications may be submitted by: state and local governments or their bona fide agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the

Marshall Islands, and the Republic of Palau), and political subdivisions of states (in consultation with states).

To be eligible, applicants must:

1. Provide evidence of an existing surveillance system(s) for Pfiesteria or other harmful algae, their toxins, or other marine toxins. This may be demonstrated through a letter from your organization's leadership and a copy of a recent surveillance report print out.

2. Demonstrate your organization has capacity and experience providing surveillance activities for adverse human health outcomes and exposure to waters contaminated with Pfiesteria, other harmful algae, their toxins, or other marine toxins. This may be demonstrated through letters of support.

This information should be placed directly behind the face page (first page) of your application. Applications that fail to submit evidence requested above will be considered non-responsive and returned without review.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Approximately $3,000,000 is available in FY 2003 to fund approximately six to eight awards. It is expected that the average award will be $500,000, ranging from $250,000 to $750,000. It is expected that the awards will begin on or about September 1, 2003 and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Recipient Financial Participation

No matching funds are required for this program.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed in 1. Recipient Activities, and CDC will be responsible for the activities listed in 2. CDC Activities.

1. Recipient Activities

All proposed activities should be planned and conducted in collaboration and coordination with CDC by state/local health departments, and where appropriate, in consultation with:

- Appropriate state and local professional associations.
- Health care providers and institutions serving, diagnosing, or providing treatment and care for persons having symptoms related to exposure to Pfiesteria, harmful algal blooms, or marine toxins, including laboratories conducting testing.
- Relevant community groups and organizations.
- Universities and health research agencies.

Surveillance activities should:

a. Target individuals with high risk of exposure to waters containing harmful algae, including Pfiesteria piscicida.

b. Conduct investigations of all cases of Pfiesteria-related illnesses meeting the set of exposure conditions and clinical signs and symptoms previously agreed upon by State and Federal partners to determine risk factors for illness, and to consider banking clinical materials for future laboratory confirmation of exposure.

c. Conduct investigations of illnesses associated with harmful algae to determine risk factors for illness and to consider banking clinical materials for future laboratory confirmation of exposure.

d. Develop and conduct surveillance activities to identify potential sources of exposure to harmful algae, including P. piscicida and Pfiesteria-like organisms, and bank clinical samples for future analysis.

e. Regularly report information collected using the pre-existing PEAS (Possible Estuary Associated Syndrome) surveillance software to the aggregate database that is housed at CDC.

f. Assess clinical data on people with illnesses related to exposure to harmful algae.

g. Develop and implement appropriate preventive strategies and develop information materials for use by health professionals and the public to aid in prevention and control of illnesses associated with P. piscicida and other harmful algae.

Applicants may include several research activity projects within their proposal. If applying for the research funding, suggested examples of the specific areas of research activities may include:

a. Laboratory studies to further define the biological impacts associated with the presence of P. piscicida, other harmful algae, and the toxins they produce.

b. Further characterization of the environmental impact on estuarine waters associated with the presence of P. piscicida, other harmful algae, and the toxins they produce.

c. Exploring the impact of anthropogenic nutrient sources on the composition of phytoplankton communities in drinking water sources and recreational waters.

d. Examining the potential for human health effects from chronic low-level exposures to toxins produced by similar organisms.

2. CDC Activities

a. Provide consultation and scientific and technical assistance and training, surveillance, epidemiologic research, laboratory and prevention activities.

b. As needed, assist in refining the format for reporting surveillance data including case report forms, database, and maintaining the reporting system.

c. Participate with states to reach mutually agreed upon standardized study protocols and, where appropriate, data collection instruments for projects or studies.

d. Assist in preparing standard data collection forms, questionnaires, etc., as needed in surveillance activities and special epidemiologic investigations.

e. Assist in the evaluation of the overall effectiveness of program operations, including the impact of surveillance data on the development of public policy, and on targeting and evaluating prevention activities.

f. Participate in the analysis of information and data gathered from program activities and facilitate the transfer of information and technology among all states and communities.

g. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

F. Content

Letter of Intent (LOI)

A LOI is required for this program. The Program Announcement title and number must appear in the LOI. The narrative should be no more than 5 pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font. Your letter of intent will be used to enable CDC to determine the level of interest in the announcement, and should include the following information:

a. Organization name and address.

b. Project Director and telephone number.

c. An abstract briefly summarizing the surveillance program for which funds are requested, including the activities to be undertaken and an estimated budget.

d. If also applying for funding for research activities, a brief description of the activities to be undertaken for each research project/activity and an estimated budget for each.

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font.

The narrative should consist of a description of the planned first year activities, and clearly lay out future year objectives and activities to be conducted over the entire three-year project period. The criteria listed in the Evaluation Criteria section will serve as the basis for evaluating the application; therefore, the narrative of the application should address the following:

a. Applicant's understanding of the problem.

b. Applicant's ability to carry out the project.

c. Technical and program personnel capability.

d. Budget justification.

e. Human Subjects review.

G. Submission and Deadline

Letter of Intent (LOI) Submission:

The LOI must be received by 4 p.m. Eastern Time, July 16, 2003. Submit the LOI to the Grants Management Specialist identified in the ''Where To Obtain Additional Information'' section of this announcement. The LOI may not be submitted electronically.

Application Forms

If applying for surveillance funding, submit the signed original and two copies of PHS 5161–1 (OMB Number 0920–0428). If applying for research funding, submit the signed original and two copies of PHS 398 should be utilized. Forms are available at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time, August 1, 2003. Submit the application to: Technical Information Management–PA#03102, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgement of Application Receipt

A postcard will be mailed by PGO-TIM, notifying you that CDC has received your application.

Deadline

Letters of intent and applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

An independent review group appointed by CDC will evaluate each application against the following criteria:

a. Understanding of the Problem (25 Points):

The extent to which the applicant understands the purpose and requirements of the program. This includes the extent of the applicant's identification and description of the problem, the realistic presentation of objectives to maintain effective surveillance systems and prevention programs, and evaluation criteria established to assess surveillance, epidemiologic research, and prevention activities.

b. Ability to Carry Out the Project (25 Points):

Degree to which the applicant provides evidence of the ability to carry out the proposed project and the extent to which the applicant documents demonstrated capability to achieve the objectives of the proposed program. This may include plans, approaches, methods, and evaluations to be used in conducting and evaluating surveillance, epidemiologic research, and prevention programs, and may include collaborating with universities or other health research agencies.

c. Technical Approach (20 Points):

Degree to which proposed objectives are clearly stated, realistic, measurable, time-phased, and related to the stated purpose of this project. Also, the adequacy of the proposed surveillance, epidemiologic research, and prevention plans to achieve the objectives. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed project. This includes: (a) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (b) The proposed justification when representation is limited or absent; (c) A statement as to whether the design of the study is adequate to measure differences when warranted; and (d) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with communities and recognition of mutual benefits will be documented.

d. Personnel (20 Points):

Extent to which professional personnel involved in this project are qualified, including evidence of experience similar to this project.

e. Plans for Administration (10 Points):

Adequacy of the plans submitted for administering the project.

f. Budget Justification (Reviewed, but Not Scored):

Itemized budget for conducting the project, along with justification, is provided and is reasonable. The applicant should include the costs for one person to travel in Atlanta, GA, to attend the 6th National Environmental Health Conference December 3–5, 2003. Review the CDC/NCEH web site for

additional information concerning this conference: *http://www.cdc.gov/nceh/default.htm*

g. Human Subjects (Reviewed, but Not Scored)

The extent to which the applicant complies with the Department of Health and Human Services Regulations (45 CFR Part 46) regarding the protection of human subjects. Not scored, however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. An interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the program announcement, as posted on the CDC web site.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC web site, Internet address: *http://www.cdc.gov*. Click on ''Funding'' then ''Grants and Cooperative Agreements''.

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Sharron Orum, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2716, E-mail address: *spo2@cdc.gov*.

For program technical assistance, contact: Dennis Christianson, Project Officer, Health Studies Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Mailstop: E23, Atlanta, GA 30333, Telephone: 404–498–1340, E-mail address: *djc2@cdc.gov*.

Dated: June 26, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–16678 Filed 7–1–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03157]

Public Health Research Accreditation Project; Notice of Availability of Funds

Application Deadline: August 1, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301 and 317(k)(2) of the Public Health Service Act, [42 U.S.C. 241 and 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.993.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a grant to assess the role of accreditation in enhancing the protection of participants in public health research. This program addresses the ''Healthy People 2010'' focus area 23 Public Health Infrastructure.

The purpose of the program is to assess the role of accreditation of human research protection programs to enhance protections afforded to persons involved in the full range of public health research programs, *e.g.*, epidemiologic research, health services research, and social and behavioral intervention research, as well as traditional biomedical research and clinical trials. Voluntary accreditation is one component of a national oversight system for protection of human subjects. The National Bioethics Advisory Commission (2001) and the Institute of Medicine (2001, 2002) recommended that a voluntary system for accreditation of human research protection programs be initiated and evaluated over the next several years.

This project will result in the development of pilot measures that can be used to assess the improvement of the ability of the public health infrastructure (such as state and local public health departments, schools of public health, and other public health research partners) to assess and monitor research involving human subjects. In year two, the pilot measures will be implemented in several locations, such as state or local health departments, schools of public health, or community-based organizations that engage in public health research, and will be evaluated for utility and feasibility in the public health setting. In year three, the measures will be refined and made available to public health research partners to document and evaluate the impact of accreditation as a process to improve protection of human subjects in public health research.

Measurable outcomes of the program will be in alignment with the performance goals for the CDC Office of Science Policy and Technology Transfer.

C. Eligible Applicants

Limited Eligibility

Assistance will be provided only to a public, private, for-profit, or non-profit organization that is currently actively engaged in the process of accrediting human research protection programs that represent the full range of activities,

which are applicable to state, and local public health departments.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501c(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Approximately $100,000 is available in FY 2003 to fund one award. It is expected that the award will begin on or about August 1, 2003 and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Recipient Financial Participation

Matching funds are not required for this program.

Funding Priority

Public comments on the proposed Funding Priority are not being solicited due to insufficient time prior to the funding date.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the following activities:

Phase 1—Develop measures for key indicators of accreditation's effectiveness and seek agreement from stakeholders on the measures' appropriateness with particular emphasis on their use in the public health setting. The public health setting here would include state and local health departments, schools of public health, and other public health research partners, including community-based organizations or other non-traditional research partners. Methods might include such strategies as:

1. Prepare a summary of the relevant literature on accreditation and quality improvement, bioethics, and biomedical, social science, and public health research to identify potential measures of effectiveness.

2. Convene a steering committee consisting of persons with appropriate expertise in human subject research protections, public health research, and state or local health department activities. This group could also contain liaison representatives from other government agencies or departments with interest or expertise in the role of accreditation in improving human research protection programs.

Phase 2—Develop evaluation methods and data collection instruments to examine the impact of the accreditation process in public health settings. Phase 2 activities will be largely dependent upon the measures generated in Phase 1. Evaluation methods should include plan for a longitudinal activity in which organizations that seek accreditation are evaluated over time as well as a comparison of accredited and non-accredited organizations.

Phase 3—Pilot test the evaluation methods and validate the proposed set of outcome measures in a small number of settings. These settings should be generally representative of the types of public health settings noted above.

Phase 4—Refine the initial set of outcome measures and evaluation methods and make them accessible to a range of interested parties for potential implementation.

Phases 1 and 2 should be undertaken in Year one, with a general outline of Phases 3 and 4 provided for Year two and three.

F. Content

Letter of Intent (LOI)

A LOI is not required for this program.

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than ten pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font.

The narrative should consist of a plan to achieve the full purpose of project for the three-year project period, a description of the qualifications and background of key personnel, a defined set of measurable objectives for year one activities, the proposed methods for achieving the objectives, a projected timeline to monitor progress, a plan for evaluation of project activities, and a proposed budget.

G. Submission and Deadline

Application Forms

Submit the signed original and two copies of PHS form 398. (OMB Number 0925–0001); adhere to the instructions on the Errata Instruction Sheet for PHS 398. Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time August 1, 2003. Submit the application to: Technical Information Management—PA#03157, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgement of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant. Measures of effectiveness must relate to the performance goals stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

An independent review group appointed by CDC will evaluate each application against the following criteria:

1. Plan to achieve the purpose of the program: 25 points.
2. Background and qualifications of staff: 20 points.
3. Measurable objectives: 15 points.
4. Adequacy of methods to achieve objectives: 15 points.
5. Evaluation plan: 15 points.
6. Timeline: 10 points.
7. Budget (reviewed, but not scored).

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:
   a. Current Budget Period Activities Objectives.
   b. Current Budget Period Financial Progress.
   c. New Budget Period Program Proposed Activity Objectives.
   d. Detailed Line-Item Budget and Justification.
   e. Additional Requested Information.
2. Financial status report, no more than 90 days after the end of the budget period.
3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where To Obtain Additional Information'' section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the program announcement, as posted on the CDC Web site.

AR–10 Smoke-Free Workplace Requirements
AR–12 Lobbying Restrictions
AR–15 Proof of Non-Profit Status

Executive Order 12372 does not apply to this program.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements''.

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: James Masone, Contracts Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2736, E-mail address: *zft2@cdc.gov.*

For program technical assistance, contact: John R. Livengood, M.D. M. Phil., Deputy Associate Director for Science, Office of Science Policy and Technology Transfer, Centers for Disease Control and Prevention, MS D–50, 1600 Clifton Road, NE., Atlanta, GA 30333, Telephone: 404–639–7260, E-mail address: *JRL1@cdc.gov.*

Dated: June 26, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–16680 Filed 7–1–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control

Special Emphasis Panel: Collaborative Program for the Identification and Prevention of Work-Related Musculoskeletal Disorders, Request for Applications: OH–03–006.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Collaborative Program for the Identification and Prevention of Work-Related Musculoskeletal Disorders, Request for Applications: OH–03–006.

Times and Dates: 8 a.m.–8:40 a.m., July 22, 2003 (Open), 8:40 a.m.–5 p.m., July 22, 2003 (Closed).

Place: Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, VA, 21314, Telephone 703.684.5900.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Request for Applications: OH–03–006.

Contact Person for More Information: Price Connor, Scientific Review Administrator, Office of Extramural Programs, Office of the Director, National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road NE, MS E–74, Atlanta, GA 30333, Telephone 404.498.2511.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 26, 2003.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–16679 Filed 7–1–03; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Mine Safety and Health Research Advisory Committee: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Mine Safety and Health Research Advisory Committee (MSHRAC).

Times and Dates: 9 a.m.–4:30 p.m., July 23, 2003; 9 a.m.–1:45 p.m., July 24, 2003.

Place: Washington Court Hotel on Capitol Hill, 525 New Jersey Avenue, NW., Washington DC, 20001, telephone (202) 628–2100, fax (202) 879–7938.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 35 people.

Purpose: This committee is charged with providing advice to the Secretary, Department of Health and Human Services; the Director, CDC; and the Director, NIOSH, on priorities in mine safety and health research, including grants and contracts for such research, 30 U.S.C. 812(b)(2), Section 102(b)(2).

Matters To Be Discussed: Agenda for this meeting will focus on reports from the Director, NIOSH and Associate Director of Mining, the strategy for extramural research program, recommendations for the extramural

research program, mining industry health and safety statistics, and improving miner's health and safety.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Lewis V. Wade, Ph.D., Executive Secretary, MSHRAC, NIOSH, CDC, 200 Independence Avenue, SW., Room 715–H, Hubert Humphrey Building, P12 Washington, DC 20201–0004, telephone 202/401–2192, fax 202/260–4464.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: June 26, 2003.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–16677 Filed 7–1–03; 8:45 am]

BILLING CODE 4163–19–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2002N–0354]

Agency Information Collection Activities; Announcement of OMB Approval; The Evaluation of Long-Term Antibiotic Drug Therapy for Persons Involved in Anthrax Remediation Activities

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''The Evaluation of Long-Term Antibiotic Drug Therapy for Persons Involved in Anthrax Remediation Activities'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 2, 2003 (68 FR 16059), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0494. The approval expires on April 30, 2004. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: June 25, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–16618 Filed 7–1–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2002N–0496]

Agency Information Collection Activities; Announcement of OMB Approval; Aluminum in Large and Small Volume Parenterals Used in Total Parenteral Nutrition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Aluminum In Large and Small Volume Parenterals Used in Total Parenteral Nutrition'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 17, 2003 (68 FR 12701), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0439. The approval expires on June 30, 2006. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: June 25, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–16619 Filed 7–1–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 97F–0284, 88F–0182, 98F–0706, 98F–0391, 97F–0170, 92F–0315, 99F–4694, 88F–0340, 95F–0021, 99F–0720, 94F–0290, and 00F–1366]

Withdrawal of Food Additive Petitions Subsequently Converted to Food Contact Notifications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of 12 food additive petitions (FAPs) proposing that the food additive regulations be amended to provide for the safe use of certain new food additives. The petitioners subsequently requested that their petitions be converted to food contact notifications for review under the agency's new food contact notification (FCN) program for food contact substances. The requested uses are now the subjects of effective notifications.

FOR FURTHER INFORMATION CONTACT: Sylvia Dodson, Center for Food Safety and Applied Nutrition (HFS–275), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 202–418–3087.

SUPPLEMENTARY INFORMATION: In notices published in the **Federal Register**, on the dates indicated in table 1 of this document, FDA announced the filing of 12 FAPs. These petitions proposed to amend the food additive regulations in the sections listed in the table to provide for the safe use of the listed substances intended for use in food contact articles. Since publication of these filing notices, the petitioners have requested that their respective petitions be converted to FCNs for review under the agency's new FCN process for food contact substances and that their petitions be withdrawn when the corresponding notifications become effective. These petitions were converted to notifications and subsequently reviewed under the FCN process. The requested uses are now the subjects of effective notifications. The corresponding FAPs are now withdrawn

without prejudice to a future filing (21 CFR 171.7).

TABLE 1.—FOOD ADDITIVE PETITIONS SUBSEQUENTLY CONVERTED TO FOOD CONTACT NOTIFICATIONS

FAP No.[1] and Docket No.	FCN No.[2]	FR Citation and Date	Company	21 CFR Section/ Part	Additive	Use
7B4547, 97F–0284	87	62 FR 37266, July 11, 1997.	Eastman Chemical Co.	175.300	1,4-cyclohexanedimethanol as a polyhydric alcohol.	In polyester resins intended for coatings in contact with food.
8B4083, 88F–0182	106	53 FR 23455, June 22, 1988.	Dow Chemical Co.	176.170	Styrene-butadiene-acrylonitrile copolymers copolymerized with not more than 10 percent of one or more of the monomers of acrylic acid, fumaric acid, 2-hydroxyethyl acrylate, itaconic acid and menacrylic acid.	As components of paper and paperboard in contact with food.
8B4620, 98F–0706	115	63 FR 45820, Aug. 27, 1998.	BASF Corp.	178.3297	2,9-bis(3,5-dimethylphenyl)anthra(2,1,9-def:6,5,10-d′e′f′)diisoquinoline-1,3,8,10(2H, 9H)-tetrone. (C.I. Pigment Red 149).	As a colorant for all polymers intended for use in contact with food.
8B4595, 98F–0391	118	63 FR 32672, June 15, 1998.	BASF Corp.	178.3297	2,9-bis[4-(phenylazo)phenyl]anthra[2,1,9-def:6,5,10-d′e′f′]diisoquinoline-1,3,8,10(2H, 9H)-tetrone. (C.I. Pigment Red 178).	As a colorant for all polymers intended for use in contact with food.
7B4538, 97F–0170	123	62 FR 23467, Apr. 30, 1997.	Toyo-Morton, Ltd. c/o Keller and Heckman, LLP.	177.1390	Polyester-epoxy-urethane adhesive.	As a nonfood contact layer of laminated articles intended for use in contact with food.
2B4337, 92F–0315	124	57 FR 43740, Sept. 22, 1992.	Fina Oil and Chemical Co.	177.1640 178.2010	Rubber-modified polystyrene resin containing not less than 71 weight percent of polymer units derived from styrene monomer and octadecyl 3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate.	In contact with food. As a stabilizer in the rubber-modified polystyrene.
0B4699, 99F–4694	131	64 FR 61132, Nov. 9, 1999.	Rohm and Haas Co.	175.105 and 176.170.	2-methyl-4- isothiazolin-3-one.	As an antimicrobial additive for adhesives, paper additives, and paper coatings that are intended to contact food.
8B4105, 88F–0340	146	53 FR 43272, Oct. 26, 1988.	Shell Oil Co.	177.1570	Poly-1-butene resins and butene/ethylene copolymers containing no more than 6-weight-percent ethylene.	As articles or components of articles intended for food-contact use.

TABLE 1.—FOOD ADDITIVE PETITIONS SUBSEQUENTLY CONVERTED TO FOOD CONTACT NOTIFICATIONS—Continued

FAP No.[1] and Docket No.	FCN No.[2]	FR Citation and Date	Company	21 CFR Section/ Part	Additive	Use
5B4444, 95F–0021	151	60 FR 7974, Feb. 10, 1995.	M & G Ricerche S.p.A.	177.1630	Ethylene terephthalate-isophthalate copolymers prepared with pyromellitic dianhydride such that the finished copolymers contain at least 95 weight percent of polymer units derived from ethylene terephthalate.	In contact with food.
9B4653, 99F–0720	166	64 FR 16742, Apr. 6, 1999.	Arakawa Chemical Industries, Ltd. c/o Keller and Heckman, LLP.	178	Hydrogenated aromatic petroleum hydrocarbon resins.	In blends with polymers intended for contact with food.
4B4427, 94F–0290	179	59 FR 43847, Aug. 25, 1994.	Eastman Chemical Co.	177.1315	Ethylene-1,4-cyclohexylene dimethylene terephthalate copolymers that include 1 to 100 mole percent of repeat units derived from 1,4-cyclohexylene dimethylene terephthalate.	As components of articles for food contact use.
0B4713, 00F–1366	220	65 FR 41079, July 3, 2000.	Nippon Shokubai c/o Keller and Heckman, LLP.	177.1520	Methylmethacrylate-trimethylolpropane trimethacrylate copolymer as an antiblocking agent in linear low-density polyethylene.	Intended for use in contact with food.

[1] Food Additive Petition Number.
[2] Food Contact Notification Number.

Dated: June 17, 2003.

Laura M. Tarantino

Deputy Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. 03–16616 Filed 7–1–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0201]

Minimizing Medication Errors—Methods for Evaluating Proprietary Names for Their Confusion Potential; Public Meeting; Correction

AGENCY: Food and Drug Administration; HHS.

ACTION: Notice of public meeting; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of May 30, 2003 (68 FR 32529). The document announced a public meeting to explore current methods being used to evaluate proprietary drug names to reduce medication errors due to similarity in drug names. The document was published with the incorrect docket number. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce A. Strong, Chief, Regulations Editorial Section (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 03–13591, appearing on page 35679 in the **Federal Register** of May 30, 2003, the following correction is made:

1. On page 32529, in the third column, the Docket No. ''02N–0201'' should be corrected to read ''2003N–0201''.

Dated: June 25, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–16617 Filed 7–1–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Small Rural Hospital Improvement Grant Program

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that applications are being accepted for grants to help small rural hospitals do any or all of the following: (1) Pay for costs related to the implementation of prospective payment systems (PPS), (2) comply with

provisions of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, and (3) reduce medical errors and support quality improvement.

Name of Grant Program: Small Rural Hospital Improvement Grant Program (SHIP). The OMB Catalog of Federal Domestic Assistance (CDFA) number is 93.301.

Program Authorization: Section 1820(g)(3) of the Social Security Act, 42 U.S.C. 1395: 4(g)(3).

Amount of Funding Available: Approximately $15.0 million is available for grants in fiscal year 2003.

Eligible Applicants: All small rural hospitals located in the fifty States and Territories, including faith-based hospitals. For the purpose of this program, (1) small is defined as 49 available beds or less, as reported on the hospital's most recently filed Medicare Cost Report, (2) rural is defined as located outside a Metropolitan Statistical Area (MSA); or located in a rural census tract of a MSA as determined under the Goldsmith Modification or the Rural Urban Commuting Areas, and (3) hospital is defined as a non-Federal, short-term, general acute care facility. There is no requirement for matching funds with this program.

Funding Criteria: To help facilitate the awards process, eligible hospitals that did not receive funds during fiscal year 2002 are asked to submit a brief letter of application to their State Office of Rural Health (SORH) that describes their need, and intended use and expenditure of grant funds. Hospitals that did receive funds during fiscal year 2002 should contact their SORH for application instructions if they wish to receive funds for fiscal year 2003. In turn, the SORH will prepare and submit a single grant application using Standard Form PHS 5161–1 (revised 7/00) (approved under OMB number 0920–0428) for applications to HRSA on behalf of all hospital applicants in their State. An award will be made to each State based on the total number of eligible applicants in that State. Grantee hospitals will receive their award from the SORH. Eligible hospitals in states that have chosen not to participate in this Federal-State partnership may submit a grant application (PHS Form 5161) directly to HRSA.

It is anticipated that all eligible hospitals (approximately 1,500) will apply for this grant program, which would result in awards of about $10,000 per hospital. It is expected that most of these grant funds will be used to purchase technical assistance, services, training and information technology. To help maximize purchasing power through economies of scale, eligible grantees are very strongly encouraged to organize themselves into consortiums and pool their grant funds for the purchase of these services. SORHs may help their eligible hospitals form consortiums and also purchase the goods and services they need.

Annual funding will be available for up to a three-year project period, with funding contingent upon: (a) Availability of Federal funds, and (b) satisfactory performance by the grantee. The SORH may charge up to five percent to the grants to cover its administrative costs.

Review Criteria: Applications will be evaluated on the extent to which they: (1) Are responsive to the requirements and purposes of this program, (2) describe need and strategies to address those needs, and (3) propose an allowable use of the grant funds. Further description of the review criteria is contained in the program guidance.

Requesting Applications: The application and program guidance for both the hospitals and SORHs may be downloaded via the web at *http://www.ruralhealth.hrsa.gov/ship.htm*. Hard copies of the application and program guidance are available from: HRSA Grants Application Center, Grants Management Officer, 901 Russell Avenue, Suite 450, Gaithersburg, MD 20879. Phone (877) 477–2123, E-mail *hrsagac@hrsa.gov*. To request an application please ask for announcement number HRSA–03–107.

Submitting Applications: All hospital applications must be submitted to the appropriate SORH in hard copy and postmarked before 5 PM EDT on June 27, 2003. All SORH applications must be submitted in hard copy and postmarked before 5 PM EDT on August 1, 2003 to the HRSA Grants Application Center, Grants Management Officer, 901 Russell Avenue, Suite 450, Gaithersburg, MD 20879. All applications from hospitals in States where the SORH has chosen not to participate must be submitted to the above address by 5 PM EDT on August 1, 2003. Applicants will receive a confirmation of receipt notice from the HRSA Grants Application Center.

Please note that HRSA anticipates accepting grant applications online in the last quarter of the Fiscal Year (July through September). Please refer to the HRSA grants schedule at *http://www.hrsa.gov/grants.htm* for more information.

Program Contact Person: Jerry Coopey or Emily Costich, Office of Rural Health Policy, HRSA, Rm. 9A–55, Parklawn Bldg, 5600 Fishers Lane, Rockville, MD 20857. Phone (301) 443–0835, Fax (301) 443–2803, E-mail *jcoopey@hrsa.gov* or *ecostich@hrsa.gov.*

Paperwork Reduction Act: The application for this grant program has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB clearance number is 0920–0428.

This program is not subject to the Public Health Systems Reporting Requirements.

Executive Order 12372: This program has been determined to be a program that is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal Programs by appropriate health planning agencies, as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice will contain a listing of States that have chosen to set up such a review system and will provide a single point of contact (SPOC) in the States for review. (Please visit the following Web site: *http://www.whitehouse.gov/omb/grants/spoc.html*). Applicants (other than federally-recognized Indian tribal governments) should contact their State SPOC as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline for new and competing awards. The granting agency does not guarantee to ''accommodate or explain'' State process recommendations it receives after that date. (See Executive Order 12372 and 45 CFR part 100 for a description of the review process and requirements.)

Dated: June 4, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–16620 Filed 7–1–03; 8:45 am]

BILLING CODE 4165–15–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 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 Special Emphasis Panel, Biochemical System Analysis of BCR–ABL Childhood ALL.

Date: July 16, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Division of Extramural Activities, 6116 Executive Boulevard, Room 8105, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Lynn M Amende, PhD., Scientific Review Administrator, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8105, Bethesda, MD 20892–8328, 301–451–4759, *amendel@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. 93.392, 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: June 25, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–16759 Filed 7–1–03; 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, 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 Special Emphasis Panel, Spores in Ovarian & Breast Cancer.

Date: June 25–27, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Bratin K. Saha, PhD, Scientific Review Administrator, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Bethesda, MD 20892, (301) 402–0371, *sahab@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. 93.392, 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: June 25, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–16760 Filed 7–1–03; 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, Interventions and Practice Research Infrastructure Program (IP–RISP).

Date: July 3, 2003.

Time: 11:30 a.m. to 3 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: Martha Ann Carey, PhD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6151, 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, Treatment for Depressive and Anxiety Disorders.

Date: July 21, 2003.

Time: 9: a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Sara K. Goldsmith, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6154, MSC 9608, Bethesda, MD 20892–9608.

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, Translational Research.

Date: July 25, 2003.

Time: 10: a.m. to 1 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: Benjamin Xu, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6143, MSC 9608, Bethesda, MD 20892–9608, 301–443–1178, *benxu1@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 25, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–16755 Filed 7–1–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND SERVICES

National Institutes of Health

National Institute of Mental Health; 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 Mental Health Special Emphasis Panel, Contract Psychoactive Drug Screening.

Date: July 9, 2003.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call)

Contract 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; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS).

Dated: June 25, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–16756 Filed 7–1–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Mental Health Special Emphasis Panel, June 19, 2003, 11 a.m. to June 19, 2003, 12 p.m. National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD, 20852, which was published in the **Federal Register** on June 18, 2003, 68 FR 36569.

The meeting will be held on July 9, 2003 and the meeting time and place remain the same. the meeting is closed to the public.

Dated: June 25, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–16757 Filed 7–1–03; 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, Interdisciplinary Behavioral Science Center Review.

Date: July 28, 2003.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethedsa, MD 20814.

Contact Person: Houmam H Araj, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, *MSC 9608,* Bethesda, MD 20892–9608, 301–443–1340, *haraj@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Psychiatry Career Development.

Date: July 29, 2003.

Time: 1 p.m. to 2 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: Houmam H Araj, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340, *haraj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 5, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–16758 Filed 7–1–03; 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, Biology of Paget's Disease.

Date: August 27, 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: June 25, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–16761 Filed 7–1–03; 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 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 on Drug Abuse Special Emphasis Panel, Improving Behavioral Health Services and Treatment for Adolescent Drug Abuse.

Date: July 22–23, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Swissotel Washington, The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

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 Institues of Health, HHS)

Dated: June 25, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–16762 Filed 7–1–03; 8:45 am]

BILLING CODE 7140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Support of Scientific Meetings by the NIH.

Date: July 22, 2003.

Time: 3:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael W. Edwards, PhD., Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 750, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–8886, *edwardsm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 24, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–16763 Filed 7–1–03; 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 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 Child Health and Human Development Special Emphasis Panel, ''NICHD Contraceptive Clinical Trials Network (Female Contraceptive Trials Topic Area)''.

Date: July 20–22, 2003.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Hameed Khan, PhD., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 435–6902, *khanh@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 25, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–16764 Filed 7–1–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1 BB (20) 4 U56 Applications—RFA AA03–007 Collaborative Minority Serving Institution Alcohol Research Program CMSIAR.

Date: July 22, 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: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787, *etaylor@niaaa.nih.gov.*

(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: June 25, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–16765 Filed 7–1–03; 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 personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Center Grants for Human Embryonic Stem Cell Research.

Date: July 14–15, 2003.

Time: 8 p.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: Rebecca H. Johnson, PhD, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18, Bethesda, MD 20892, 301–594–2771, *johnsonrh@nigms.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 Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: June 25, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–16766 Filed 7–1–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Stem Cells and Supportive Stromal Cells.

Date: July 17, 2003.

Time: 9 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: John F. Connaughton, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 757, 6707 Democracy Boulevard, Bethesda, MD 20892, (301) 594–7797, *connaughton@extra.niddk.nih. gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Mid Career Investigator Award in Patient Oriented Research.

Date: July 21, 2003.

Time: 4 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 750, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–8886, *davila-bloomm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Ancillary Studies to Chronic Renal Insufficiency Cohort.

Date: July 23, 2003.

Time: 3:30 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael W. Edwards, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 750, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–8886, *edwardsm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Noninvasive Measurement of Iron by Magnetic Resonance Imaging.

Date: July 24–25, 2003.

Time: 7:30 p.m. to 3 p.m.

Agenda: to review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 748, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–8890, *federn@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Different Bacterial Species Selectively Induce TH1 Cells.

Date: July 28, 2003.
Time: 3 p.m. to 4:30 p.m.
Agenda: to review and evaluate grant applications.
Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 754, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7799, *Is38z@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 25, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–16767 Filed 7–01–03; 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 552(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, T32 Applications.
Date: July 8, 2003.
Time: 12 p.m. to 2 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: Martha Ann Carey, PhD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, 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, Borderline Personality Disorders SEP.
Date: July 10, 2003.
Time: 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: Sara K. Goldsmith, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9608, Bethesda, MD 20892–9608.

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, Mental Health Research,
Date: July 24, 2003.
Time: 12 p.m. to 2 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: Benjamin Xu, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6143, MNSC 9608, Bethesda, MD 20892–9608, 301–443–1178, *benxu1@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 24, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–16768 Filed 7–1–03; 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 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 Mental Health Special Emphasis Panel, Minority Dissertations and K's.
Date: July 17, 2003.
Time: 9 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: Richard E. Weise, PhD, Scientist Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6100 Executive Boulevard, Room 6140, MSC9606, Bethesda, MD 20892–9606, 301–443–1225, *rweise@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 24, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–16769 Filed 7–1–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Vascular Calcification in ESRD.

Date: July 21, 2003.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 754, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7799, *Is38z@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 24, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–16770 Filed 7–1–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 Aging Special Emphasis Panel, Clinical and Biological Studies of Early AD.

Date: July 22–23, 2003.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Belvedere Hotel, 319 West 48th Street, New York, NY 10036.

Contact Person: Louise L. Hsu, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–7705.

Name of Committee: National Institute on Aging Special Emphasis Panel, Bone Metabolism in Aging.

Date: July 23–24, 2003.

Time: 6:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Plaza Hotel, 150 South Broadway, Rochester, MN 55904.

Contact Person: Alessandra M. Bini, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7708, *binia@nia.nih.gov*.

Name of Committee: National Institute on Aging Special Emphasis Panel, Work, Disease and Death.

Date: July 24, 2003.

Time: 1:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Gateway Bldg, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alfonso R. Latoni, PhD., Scientific Review Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20892, 301/496–9666, *latonia@mail.nih.gov*.

Name of Committee: National Institute on Aging Special Emphasis Panel, Exercise and Disability.

Date: July 25, 2003.

Time: 7:30 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: Ramesh Vemuri, PhD, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Ave., Suite 2C212, Bethesda, MD 20892, (301) 402–7700, *rv23r@nih.gov*.

Name of Committee: National Institute on Aging Special Emphasis Panel, Old Mortality.

Date: July 29–30, 2003.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Hotels and Resorts, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Ramesh Vemuri, PhD, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Ave., Suite 2C212, Bethesda, MD 20892, (301) 402–7700, *rv23r@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: June 24, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–16771 Filed 7–1–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Endoscopic Clinical Research in Pancreatic and Biliary Diseases.

Date: July 24, 2003.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 758, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, 301–594–7637, *davila-bloomm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 17, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–16772 Filed 7–1–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 Neurological Disorders and Stroke Special Emphasis Panel, Conference Program for Young Minority Scientists.

Date: July 10, 2003.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neoroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Philip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–5388.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: June 24, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–16774 Filed 7–01–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 26, 2003, 8:30 a.m. to June 27, 2003, 3 p.m., Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD, 20814 which was published in the **Federal Register** on June 11, 2003, 68 FR 34992–34994.

The meeting will be held on July 24–25, 2003. The time and location remain the same. The meeting is closed to the public.

Dated: June 24, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–16773 Filed 7–1–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

National Outcomes Performance Assessment of the Collaborative Initiative to Help End Chronic Homelessness—New—This Initiative is coordinated by the U.S. Interagency Council on the Homeless and involves the participation of three Council members: The Department of Housing and Urban Development (HUD), the Department of Health and Human Services (HHS), and the Department of Veterans Affairs (VA). Within HHS, SAMHSA's Center for Mental Health Services is the lead agency.

This project will monitor the implementation and effectiveness of the Initiative. A national assessment of client outcomes is needed to assure a high level of accountability and to identify which models work best for which people, using the same methods for all sites. To this end, this project will provide a site-by-site description of program implementation, as well as descriptive information on clients served; services received; housing quality, stability, and satisfaction; and, client outcomes in health and functional domains. The VA Northeast Program Evaluation Center (NEPEC), based at the VA Connecticut Healthcare System in West Haven, Connecticut, will be responsible for conducting this project.

Data collection will be conducted over a 36-month period. At each site, a series of measures will be used to assess (1) program implementation (*e.g.*, number and types of housing units produced and intensity and types of treatment and supportive services provided), (2) client descriptive information (*e.g.*, demographic and clinical characteristics, and housing and treatment services received) and, (3) client outcomes.

Client outcomes will be measured using a series of structured instruments administered by evaluation personnel employed and funded by the local VA medical center or outpatient clinic involved at each Initiative site who will work closely with central NEPEC staff. Assessments will be conducted through face-to-face interviews and, when needed, telephone interviews. Interviews (approximately one hour in length) will be conducted at baseline, defined as the date of entry into the clinical treatment program leading to placement into permanent housing, and quarterly (every 3 months) thereafter for up to three years. Discharge data will be collected from program staff at the time of official discharge from the program, or when the client has not had any clinical contact from members of the program staff for at least 6 months. In addition to client interviews, key informant interviews with program managers at each site will be conducted annually.

At most Initiative sites, it is expected that more people will be screened and or evaluated for participation in the program than receive the full range of core housing and treatment services. Entry into the Initiative is conceptualized as a two-phase process involving an Outreach/Screening/Assessment Phase (Phase I), and an Active Housing Placement/Treatment Phase (Phase II) that is expected to lead to exit from homelessness; in some programs these two phases may be described as the Outreach and Case Management Phases. It will be important to have at least some minimal information on all clients so as to be able to compare those who enter Housing/Treatment with those who do not.

Client-level data at the time of first contact with the program (*i.e.*, before the client receives more intensive treatment or housing services) will be collected using a screener form. The screener form will be completed by a member of the clinical staff when prospective clients are first told about the program, and express interest in participating in the program (*i.e.* when they enter Phase I). The purpose of this form is to identify the sampling frame of the evaluation at each site, or the pool of potential clients from which clients are then selected. Program implementation will be measured using a series of progress summaries.

Initiative sites will be responsible for screening potential participants, assessing homeless and disabling

condition eligibility criteria for the program, and documenting eligibility as part of the national performance assessment. Each site will identify a limited number of portals of entry into the program in a relatively small geographic area, so that the evaluator can practically and systematically contact clients about participating in the evaluation. VA evaluation staff, clinical program staff, and NEPEC will work together to establish systematic procedures for assessing eligibility, enrolling clients into the Housing/Treatment Activity of the Initiative, obtaining written informed consent to participate in the national performance assessment, and other evaluation activities.

The estimated response burden to collect this information is as follows:

Respondents form name	No. of respondents	Responses per respondent	Hours per response	Total hour burden
Clients:				
Baseline assessment	1,500	1	1.50	2,250
Follow-up assessment	1,500	8 [1]	1.25	15,000
Sub-total				17,250
Clinicians:				
Screening	30 [2]	100	0.25	750
Discharge	30 [3]	13	0.40	156
Sub-total				906
Administrators:				
Network definition	60	1	0.25	15
Network participation	105	4	0.75	315
Sub-total				330
Total				18,486
3-yr. Annual Avg.				6,162

[1] Assumes average follow-up period of 2 yrs. due to delayed recruitment at some sites & 20% attrition overall.
[2] Assumes an average of 2 screening clinicians per site, and twice the number of persons screened as enrolled.
[3] Assumes an average of 2 discharge clinicians per site, and discharge rate of 25%.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Herron Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: June 24, 2003.

Anna Marsh,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–16661 Filed 7–1–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Evaluation of Program Rehabilitation and Restitution—New—The Rehabilitation and Restitution initiative of SAMHSA's Center for Substance Abuse Treatment seeks to reduce recidivism and increase psychosocial functioning and pro-social lifestyle among substance abusing state correctional prisoners. Hypotheses of the study are that providing intensive, long-term case management services will facilitate a pro-social lifestyle leading to higher rates of sealing or expunging of criminal records and that the prospect of stigma reduction provided by a sealed criminal record will motivate offenders to remain crime and drug free for a least three years after completing judicial supervision.

The project consists of (1) providing technical assistance to develop and implement intensive case management services, and (2) an evaluation of the effectiveness of the intensive case management services in increasing the number of people eligible to have their records sealed. The study is confined to jurisdictions with statutes permitting records to be sealed. Two counties in Ohio involving an urban setting (Cuyahoga county which includes the city of Cleveland) and a rural setting (Clermont county adjacent to Kentucky) were selected based on responses to an RFA. Subjects in each county will be drawn from referrals by parole and probation to Treatment Accountability for Safer Communities (TASC) case management programs in the two counties.

The target population consists of individuals entering parole or probation who are first time nonviolent felons with a history of substance abuse and are eligible to have their records sealed. Technical assistance to participating counties will be provided to (1) develop, an intensive case management treatment model designed to increase the proportion of offenders eligible to have records sealed, and (2) involve the various stake holders, such as case managers, parole officers, district attorney's office, public defender, and judges in the implementation of the case management model. A formative evaluation will provide feedback on the implementation of the program. A systems evaluation will examine the number of services offered to the felons, and changes in attitudes towards sealing records on the part of critical

stakeholders, such as district attorney offices, judges and service providers. An outcomes evaluation will examine the effect of the intensive case management model on the eligibility to have records sealed, social, psychological and health status, HIV risk behavior, and the actual proportion of subjects who have their records sealed.

The experimental study in Cuyahoga County consists of two groups of randomly assigned subjects. An *intent-to-treat group* is scheduled to receive intensive case management consisting of an intensive TASC case management model during the one-year period of supervision followed by an additional three years of less intensive case management services. A *control group* will receive treatment as usual, consisting of the TASC case management model now in place. In Clermont County there will be only an experimental group. The evaluation procedures in both locations will consist of a baseline interview and follow-up interviews over a 4-year period that tracks outcomes to the point at which subjects are eligible for sealing of records. Follow-up interviews and file studies will test for a wide array of possible effects, including recidivism, employment, education, drug use, family relationships, support of children, mental and physical health, HIV/AIDS risk factors, assumption of personal responsibility and life adjustment factors.

The evaluation will involve 900 projected participants over a five-year period. Evaluation interviews will take place at baseline, 6 months, 12 months, and 42-months. Each interview will last 1½ to 2 hours depending of the memory and speed of the respondents. The interview goal is a minimum 80% completion rate. Interview data will be supplemented by a file study of arrest records and the number of criminal records expunged. Additionally, two focus groups of clients in the intent to treat group will be conducted in each county at 3, 6, 12, 18, 24, and 30 months to provide feedback on client perceptions of the case management programs. One group at each site will consist of clients in compliance with the program and one group will consist of clients not in compliance. Groups will consist of 8 to 10 participants chosen at random from the compliant and noncompliant clients. Additional file study data will be gathered on the number of case management sessions and the number and frequency of other interventions in the intent-to-treat and control groups.

Data collection	Number of respondents	Responses/ respondent	Hours per response	Total hr. burden
Baseline Interview	900	1	1.33	1,197
Follow-up Battery: 6-, 12-, & 42-month	900	3	1.50	4,050
Client Focus Groups: 3-, 6-,12-,18-, 24-months (Cuyahoga)	50	1	1.50	75
Client Focus Groups: 3-, 6-, 9-, 12-, 18-, 24-, 36-& 42-months (Clermont)	80	1	1.50	120
File Data Collection (Staff Time) MCSIS, Ohio DRC, TASC	3	7	2.00	42
Multimodality Quality Assurance (MQA)—(Treatment Program Staff)	84	1	.75	63
Stakeholders: Attitudes Towards Sealing Records	12	3	.167	6
Stakeholder Focus Groups: 6-,12-, 24-months	36	1	1.50	54
Key Officials Attitudinal Survey	12	3	.167	6
Total Burden	1,047			5,613
5-Year Annual Average	1,047			1,123

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Herron Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: June 24, 2003.

Anna Marsh,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–16662 Filed 7–1–03; 8:45 am]

BILLING CODE 4162–20–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2003 Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability for SAMHSA Cooperative Agreements to Expand the National Child Traumatic Stress Initiative Intervention Development and Evaluation Centers.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services (CMHS) announces the availability of FY 2003 funds for the cooperative agreement described below. A synopsis of this funding opportunity, as well as many other Federal Government funding opportunities, is also available at the Internet site: *www.fedgrants.gov*.

This notice is not a complete description of the cooperative agreement; potential applicants must obtain a copy of the Request for Applications (RFA), including Part I, Cooperative Agreements to Expand the National Child Traumatic Stress Initiative Intervention Development and Evaluation Centers, Part II, General Policies and Procedures Applicable to all SAMHSA applications for Discretionary Grants and Cooperative Agreements, and the PHS 5161–1 (Rev. 7/00) application form before preparing and submitting an application.

Funding Opportunity Title: Cooperative Agreements to Expand the National Child Traumatic Stress Initiative—Short Title: Child Traumatic Stress Initiative Intervention Development and Evaluation Centers.

Funding Opportunity Number: SM 03–011.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.243.

Authority: Section: 582 of the Public Health Service Act, as amended and subject to the availability of funds.

Funding Opportunity Description: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services (CMHS) is accepting applications for fiscal year 2003 cooperative agreements to expand the National Child Traumatic Stress Initiative (NCTSI) Intervention Development and Evaluation Centers. Funds are available under Section 582 to local mental health providers for the purpose of developing knowledge of best practices and providing mental health services to children and youth suffering from post-traumatic stress as a result of having experienced or witnessed a traumatic event.

The purpose of the NCTSI is to improve treatment and services for all children and adolescents in the United States who have experienced traumatic events or witnessed such events. A network of centers, the NCTSN, has been established to promote the development and use of effective treatment and services, to develop resources on trauma for professionals, consumers, and the public, and to develop trauma-focused public education and professional training and other field development activities.

This announcement solicits for three specific types of child and adolescent traumatic stress Intervention Development and Evaluation (IDE) Centers that will facilitate the NCTSI achievement of its overall goals of improving access to and quality of services for child and adolescent traumatic stress: Rural/Tribal/Frontier Intervention Development and Evaluation Center; Service Systems Models Intervention Development and Evaluation Center; and Traumatic Stress and Substance Abuse Intervention Development and Evaluation Center.

Eligible Applicants: The following domestic public and private non-profit entities are eligible to apply. Community-based and faith-based organizations, out-patient clinics, public or private universities, psychiatric or general hospitals, units of State or local governments, Indian tribes and tribal organizations, partnerships of multiple clinical centers, programs and/or community service providers applying as a single center (in which case one of the participating organizations must be designated as the applicant organization).

Applicant organizations may apply for the Intervention Development and Evaluation Centers (this announcement) and/or the Community Treatment and Services Centers (RFA SM–03–012). A separate, complete application is required for each category. An organization that is selected for funding in both programs will receive funding only for its proposed Intervention Development and Evaluation Center.

Organizations that are currently grantees of the NCTSI are not eligible to apply as the applicant organization under this announcement.

Applicant organizations must apply for one of the specific IDE centers—Rural/Tribal/Frontier; Service Systems Models; or Traumatic Stress and Substance Abuse—and address the requirements for that specific center in the application. Applicant organizations may submit separate applications for more than one of the specific IDE centers.

Due Date for Applications: August 7, 2003.

Estimated Funding Available/Number of Awards: It is expected that approximately $1.8 million will be available to fund three new centers in the Intervention Development and Evaluation Program of the National Child Traumatic Stress Network (NCTSN). Annual awards may be up to $600,000 in total costs (direct and indirect) for each year for up to 4 years. Actual funding levels will depend on the availability of funds. Second, third, and fourth project year funding may be supplemented by SAMHSA for activities that fall within the scope and intent of this RFA. Applications with proposed budgets that exceed $600,000 will be returned without review.

Is Cost Sharing Required: No.

Period of Support: Applicants must request support for four years and provide a separate budget for each year. While SAMHSA's intent for this program is to fund the full four year period requested, continued funding is contingent on the availability of funds.

How to Get Full Announcement and Application Materials: Complete application kits may be obtained by calling: the SAMHSA Mental Health Information Center at (800) 789–2647, Monday through Friday, 8:30 a.m. to 5 p.m., EDT; TDD: (301) 443–9006; Fax: (301) 984–8796; P.O. Box 42490, Washington, DC 20015. The PHS 5161–1 application form and the full text of the funding announcement are also available electronically via SAMHSA's World Wide Web Home Page: *http://www.samhsa.gov* (Click on 'Grant Opportunities').

When requesting an application kit, the applicant must specify the funding opportunity title and number for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Contact for Additional Information: Malcolm Gordon, Ph.D., Substance Abuse and Mental Health Services Administration, Center for Mental Health Services, Division of Prevention, Traumatic Stress, and Special Programs, 5600 Fishers Lane, Room 17C–17, Rockville, MD 20857, (301) 443–2957, E-mail: *mgordon@samhsa.gov*.

Dated: June 25, 2003.

Anna Marsh,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–16621 Filed 7–1–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–30]

Notice of Proposed Information Collection: Comment Request; Reporting Requirements Associated with 24 CFR 203.508b and 24 CFR 235.1001—Providing Information

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 2, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne__Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Joseph McCloskey, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–1672 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork

Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Reporting Requirements Associated with 24 CFR 203.508(b) and 24 CFR 235.1001—Providing Information.

OMB Control Number, if applicable: 2502–0235.

Description of the need for the information and proposed use: The purpose of this notice is to extend the use of 24 CFR 203.508b and 24 CFR 235.1001. The requirements of the 24 CFR 203.508b state, in part, that ''all mortgagors must be informed by the mortgagees of the system available to them on loan inquiries on their mortgages and they must be reminded of the system at least annually.'' The requirements of 24 CFR 235.1001 state, in part, that ''mortgagees must provide to the mortgagor and annual statement of interest paid and taxes disbursed and shall include an accounting of the total amount of assistance payments paid by HUD and applied to the mortgagor's account during the preceding year.''

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of burden hours needed to prepare the information collection is 1,361; the number of respondents is 122 generating approximately 5,444 annual responses; the frequency of response is annually and third party disclosures; and the estimated time needed to prepare the response is 15 minutes.

Status of the proposed information collection: Extension is a previously approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: June 23, 2003.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 03–16778 Filed 7–1–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Delaware & Lehigh National Heritage Corridor Commission Meeting

AGENCY: Department of the Interior, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware & Lehigh National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

MEETING DATE AND TIME: Friday, July 11, 2003, time 2 p.m. to 4 p.m.

ADDRESS: The Greater Wilkes-Barre Chamber, Two Public Square, Wilkes-Barre PA 18710.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware & Lehigh National Heritage Corridor Commission was established by Public Law 100–692, November 18, 1988, and extended through Public Law 105–355, November 13, 1998.

FOR FURTHER INFORMATION CONTACT: C. Allen Sachse, Executive Director, Delaware & Lehigh National Heritage Corridor Commission, 1 South Third Street, 8th Floor, Easton PA 18042. (610) 923–3548.

Dated: June 26, 2003.

C. Allen Sachse,

Executive Director, Delaware & Lehigh National Heritage Corridor Commission.

[FR Doc. 03–16682 Filed 7–1–03; 8:45 am]

BILLING CODE 6820–PE–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). We (U.S. Fish and Wildlife Service) solicit review and comment from local, State, and Federal agencies, and the public on the following permit requests.

DATES: Comments on these permit applications must be received on or before August 1, 2003 to receive our consideration.

ADDRESSES: Written data or comments should be submitted to the Chief, Endangered Species, Ecological Services, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (fax: 503–231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to the address above (telephone: 503–231–2063). Please refer to the respective permit number for each application when requesting copies of documents.

SUPPLEMENTARY INFORMATION:

Permit No. TE–050644

Applicant: The Washington Department of Fish and Wildlife, Olympia, Washington.

The permittee requests an amendment to take (harass through captive propagation, collect biological samples, and mark) the Columbia Basin distinct population segment of the pygmy rabbit (*Brachylagus idahoensis*) in conjunction with an intercross captive propagation program with the Idaho pygmy rabbit (*Brachylagus idahoensis*) and to support

genetic research at facilities in Oregon and Washington for the purpose of enhancing Columbia Basin pygmy rabbits survival and viability.

Permit No. TE–072650

Applicant: Jennifer Michaud-Laird, Sebastopol, California.

The applicant requests a permit to take (harass by survey, capture, handle, and release) the California tiger salamander Sonoma County distinct population segment (*Ambystoma californiense*) in conjunction with surveys in Sonoma County, California for the purpose of enhancing its survival.

Permit No. TE–072651

Applicant: Diana Immel, Davis, California.

The applicant requests a permit to remove/reduce to possession *Trifolium amoenum* (showy Indian clover) in conjunction with reintroduction efforts in Sonoma and Marin Counties, California for the purpose of enhancing its survival.

Permit No. TE–072873

Applicant: Kevin D. Matson, St. Louis, Missouri.

The applicant requests a permit to take (collect blood) captive Hawaiian geese (*Branta sandvicensis*) and captive iò (*Buteo solitarias*) in conjunction with disease research at the Three Ring Ranch Exotic Animal Sanctuary, Kailue-Kona, Hawaii for the purpose of enhancing their survival.

We solicit public review and comment on each of these recovery permit applications.

Dated: June 12, 2003.

Bill Shake,

Deputy Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 03–16683 Filed 7–1–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

SUMMARY: The following applicants have applied for scientific research permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended.

DATES: To ensure consideration, written comments must be received on or before August 1, 2003.

ADDRESSES: Written comments should be submitted to the Chief, Endangered Species Division, Ecological Services, P.O. Box 1306, Albuquerque, New Mexico 87103. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act. Documents will be available for public inspection, by appointment only, during normal business hours at the U.S. Fish and Wildlife Service, 500 Gold Avenue SW., Room 4102, Albuquerque, New Mexico. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Chief, Endangered Species Division, (505) 248–6920.

SUPPLEMENTARY INFORMATION: Permit No. TE–057946

Applicant: USDA, Natural Resources Conservation Service, Flagstaff, Arizona.

Applicant requests an amendment to an existing permit to allow presence/absence surveys for black-footed ferret (*Mustela nigripes*) within Arizona and New Mexico.

Permit No. TE–072498

Applicant: Shaw Environmental, Inc., Albuquerque, New Mexico.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for the following species within Arizona and New Mexico: black-footed ferret (*Mustela nigripes*), southwestern willow flycatcher (*Empidonax traillii extimus*), northern aplomado falcon (*Falco femoralis septentrionalis*), and interior least tern (*Sterna antillarum*).

Permit No. TE–011464

Applicant: Caryn Vaughn, Norman, Oklahoma.

Applicant requests an amendment to an existing permit to allow surveys and collection of the scaleshell mussel (*Leptodea leptodon*) within Oklahoma and Arkansas.

Permit No. TE–054803

Applicant: Michael Larisch, Silver City, New Mexico.

Applicant requests an amendment to an existing permit to allow presence/absence surveys for the following species within New Mexico: black-footed ferret (*Mustela nigripes*), southwestern willow flycatcher (*Empidonax traillii extimus*), and interior least tern (*Sterna antillarum*).

Permit No. TE–073460

Applicant: Aaron Flesch, Tucson, Arizona.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys, nest monitoring, radio tracking, trapping, and removal of radio transmitters for cactus ferruginous pygmy owl (*Glaucidium brasilianum cactorum*) within Arizona.

Permit No. TE–072500

Applicant: U.S. Army Corps of Engineers, Champaign, Illinois.

Applicant requests a permit for research and recovery purposes to receive fountain darters (*Etheostoma fonticola*) and Texas wild-rice (*Zizania texana*), in order to assess the effects of fog oil and other military species chemical compounds on these species.

Authority: 16 U.S.C. 1531, *et seq.*

Dated: June 19, 2003.

Bryan Arroyo,

Assistant Regional Director, Ecological Services, Region 2, Albuquerque, New Mexico.

[FR Doc. 03–16684 Filed 7–1–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; 90-day Finding for a Petition to Delist the Mexican Bobcat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding for a petition to delist the Mexican bobcat (*Lynx rufus escuinapae*) under the Endangered Species Act of 1973, as amended. After reviewing the petition and available scientific and commercial information, we find that the petition presents substantial information indicating that listing may no longer be warranted. With the publication of this notice, we are initiating a status review of the Mexican bobcat. In addition to requesting information on the status of the Mexican bobcat, we are requesting information on whether the subspecies designation is taxonomically valid. If not valid, we also request information on the status of

the listed entity within Mexico for the purpose of determining if the Mexican population constitutes a distinct population segment (DPS) or constitutes a significant portion of the range of the species. We will prepare and publish a 12-month finding.

DATES: The finding announced in this document was made on June 11, 2003. To be considered in the 12-month finding for this petition, comments and information should be submitted to us by September 30, 2003.

ADDRESSES: Submit information, comments, or questions concerning this petition finding to the Chief, Division of Scientific Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Rm 750, Arlington, VA 22203 (facsimile number 703–358–2276; E-mail address: *ScientificAuthority@fws.gov*). The petition, supporting information, and comments will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Karen L. Anderson, Division of Scientific Authority (*see* **ADDRESSES** section) (telephone 703–358–1708; facsimile 703–358–2276).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1533(b)(3)(A)), requires us to make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. This finding is to be based on all information available to us at the time the finding is made. To the maximum extent practicable, this finding is to be made within 90 days of the date the petition was received, and a notice of the finding is to be published promptly in the **Federal Register**. If the finding is that substantial information was presented, we are required to promptly commence a review of the status of the involved species. After completing the status review, we will issue an additional finding (the 12-month finding) on whether delisting is, in fact, warranted.

On July 8, 1996, we received a petition dated June 30, 1996, from the National Trappers Association, Inc., Bloomington, Illinois. The petition and cover letter clearly identified itself as such and contained the name, address, and signature of the petitioning organization's representative. Information relating to the taxonomy, the present population status and trends, and threats were included in the petition. The petition requested that we delist the Mexican bobcat under the Act, and noted that downlisting to threatened status would not be an appropriate alternative. In a letter dated November 4, 1996, we acknowledged receipt of the petition (Service, *in litt.*, 1996). We stated that we would address the petition as soon as possible. Due to staffing and budget constraints, we have been unable to process this petition until now.

The Mexican bobcat belongs to the mammalian family Felidae and has been reported to be a subspecies of *Lynx rufus.* The number of taxa described within *Lynx rufus* ranges from 11 to 14. Allen (1903) first described this subspecies from two immature male specimens found in Escuinapa, Mexico, on the basis of color and cranial differences. However, the validity of this subspecies is questionable. Samson (1979) conducted a multivariate statistical analysis of a variety of skull measurements and found cranial characteristics of *L. r. escuinapae* to be similar to those of *L. r. californicus* and *L. r. texensis.* Also, the range of *escuinapae* overlaps with the ranges of *baileyi* and *texensis.* However, McCord and Cardoza (1982) noted that statistical analysis of skull measurements only have meaning in large samples and are thus ineffective in the subspecific assignment of individual specimens. They also noted that the 11 to 14 subspecies of bobcats described to date comprise few realistically distinguishable taxa that have any real biological or conservation significance.

The majority of bobcats are found in the United States, where they range through a wide variety of habitats, including boreal coniferous and mixed forests in the north, bottomland hardwood forest and coastal swamp in the southeast, and desert and scrubland in the southwest. Even within a local area, individual bobcats usually use a variety of habitats (Wilson and Ruff 1999). Only large, intensively cultivated areas appear to be unsuitable habitat. Southern Canada represents the northern limit of bobcat range, with deep snow a significant limiting factor. With the clearing of mature coniferous forests for agriculture, the bobcat has expanded its range northward over the past century (Rollings 1945, Banfield 1974). In Mexico, bobcats are found in dry scrubland and forest of pine (*Pinus* spp.) and oak (*Quercus* spp.), principally in the mountainous northern and central parts of the country, and not in the tropical south (Hall and Kelson 1959; Gonzalez and Leal 1984 and Woloszyn and Woloszyn 1982 cited by Nowell and Jackson 1996). *Lynx rufus escuinapae* is the southernmost race of bobcat found in Mexico.

No population estimates are available for *Lynx rufus escuinapae*, but the Mexican Government has stated that this subspecies is widespread and numerous, is not specialized in its habitat requirements, and is highly ecologically adaptable (Graciela de la Garza Garcia, Direccion General de Conservacion Ecologia de los Recursos Naturalese, *in litt.* 1991).

Little information is available on utilization of the species in Mexico, but local hunting and trapping for subsistence is possible. There is no indication of illegal trade and no reported potential trade threats (Govt. of U.S. 1992; Service, *in litt.* 1992).

We listed the Mexican bobcat as an endangered species on June 14, 1976 (41 FR 24064). This subspecies was listed under the Act due to its inclusion in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). By July 1, 1975, the Convention was ratified by enough nations to enter into force and at that time the countries participating in CITES agreed that the Mexican bobcat met the criteria for inclusion in Appendix I. Appendix I includes all species threatened with extinction and that are or may be affected by international trade. In 1992, during the 10-year review of species included in the CITES Appendices, we, with support from Mexico and other countries, proposed to transfer the Mexican bobcat to Appendix II, based on the bobcat's widespread and stable status in Mexico and questionable taxonomy. Our proposal was accepted and the transfer went into effect on November 6, 1992. It is not clear at this time why the Mexican bobcat was originally included in Appendix I.

Distinct Vertebrate Population Segment

We must consider any species for listing under the Act if available information indicates such action may be warranted. ''Species'' is defined by the Act as including any subspecies of fish and wildlife or plants, and any distinct population segment of vertebrate fish or wildlife that interbreeds when mature (16 U.S.C. 1532 (16)). We, along with the National Marine Fisheries Service (National Oceanic and Atmospheric Administration-Fisheries), developed the Policy Regarding the Recognition of Distinct Vertebrate Population Segments (DPS Policy) (61 FR 4722) to help us in determining what constitutes a distinct population segment (DPS). Under this policy, we use three elements to assess

whether a population under consideration for listing may be recognized as a DPS: (1) Discreteness of the population in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing.

The DPS analysis is a stepwise analysis; significance is considered only when discreteness of the population has been determined, and the conservation status is considered only when both discreteness and significance of the population have been established. Discreteness refers to the isolation of a population from other members of the species and is based on two criteria: (1) Marked separation from other populations of the same taxon resulting from physical, physiological, ecological, or behavioral factors, including genetic discontinuity; or (2) populations delimited by international boundaries. If the population is determined to be discrete, we determine significance by assessing the distinct population segment's importance and/or contribution to the species throughout its range. Measures of significance may include, but are not limited to, the following: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of the taxon that may be more abundant elsewhere as an introduced population outside its historic range; and (4) evidence the discrete population segment differs markedly from other populations of the taxon in its genetic characteristics.

If we determine that a population meets the discreteness and significance criteria for a distinct population segment, we evaluate the threats to determine if endangered or threatened status based on the Act's standards is warranted. Endangered means the species is in danger of extinction throughout all or a significant portion of its range. Threatened means the species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

In reviewing the taxonomic information on Mexican bobcat, it is unclear whether this subspecies is valid. If the subspecies designation is not valid, then we must evaluate the status of the listed entity in its range within Mexico and determine whether the listed entity meets the DPS policy, and if so, whether this population of bobcat should remain listed. Although the petition did not address this issue, we will consider this question during our status review.

Petition Finding

We have reviewed the petition, the literature cited in the petition, and other literature and information available in our files. On the basis of the best scientific and commercial information, we find that the petition presents substantial information to indicate that the Mexican bobcat may warrant being delisted.

With the publication of this notice, we are initiating a status review of the Mexican bobcat to determine whether delisting is warranted based on its status and taxonomy. If this subspecies is not taxonomically valid, we will also evaluate if the population of the listed entity in Mexico constitutes a DPS, and if so, whether or not we should retain the listing of this entity. If this population does not meet the DPS criteria, we will then evaluate whether or not the population of the listed entity is endangered or threatened in a significant portion of the species' (*i.e., Lynx rufus*) range.

Public Information Solicited

When we make a finding that sufficient information exists to indicate that delisting of a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information on the Mexican bobcat (*Lynx rufus escuinapae*) throughout the listed entity's range in Mexico. If we determine that the subspecies designation is not valid, then information on the status of the listed entity rangewide will, in particular, assist us in determining if the Mexican population meets the distinct vertebrate population segment criteria, or constitutes a significant portion of the range.

We request any additional information, comments, and suggestions from the public, governmental agencies, the scientific community, industry, and any other interested parties concerning the status of this subspecies of the bobcat throughout its range in Mexico. We are seeking information regarding taxonomy, historic and current distribution, habitat use and habitat conditions, biology and ecology, ongoing conservation measures for the subspecies and its habitat, and threats to the subspecies and its habitat. We are particularly interested in recent information on the taxonomy of the bobcat, and specifically whether escuinapae is a valid subspecies or whether it should be considered part of other subspecies. We also request any additional information that will support the DPS analysis of the discreteness and significance, as defined in our DPS policy (see Distinct Vertebrate Population Segment section above), of this Mexican population relative to the species as a whole.

If you wish to comment, you may submit your comments and materials concerning this finding to the Chief, Division of Scientific Authority (see **ADDRESSES** section). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular office hours. Respondents may request that we withhold their identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

References Cited

Allen, J.A. 1903. A New Deer and a New Lynx From the State of Sinaloa, Mexico. Amer. Mus. Nat. Hist. Bull., 19:613–615.

Banfield, A.W. 1974. The Mammals of Canada. Univ. Toronto Press, Toronto.

Hall, E. R., and K. R. Kelson 1959. The Mammals of North America. The Ronald Press Company, New York.

Government of the United States. 1992. Proposal to Transfer *Felis rufa escuinapae* from Appendix I to Appendix II. Proc. Conf. of the Parties to CITES 8, CITES Secretariat, Lausanne.

Gonzalez, C.B., and C.G. Leal. 1984. [Forest Mammals of the Mexican Basin.] Programme on Man and the Biosphere (UNESCO) and Editorial Limusa. Mexico City (in Spanish).

McCord, C.M., and J.E. Cardoza. 1982. Bobcat and Lynx. Pp 728–766 in J.A. Chapman and G.A. Feldhamer, eds. Wild Mammals of North America: Biology, Management and Economics. Johns Hopkins Univ. Press, Baltimore.

Nowell, K., and P. Jackson. eds. 1996. Wild Cats: Status Survey and Conservation Action Plan. IUCN/SSC Cat Specialist Group, IUCN, Gland, Switzerland.

Rollings, C.T. 1945. Habits, Food and Parasites of the Bobcat in Minnesota. J. Wildl. Manage. 9:131–145.

Samson, F.B. 1979. Multivariate Analysis of Cranial Characteristics Among Bobcats with a Preliminary Discussion of the Number of Subspecies. Bobcat Res. Conf. Natl. Wildl. Fed. Sci. Tech. Ser. 6:80–86.

Wilson, D.E., and S. Ruff. eds. 1999. The Smithsonian Book of North American Mammals. Smithsonian Institution Press, Washington DC.

Woloszyn, D., and B.W. Woloszyn. 1982. [The Mammals of Sierra de La Laguna Baja California Sur.] Consejo Nacional de Ciencia y Technologia, Mexico (in Spanish).

Author

The primary author of this document is Karen L. Anderson of the Division of Scientific Authority (*see* **ADDRESSES** above).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 11, 2003.

Marshall P. Jones, Jr.,

Deputy Director, Fish and Wildlife Service.

[FR Doc. 03–16725 Filed 7–1–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Environmental Assessment on Management of Mute Swans in the Atlantic Flyway

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that a Draft Environmental Assessment on the Management of Mute Swans in the Atlantic Flyway is available for public review. Comments and suggestions are requested.

DATES: You must submit comments on the Draft Environmental Assessment by July 16, 2003.

ADDRESSES: Copies of the Draft Environmental Assessment (DEA) can be obtained by writing to U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 4401 North Fairfax Drive, Mail Stop MBSP–4107, Arlington, VA 22203. The DEA may also be viewed on the Fish and Wildlife Service home page at *http://migratory birds.fws.gov*. Written comments can be sent to the address above, or emailed to *MuteSwanEA@fws.gov*. All comments must include the name and full mailing address of the person submitting the comments. All comments received, including names and addresses, will become part of the public record. You may inspect comments during normal business hours at the address above.

FOR FURTHER INFORMATION CONTACT: John L. Trapp, (703) 358–1965.

SUPPLEMENTARY INFORMATION: The purpose of the DEA is to determine how to respond to applications for permits to take mute swans (*Cygnus olor*) under authority of the Migratory Bird Treaty Act for the purpose of minimizing the environmental damage that they can cause. The DEA (1) reviews the history, population status, and trends of mute swans in the Atlantic Flyway; (2) summarizes the history of mute swan population management; (3) assesses the effects of mute swans on wetland habitats, native species of fish and wildlife, and human interests; and (4) evaluates the need for continuing management of mute swans in the Atlantic Flyway to minimize environmental damage. Four alternatives, including the proposed action, are considered.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 03–16699 Filed 7–1–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Mississippi River Basin Panel Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force Mississippi River Basin Panel. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION.**

DATES: The Mississippi River Basin Regional Panel will meet from 8 a.m. to 5 p.m. on Thursday, July 10, 2003, and 8 a.m. to 2 p.m. on Friday, July 11, 2003, and a field trip from 2:30 p.m. to 6 p.m. on Friday, July 11, 2003.

ADDRESSES: The Mississippi River Basin Regional Panel meeting will be held at the Hilton Minneapolis/St. Paul Airport, 3800 East 80th Street, Bloomington, MN 55425. Phone 952–854–2100.

FOR FURTHER INFORMATION CONTACT: Jay Rendall, Mississippi River Basin Panel Chair and Exotic Species Program Coordinator, Minnesota Department of Natural Resources at 651–297–1464 or Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2308.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces meetings of the Aquatic Nuisance Species Task Force Mississippi River Basin Regional Panel. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990. The Mississippi River Basin Regional Panel was established by the ANS Task Force in 2002. The purpose of the Panel is to advise and make recommendations to the Aquatic Nuisance Species Task Force on issues relating to the Mississippi River Basin region of the United States that includes thirty-two Mississippi River Basin States: Alabama, Arkansas, Colorado, Georgia, Iowa, Illinois, Indiana, Kentucky, Kansas, Louisiana, Maryland, Michigan, Minnesota, Missouri, Mississippi, Montana, North Carolina, North Dakota, Nebraska, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, West Virginia, Wisconsin, and Wyoming. The Mississippi River Basin Regional Panel will discuss several topics at this meeting including: aquatic invasive species (Asian carp, New Zealand mudsnail, round goby, water fleas, purple loosestrife, and Eurasian watermilfoil) in the Mississippi River Basin and their management; a discussion on pathways of invasive species spread and prevention methods used for the aquatic plant trade, recreational activities, and effective boater education programs; a discussion on prevention initiatives taken for the dispersal barrier and the summit in Chicago, 100th Meridian initiative, public awareness campaign, Stop Aquatic Hitchhikers, NAISA, and National Invasive Species Council's rapid response efforts; a discussion on Panel organization and operation and establishment of new Panel Committees for education, policy, control, research, and outreach efforts; and status and discussion of national legislation regarding aquatic invasive species.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 810, 4401 North Fairfax Drive,

Arlington, Virginia 22203–1622, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: June 13, 2003.

Mamie Parker,

Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries & Habitat Conservation.

[FR Doc. 03–16659 Filed 7–1–03; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Great Lakes Panel Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force Great Lakes Panel. The Great Lakes Panel meeting will be held in conjunction with a workshop entitled ''Rapid Response Plan for Great Lakes Aquatic Invasions''. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION.**

DATES: The Great Lakes Panel will meet from 9 a.m. to 5 p.m. on Tuesday, July 22, 2003, and from 8 a.m. to noon on Wednesday, July 23, 2003. The Rapid Response workshop will be held from 1 p.m. to 5 p.m. on Wednesday, July 23, 2003, and from 8 a.m. to 4 p.m. on Thursday, July 24, 2003.

ADDRESSES: The Great Lakes Panel meeting and Rapid Response workshop will be held at the Courtyard Marriott of Ann Arbor, 3205 Boardwalk, Ann Arbor, Michigan 48108. Phone (734) 995–5900.

FOR FURTHER INFORMATION CONTACT: Kathe Glassner-Shwayder, Project Manager, Great Lakes Commission, at 734–971–9135 or Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2308 or by e-mail at: *sharon_gross@fws.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force Great Lakes Panel. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

The Great Lakes Panel, comprised of representatives from federal, State, and local agencies and from private environmental and commercial interests, performs the following activities:

(a) Identifies priorities for the Great Lakes Region with respect to aquatic nuisance species;

(b) Makes recommendations to the Task Force regarding programs to carry out zebra mussel programs;

(c) Assists the Task Force in coordinating Federal aquatic nuisance species program activities in the Great Lakes region;

(d) Coordinates, where possible, aquatic nuisance species program activities in the Great Lakes region that are not conducted pursuant to the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (as amended, 1996);

(e) Provides advice to public and private individuals and entities concerning methods of controlling aquatic nuisance species; and

(f) Submits an annual report describing activities within the Great Lakes region related to aquatic nuisance species prevention, research, and control.

Topics to be addressed at the panel meeting include: An update on panel products and activities; updates on national issues such as the ANS Task Force, the National Invasive Species Council, and the National Aquatic Invasive Species Act; an update on the development of ballast water standards; an update on the dispersal barrier project and related concerns on nonindigenous fish invasions; a discussion on the expansion of Ruffe into Lake Michigan; a discussion on the Panel priorities in areas of information, education, research coordination, and policy and legislation; and updates from the Information/Education Committee, the Research Coordination Committee, and the Policy and Legislation Committee. The agenda for the Rapid Response Workshop includes; an overview of the need for early warning and rapid response to new invasive species in the United States; an overview of ANS Task Force and Federal perspectives on ANS Rapid response; an overview of the multi-jurisdictional experience in coordinating responses to chemical spills as a model for ANS rapid response; an overview on the role of monitoring for early detection; discussions during breakout sessions on communication, public outreach, detection and monitoring, decision support and scientific assessment, management options, implementation, and adaptive management as components of a rapid response plan; and an overview of the operational challenges associated with developing and implementing a rapid response plan.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 810, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: June 13, 2003.

Mamie Parker,

Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries & Habitat Conservation.

[FR Doc. 03–16660 Filed 7–1–03; 8:45 am]

BILLING CODE 4310–55–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–482]

Certain Compact Disc and DVD Holders; Notice of Commission Issuance of Limited Exclusion Order and Termination of Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order and terminated the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Andrea Casson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3105. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202)–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202)–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on October 22, 2002, based on a complaint filed by DuBois Limited of the United Kingdom (''DuBois'') against eight respondents, including Wah-De Electron Co., Ltd of Taiwan (''Wah-De'')

and Dragon Star Magnetics, Inc., of Hong Kong (''Dragon Star''). The complaint alleged violations of section 337 of the Tariff Act of 1930 in the importation, sale for importation, or sale within the United States after importation of certain compact disc and DVD holders by reason of infringement of U.S. Design Patent No. D441,212. On April 16, 2003, the Commission determined not to review an initial determination (Order No. 13) finding the two remaining respondents in this investigation, Wah-De and Dragon Star, in default. All other respondents have been terminated from the investigation on the basis either of settlement agreements or the withdrawal of the allegations in the complaint as to them.

On March 26, 2003, DuBois filed a declaration pursuant to section 337(g)(1) and Commission rule 210.16(c)(1) seeking immediate entry of a limited exclusion order against Wah-De and Dragon Star. On April 22, 2003, the Commission issued a **Federal Register** notice requesting briefing on the issues of default remedy, the public interest, and bonding. 68 FR 19848. On April 30, 2003 and May 6, 2003, DuBois and the Commission investigative attorney, respectively, filed submissions on the issues of remedy, the public interest, and bonding. No other person or government agency filed a submission.

Section 337(g)(1) of the Tariff Act of 1930 provides that the Commission shall presume the facts alleged in a complaint to be true, and upon request, issue a limited exclusion order if: (1) A complaint is filed against a person under section 337, (2) the complaint and a notice of investigation are served on the person, (3) the person fails to respond to the complaint and notice or otherwise fails to appear to answer the complaint and notice, (4) the person fails to show good cause why it should not be found in default, and (5) the complainant seeks relief limited to that person. Such an exclusion from entry shall be issued unless, after considering the effect of such exclusion or order in light of the statutory public interest factors, the Commission finds that the exclusion order should not be issued.

The Commission found that each of the statutory requirements for the issuance of a limited exclusion order was met with respect to defaulting respondents Wah-De and Dragon Star. The Commission further determined that the public interest factors enumerated in section 337(g)(1) did not preclude the issuance of such relief. Finally, the Commission determined that bond under the limited exclusion order during the Presidential review period shall be in the amount of 100 percent of entered value.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and § 210.16 of the Commission's Rules of Practice and Procedure, 19 CFR 210.16.

Issued: June 26, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–16718 Filed 7–1–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–03–019]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: July 9, 2003 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. AA1921–143 and 731–TA–343 (Review) (Remand) (Tapered Roller Bearings from Japan)—briefing and vote. (The Commission is currently scheduled to transmit its views on remand to the United States Court of International Trade on or before July 23, 2003.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: June 30, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–16935 Filed 6–30–03; 2:37 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Stipulated Amendment to Consent Decree Under the Clean Water Act

Notice is hereby given that on June 17, 2003, a proposed Stipulated Amendment to Consent Decree in *United States and the State of Maryland* v. *Mayor and City Council of Baltimore, Maryland,* Civil Action No. Y–97–4185, was lodged with the United States District Court for the District of Maryland.

The original consent decree, entered on November 19, 1999, resolved the liability of the City of Baltimore, Maryland (''Baltimore'') arising out of, and with respect to, the claims for relief asserted in the United States' Complaint and Amended Complaints, and the State of Maryland's Complaint in Intervention and Amended Complaints, in this action. The United States and Maryland alleged that Baltimore violated the Clean Water Act, 33 U.S.C. 1251 *et seq.*, and the terms and conditions of National Pollutant Discharge Elimination System (''NPDES'') permits, by discharging excessive levels of pollutants from Baltimore's Ashburton Water Filtration Plant and Patapsco Wastewater Treatment Plant.

As part of the settlement embodied in the Consent Decree, Baltimore agreed to perform three Supplemental Environmental Projects (''SEPs'') pursuant to the work plans and schedules attached to the consent decree as Appendix C and incorporated into the consent decree by reference. As set forth in the proposed Stipulated Amendment, the parties have agreed upon an extension of the schedules for these projects, to be enforceable by specific per diem penalties for delay in performance.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Stipulated Amendment. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and the State of Maryland* v. *Mayor and City Council of Baltimore, Maryland*, D.J. Ref. No. 90–5–1–1–4402.

The Stipulated Amendment to Consent Decree may be examined at the Office of the United States Attorney, District of Maryland, United States Courthouse, 101 West Lombard Street, Baltimore, MD 21201, and at U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood *(tonia.fleetwood@usdoj.gov)*, fax no. (202) 514–0097, phone

confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $2.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

W. Benjamin Fisherow,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–16776 Filed 7–1–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Amendment to Consent Decree Pursuant to the Resource Conservation and Recovery Act (RCRA)

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Amendment to Consent Decree entered on January 17, 2001 in *United States and State of Mississippi* v. *Morton International, Inc.,* Civil Action No. 1:00–CV–501 BrR, was lodged with the United States District Court for the Southern District of Mississippi, Biloxi Division on June 13, 2003.

The Consent Decree involved the settlement of claims brought by the United States and State pursuant the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 *et seq.*, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA); the Safe Drinking Water Act (SDWA), 42 U.S.C. 300f *et seq.*; the Clean Water Act (CWA), 33 U.S.C. 1251 *et seq.*; the Clean Air Act (CAA), 42 U.S.C. 7401 *et seq.*; the Emergency Planning and Community Right-To-Know Act (EPCRA), 42 U.S.C. 11001 *et seq.*; and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601 *et seq.* The complaint also contained claims brought under the Mississippi Solid Waste Disposal Law of 1974, Miss. Code Ann. 17–17–1 *et seq.*, the Mississippi Air and Water Pollution Control Law, Miss. Code Ann. 49–17–1– *et seq.*, and the organic act of the Commission and of the Mississippi Department of Environmental Quality (MDEQ), Miss. Code Ann. 49–2–1 *et seq.* and sought recovery of civil penalties and injunctive relief. The United States and State sought the assessment of civil penalties and injunctive relief. The proposed and agreed upon Amendment would modify the Consent Decree by substituting a drinking water supplemental environmental project (SEP) for a SEP which was no longer viable due to the closing of the facility in Moss Point, Mississippi.

More specifically, the substitute SEP is a reverse osmosis treatment process for drinking water systems in Moss Point, Mississippi that is designed to improve the taste, color and odor of drinking water. The substitute SEP will provide substantial benefits to the community. Given the credit earned for the no longer viable SEP, Morton is obligated to spend $9,434,537.00. If the reverse osmosis system costs less than $9,434,537.00, Morton will pay the difference to the United States and State, unless the parties agree on an additional SEP to be funded with all or a portion of the balance.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Amendment to Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. Each communication should refer on its face to *United States and State of Mississippi* versus *Morton International, Inc.,* DOJ No. 90–7–1–06413.

The proposed Amendment to Consent Decree may be examined at the Office of the United States Attorney, Southern District of Mississippi, 808 Vieux Marche, 2nd Floor, Biloxi, Mississippi 39530, and at the U.S. Environmental Protection Agency, Region 4 Office, 61 Forsyth Street, Atlanta, Georgia 30303. During the public comment period, the proposed Amendment may also be examined on the following Department of Justice Web site, *http:/ www.usdoj.gov/enrd/open.html.*

A copy of the proposed Amendment to Consent Decree may be obtained by (1) mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611; or by (2) faxing or emailing the request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), U.S. Department of Justice, fax number (202) 616–6584; phone confirmation (202) 514–1547. In requesting a copy, please forward the request and a check in the amount of $6.25 (25 cents per page reproduction cost), made payable to the U.S. Treasury.

Bruce S. Gelber,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–16775 Filed 7–1–03; 8:45 am]

BILLING CODE 4416–IS–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

Notice is hereby given, in accordance with that on June 18, 2003, the United States lodged a proposed Consent Decree with the United States District Court for the Western District of Wisconsin, United States v. Northern States Power Co., a Wisconsin corporation, doing business, as Xcel Energy, Case No. 03–C–0330–C (W.D. Wis.), under the Clean Air Act (''CAA''). The proposed consent Decree resolves specific allegations and claims of the United States Against Northern States Power Co. (''NSP''), arising out of the company's operation of an electricity generating facility in La Crosse, Wisconsin. The French Island Plant is located on the Mississippi River at 200 South Bainbridge Street, La Crosse, La Crosse County, Wisconsin, which is within the Western District of Wisconsin.

The consent Decree requires NSP to install and operate pollution control equipment on each municipal waste combustor (''MWC'') necessary to come into compliance with emission limits for large MWC's, with the exception the carbon monoxide (''CO'') emission limitation. NSP has already installed a dry lime injection scrubber and pulse jet baghouse on each MWC, and installed a Selective Noncatalytic Reduction process to control nitrous oxide (''NO_X'') emissions. NSP has also installed continuous emission monitoring systems for both sulfur dioxide (''SO_2'') and NO_X on each MWC. With the exception of the CO emission limitation, this pollution control equipment has brought NSP into compliance with pollutant emission limitations set forth in the large MWC regulations.

In addition, NSP will complete all training requirements no later than 6 months from the lodging date of the Consent Decree, and will comply with applicable recordkeeping and recording requirements. It has also agreed to implement a plan to minimize CO emissions during the pendency of the Decree.

NSP is currently unable to meet the large MWC CO emission limitation of 100 ppmv consistently. On July 8, 2002, NSP submitted a Petition to EPA's Administrator to modify the CO emission limitation in the large MWC regulations. The Consent Decree requires that, during the pendency of the petition, NSP undertake significant steps to minimize the potential for CO exceedences. NSP is also required to

report any CO emission limitation exceedance. Moreover, if EPA does not agree to modify the CO emission limitation included in the large MWC regulations, the Consent Decree reserves EPA's right to requires NSP to install further control equipment upgrades or other facility changes necessary to comply with the then applicable CO emission limit.

Under the terms of the proposed settlement, NSP will pay a civil penalty of $500,000 to the United States.

The Department of Justice will accept written comments relating to the proposed Consent Decree for 30 days after publication of this Notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044–7611, and should refer to United States v. NSP, Case Number 03–C–0330–C (W.D. Wis.), DJ Ref. #90–5–2–1–07638. The proposed Consent Decree may be examined at the Office of the United States Attorney for the Western District of Wisconsin, Madison, Wisconsin, and at the Regional 5 Office of the United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. During the Public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the proposed consent decree may also be obtained by mail from the U.S. Department of Justice, Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check for reproduction costs (at 25 cents per page) in the amount of $8.75 for the decree, payable to the United States Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–16777 Filed 7–1–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review; Reinstatement, without change, of a previously approved collection for which approval has expired; Cost Recovery Regulations, Communications Assistance for Law Enforcement Act of 1994.

The Department of Justice (DOJ), Federal Bureau of Investigation has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until September 2, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Porter Dunn, (703) 814–4902, Federal Bureau of Investigation, U.S. Department of Justice, TCAU, 14800 Conference Center Drive, Suite 300 Chantilly, VA 20151.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Colllection:* Cost Recovery Regulations, Communications Assistance for Law Enforcement Act of 1994.

(3) Agency form number, if any, and the applicable component of the Department sponsoring the collection: None. Federal Bureau of Investigation, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Business or other for-profit. Other: None. This collection is facilitated by the procedures whereby telecommunications carriers can recover the costs associated with complying with the Communications Assistance for Law Enforcement Act, which went into effect on October 25, 1994.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: The average time burden of the approximately 3,000 respondents to provide the information requested is approximately four hours per telecommunications switch.

(6) An estimate of the total public burden (in hours) associated with the collection: The total annual hour burden, to provide the information necessary to file a claim under the Cost Recovery Regulation, is approximately 46,000 annual burden hours.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: June 26, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–16635 Filed 7–1–03; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 25, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork

Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on (202) 693–4129 (this is not a toll-free number) or E-Mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316/ this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB Is Particularly Interested in Comments Which

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Title: Personal Protective Equipment for General Industry.

OMB Number: 1218–0205.

Frequency: On occasion.

Type of Response: Recordkeeping.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; and State, Local or Tribal Government.

Number of Respondents: 33,200,000.

Information collection requirement	Annual response	Average responses time (hours)	Annual burden hours
Assessment of Workplace Hazards—29 CFR 1910.132(d)(1)	169,600	1.00	169,600
Firms with 1–19 Employee	76,320	3.00	228,960
Firms with 20–99 Employee	76,320	10.00	763,200
Firms with 100–249 Employee	8,480	19.00	161,120
Firms with 250 or More Employee	8,480	29.00	245,920
Written Certification of Assessment—29 CFR 1910.132(d)(2)	640,000	1.00	640,000
Certification of PPE Training—29 CFR 1910.132(f)(4)	.....	.....	.....
Maintain Employee Certification Record (all employees)	33,200,000	0.02	664,000
Generate and Maintain Training Documentation for New/Retrained Employee	7,968,000	0.05	398,400
Re-training and Recertification	1,328,000	0.05	66,400
Disclose Training Certification Record to OSHA During and Inspection	44,800	0.03	1,344
Total	43,350,400	.....	3,169,344

Total Annualized capital/startup costs: $0.

Total annual costs (operating/ maintaining systems or purchasing services): $0.

Description: The collections of information in the standard are necessary for implementation of the requirements of the standard. The Standard specifies several paperwork requirements. The following sections describe the information collection requirements and who will use the information.

Paragraph 1910.132(d)(1) requires employers to perform a hazard assessment of the workplace to determine if personal protective equipment (PPE) is necessary. Paragraph (d)(2) requires employers to certify that a hazard assessment has been performed. The signed certification must include the date the hazard assessment was conducted and the identification of the workplace evaluated (area or location).

Paragraph 1910.132 (f)(4) requires employers to certify that employees have received and understood PPE training. The training certification must include the name of the employee(s) trained, the date of training, and the subject of the certification (*i.e.*, a statement identifying the document as a certification of training in the use of PPE). The hazard assessment assures that the PPE selected is appropriate for the hazards present in the workplace. The certification required with the hazard assessment verifies that the hazard assessment was conducted. The training certification verifies that employees have received the necessary training involving PPE. OSHA compliance officers may require employers to disclose the certification records during an Agency inspection.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–16704 Filed 7–1–03; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 25, 2003.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or E-Mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Mine Safety and Health Administration (MSHA), Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316 this is not a toll-

free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Type of Review: Extension of a currently approved collection.

Title: Notification of Methane Detected in Mine Atmosphere.

OMB Number: 1219–0103.

Frequency: On occasion and Weekly.

Type of Response: Recordkeeping and Reporting.

Affected Public: Business or other for-profit.

Number of Respondents: 8.

Information collection requirement	Frequency	Annual responses	Average response time (hours)	Annual burden hours
Notifying MSHA	On occasion	1	0.25	0.25
Weekly Certification Record	Weekly	364	0.08	30
Notifying Miners of Hazardous Conditions	On occasion	7	0.17	1
Grand Total		372		31

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: 30 CFR 57.22004(c), 57.22231, and 57.22239 require underground metal and nonmetal mines operators to notify MSHA as soon as possible if any of the following events occurs: (a) There is an outburst that results in 0.25 percent or more methane in the mine atmosphere; (b) there is a blowout that results in 0.25 percent or more methane in the mine atmosphere; (c) there is an ignition of methane; (d) air sample results indicate 0.25 percent or more methane in the mine atmosphere of a Subcategory I–B, I–C, II–B, V–B, or Category VI mine; If methane reaches 2.0 percent in a Category IV mine; or methane reaches 0.25 percent in the mine atmosphere of a Subcategory I–B, II–B, V–B, and VI mines, MSHA shall be notified immediately.

30 CFR 57.22229 and 57.22230 require that the mine atmosphere be tested for methane by a competent person or atmospheric monitoring system at least once every seven days, or a combination of both. Standards 57.22229(d) and 57.22230(c) require that the person performing the tests certify by signature and date that the tests have been conducted. Certifications of examinations shall be kept for at least one year and made available at the mine for MSHA inspectors. Where examinations disclose hazardous conditions, affected miners must be informed.

Agency: Mine Safety and Health Administration.

Type of Review: Extension of a currently approved collection.

Title: Safety Standards for Roof Bolts in Metal and Nonmetal Mines and Underground Coal Mines.

OMB Number: 1219–0121.

Frequency: On occasion; Quarterly; and Semi-annually.

Type of Response: Recordkeeping.

Affected Public: Business or other for-profit.

Information collection requirement	Number of respondents	Annual responses	Average response time (hours)	Annual burden hours
M/NM Surface	20	40	0.05	2
M/NM Underground	180	720	0.05	36
Coal Underground	893	3,572	0.05	179
Grant Total	1,093	4,332		217

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: 30 CFR 56.3203(a), 57.3203(a), and 75.204(a) require mine operators to obtain certification from the manufacturer that roof and rock bolts and accessories are manufactured and tested in accordance with applicable American Society for Testing and Materials specifications and make the certification available to an authorized representative of the Secretary.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–16705 Filed 7–1–03; 8:45 am]

BILLING CODE 4510–43–M

NATIONAL COMMUNICATIONS SYSTEM

National Security Telecommunications Advisory Committee

AGENCY: National Communications System (NCS).

ACTION: Notice of meeting.

SUMMARY: A meeting of the President's National Security Telecommunications

Advisory Committee will be held via conference call on Wednesday, July 14, 2003, from 11 a.m. to 1 p.m. The conference call will be closed to the public to allow for oral discussion on a pre-decisional Government document titled ''Physical Security Assessment of Cyber Assets'', which is related to vulnerabilities of physical assets.

FOR FURTHER INFORMATION CONTACT: Telephone Ms. Marilyn Witcher, (703) 607–6214, or write the Manager, National Communications System, 701 South Court House Roads, Arlington, Virginia 22204–2198.

Nicholas E. Andre,

Federal Register Liaison Officer, National Communications System.

[FR Doc. 03–16706 Filed 7–1–03; 8:45 am]

BILLING CODE 5001–08–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information Pertaining to the Requirement To Be Submitted

1. *The title of the information collection:* NRC Form 171, ''Duplication Request''.
2. *Current OMB approval number:* OMB 3150–0066.
3. *How often the collection is required:* On occasion.
4. *Who is required or asked to report:* Individuals or companies requesting duplication of NRC documents.
5. *The number of annual respondents:* 15,800.
6. *The number of hours needed annually to complete the requirement or request:* 1,883 hours.
7. *Abstract:* This form is utilized by individual members of the public requesting reproduction of publicly available documents in NRC's Headquarters Public Document Room. Copies of the form are utilized by the reproduction contractor to accompany the orders and are then discarded.

Submit, by (September 2, 2003), comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–5 C3, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 25th day of June 2003.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–16702 Filed 7–1–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Workshop on the Industry Initiating Events Performance Indicator for the Industry Trends Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of workshop.

SUMMARY: The Nuclear Regulatory Commission (NRC) is holding a workshop on issues related to the Industry Initiating Events Performance Indicator (IIEPI) for the NRC's Industry Trends Program (ITP). The public workshop is being held to discuss the technical approach and characteristics of the IIEPI.

FOR FURTHER INFORMATION, CONTACT: Thomas H. Boyce, Inspection Program Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Mr. Boyce may be reached at (301) 415–1130 or by e-mail at *thb@nrc.gov.*

DATES: The workshop will be held on July 30, 2003, from 8:30 a.m. to 2:30 p.m.

ADDRESSES: The workshop will be held in Room O–7B4 at the U.S. Nuclear Regulatory Commission in the One White Flint North Building, 11545 Rockville Pike, Rockville, Maryland.

The workshop will focus on the technical approach and characteristics discussed in the draft report ''Development of an Integrated Industry Initiating Events Indicator.'' The draft report is available for public inspection in the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike, Public File Area O1 F21, Rockville, Maryland, or from the Publicly Available Records (PARS) component of NRC's Agencywide Document Access and Management System (ADAMS), (ADAMS # ML031750752). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/NRC/ADAMS/index.html* (the Public Electronic Reading Room). For more information, contact the NRC Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

Those who are unable to attend in person may send written comments on the draft report to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop T6–D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Comments may be submitted by Email at *nrcrep@nrc.gov.* All comments received by the Commission, including comments made by Federal, State, and local agencies, Indian tribes, or other interested persons, will be made available electronically at the Commission's PDR in Rockville, Maryland, or from the PARS component of ADAMS.

SUPPLEMENTARY INFORMATION:

The IIEPI is being developed as part of the NRC's Industry Trends Program (ITP) to provide a more risk-informed indicator of the industry safety performance of operating power reactors for initiating events. The indicators in the ITP are used by the NRC to report to Congress on industry safety performance as part of NRC's annual Performance and Accountability Report. Information on the ITP may be found in

SECY–03–0057, ''FY 2002 Results of the Industry Trends Program for Operating Power Reactors and Status of Ongoing Development,'' which is available electronically on the NRC's Web page at *http://www.nrc.gov/reading-rm/doc-collections/commission/secys/2003/.*

The draft technical report describes the technical approach and characteristics of the IIEPI, as well as an approach to establishing thresholds for the indicator. The following topics in the draft report will be discussed during the workshop:

- Industry Trends Program and Framework for IIEPI
- Technical Approach to IIEPI
- IIEPI Characteristics
- Technical Discussion
- Implementation Discussion

Dated at Rockville, Maryland, this 25th day of June 2003.

For the Nuclear Regulatory Commission.

Stuart A. Richards,

Chief, Inspection Program Branch, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–16701 Filed 7–1–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48067; File No. SR–Amex–2003–48]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to the Amendment of Exchange Rules 340 and 341 and the Adoption of New Exchange Rule 359 To Provide for the Processing of Forms U–4 and U–5 by the NASD's Web CRD System

June 19, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 23, 2003, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rules 340, Disapproval of Employees, and 341, Approval of Registered Employees and Officers, and to adopt new Exchange Rule 359, Application and Termination Forms (Forms U–4 and U–5), to provide for the processing of the Uniform Application for Securities Industry Registration or Transfer (''Form U–4'') and the Uniform Termination Notice for Securities Industry Registration (''Form U–5'') by the National Association of Securities Dealers, Inc.''s (''NASD's'') Web Central Registration Depository (''Web CRD'') system for all individuals required to be registered with or approved by the Exchange.[3] Proposed new text is *italicized* and proposed deleted text is [bracketed] below.

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Rule 340 Disapproval of Employees—No change.

Commentary

.01 Any employee or prospective employee of a member or member organization who is to be admitted to the trading floor must be registered and approved by the Exchange's. To become registered, such employee or prospective employee must *electronically file* [submit] an application on the Uniform Application for Securities Industry Registration or Transfer (''Form U–4'') *and any amendment thereto to the Central Registration Depository.* All employees and prospective employees of members and member organizations who have submitted applications for admission to the trading floor are required to be fingerprinted and to submit, or cause to be submitted, such fingerprints to the Exchange *or its designee* for identification and appropriate processing. Members and member organizations are required to *electronically file* [submit] a Uniform Termination Notice *for* [of] Securities Industry Registration (''Form U–5'') *and any amendment thereto to the Central Registration Depository* [to the Exchange's Membership Services Department] within 10 days of the date of termination of an employee that has been approved for admission to the trading floor. Members and member organizations also are responsible for obtaining and submitting a terminated employee's Exchange identification badge *to the Exchange* [together with the Form U–5]. For purposes of this Commentary .01, the term ''trading floor'' includes, but is not limited to, any space provided to members and their employees for the resolution of errors.

.02 through .04. No change.

.05 Transition to Web CRD.—Members and member organizations must electronically file a Form U–4 with NASD's Web-based Central Registration Depository (CRD) system on or before such time as may be specified by the Exchange for each of their employees (including members) who have access to the trading floor.

Rule 341 Approval of Registered Employees and Officers—(a) and (b) No change.

Commentary

.01 Natural Persons Required to be Registered or Approved—Although the employment of each employee of a member or member organization is subject to disapproval by the Exchange, only (i) registered representatives, (ii) securities lending representatives, (iii) securities traders or (iv) a direct supervisor of (i), (ii) or (iii) above (*see* definitions 6, 7 and 8, General and Floor Rules), must be registered and approved. Note that a natural person who performs the duties normally performed by a (i) registered representative, (ii) securities lending representative or (iii) securities trader is also subject to this Rule, notwithstanding such natural person's assertion of ''independent contractor'' status. (*See* Rule 341B). The requirements for persons seeking Exchange approval as regular member, options principal members, allied members, partners, approved persons and subordinated lenders are set forth in Article IV, Section 2 of the Constitution and Rules 300, 301, 310, 311, 312, 317, 318 and 470. Such persons must file forms prescribed by the Exchange [which are available from the Membership Services Division].

Any person who prior to June 1, 1970, was an allied member of the Exchange, in good standing, and who as of June 1, 1970, ceases to meet the definition of an allied member shall automatically cease his status as an allied member and may upon execution of such agreements as may be required by the Exchange qualify as a registered representative, supervisory person or officer. Any person who was an allied member in good standing prior to June 1, 1970, but does not meet the definition of allied member as of June 1, 1970, may

[3] In connection with the instant proposal, the Exchange filed an effective on filing rule proposal related to fee schedule changes for Form U–4 and Form U–5 processing. *See* Securities Exchange Act Release No. 48066 (File No. SR–Amex-2003–49).

continue to perform those functions for his member corporation which he was performing on June 1, 1970.

A ''securities lending representative'' is defined as any person who has discretion to commit a member or member organization with which he is associated, as an employee or otherwise, to any contract or agreement (written or oral) involving securities lending or borrowing activities with any other person.

A ''securities trader'' is defined as any person engaged in the purchase or sale of securities or other similar instruments for the account of a member or member organization with which he is associated, as an employee or otherwise, and who does not transact any business with the public.

.02 How to Register Employees or Obtain Approval of Officers.—To register an employee or obtain the approval of an officer, the employer must *electronically file an application on the Uniform Application for Securities Industry Registration or Transfer (''Form U–4'') and any amendment thereto with NASD's Central Registration Depository.* [submit the appropriate application form to the Membership Services Division, Attention Registered Personnel Section. The application includes an agreement, described in Commentary .08 below, which the prospective registered employee or officer must sign.]

If the employer is a member of the New York Stock Exchange, Inc., and application for the registration of an employee or the approval of an officer is made to that exchange, the American Stock Exchange LLC [, Inc.,] application [form] should be submitted concurrently with the submission of an application to the New York Stock Exchange, Inc. and prompt notice should be furnished to the *Exchange* [Membership Services Division] of any action taken by the New York Stock Exchange, Inc. with respect to such application.

.03 through .08—No change.

.09 Termination of Employment.—Members and member organizations must immediately inform the [Membership Services Division of the] Exchange of any termination of employment of a *member*, registered employee or an officer, together with the reasons therefor. Such information is to be submitted on Form U–5 *within ten days of the date of termination*.

.10 *Rescinded* [Additional Information.—The following material may be obtained from the Registered Section, Membership Services Division of the Exchange:

(1) Application forms.

(2) Study Guide for Registered Representative Examination.

(3) Study Guide for Branch Office Manager Examination.

(4) Notice of Termination of Employment of Registered Employee—Form U–5].

.11 Filing With *Designee* [Agent].—Any filing or submission required under this rule which is made with a properly authorized *designee* [agent] acting on behalf of the Exchange shall for purposes of this Rule be deemed to be a filing with the Exchange.

Rule 359. Application and Termination Forms (Forms U–4 and U–5)

(a) An individual who (i) seeks to become a regular, options principal, or associate member, (ii) seeks to become a limited trading permit holder, (iii) seeks to own a regular, options principal, associate membership or limited trading permit, or (iv) is or should be an approved person or allied member shall electronically file a Uniform Application for Securities Industry Registration or Transfer (Form U–4) and any amendments thereto with Central Registration Depository. A member or member organization that terminates a regular member, options principal member, associate member, allied member, limited trading permit holder or approved person shall electronically file within 10 days of such termination a Uniform Termination Notice for Securities Industry Registration (Form U–5) with the Central Registration Depository. A member or member organization shall electronically file with the Central Registration Depository any amendments to Form U–5 within 10 days of the discovery of the information requiring the amendment.

(b) Transition to Web CRD—Regular members, options principal members, and limited trading permit holders must electronically file a Form U–4 with NASD's Central Registration Depository system on or before such time as may be specified by the Exchange.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and the basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Amex Rule 340 currently requires Amex members and member organizations to submit Forms U–4 and U–5 for their employees with access to the trading floor (*e.g.*, members and clerks). The Exchange also has long required persons who seek to become members or to own a membership to submit Form U–4 in connection with their membership applications. These forms currently are submitted to the Exchange's Membership Services Division as paper documents.

The Exchange now is proposing to require all its members, member organizations and seat owners to use NASD's Web CRD as the mechanism for submitting required Forms U–4 and U–5 filings to the Exchange. As a result of this change, all persons that currently would submit paper Forms U–4s and U–5s to the Exchange would be required to submit these forms electronically through Web CRD. The CRD is a Web-based system that provides broker-dealers and their associated persons with ''one-stop filing'' with the SEC, NASD, and other self-regulatory organizations and regulators. The CRD is operated by NASD and is used by participating regulators in connection with registering and licensing broker-dealers and their associated persons.

The Exchange anticipates that, during the period between September 3 and September 19, 2003, Amex members and member organizations will submit an updated Form U–4 to Web CRD for all individuals who work on the trading floor who have not previously submitted a Form U–4 to Web CRD.[4] The proposed rule change also would require individuals who (i) seek to become a regular, options principal, or associate member, (ii) seek to become a limited trading permit holder, (iii) seek to own a regular, options principal, associate membership or limited trading permit, or (iv) are or should be an approved person or allied member, to electronically file a Form U–4 with Web CRD. The Exchange believes that automating the review of registration applications and termination notices by transitioning all Forms U–4 and U–5

[4] A number of individuals that work on the trading floor already have submitted Form U–4 to Web CRD if they work for dual Amex/NASD member firms and their job responsibilities require registration with NASD.

filings to Web CRD will enable the Exchange to perform more efficiently its regulatory responsibilities with respect to members and member organizations and, thereby, will ultimately enhance investor protection.

The proposed amendments to Exchange Rules 340 and 341 and the adoption of Exchange Rule 359 are intended to facilitate the transfer of all required Forms U–4 and U–5 filings to Web CRD. The changes provide that the filing of Forms U–4 and U–5 with a duly authorized designee of the Exchange (*i.e.*, NASD) would constitute submission to the Exchange. The proposed amendments also would eliminate references to the Membership Services Division that would become obsolete with the implementation of filing with Web CRD.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[5] in general, and the provisions of section 6(b)(5) of the Act,[6] in particular, which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)[8] thereunder because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change or the Commission waives such prior notice. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate, in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[9]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2003–48 and should be submitted by July 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

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[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] *See* section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48086; File No. SR–CHX–2003–08]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating To Execution of Resting Limit Orders Following a Primary Market Block Trade-Through

June 25, 2003.

On March 24, 2003, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to eliminate the requirement that a CHX specialist fill resting limit orders at the block price following a block trade trade-through in the primary market.[3] The proposed rule change was published for comment in the **Federal Register** on May 13, 2003.[4] The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.[5] Specifically, the Commission finds that the proposal is consistent with the requirements of section 6(b) of the Act,[6] in general, and section 6(b)(5) of the Act,[7] in particular, which requires that the rule of the Exchange be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] If, however, a specialist is representing an order in his or her quote that is traded through by a block trade from another market, and the specialist receives satisfaction from the other market, the specialist must give the higher price to the customer order. Further, because specialists may wish to continue filling such limit orders at the block price as a customer service accommodation, the proposed rule change would permit a CHX specialist to continue to have the option to engage an existing functionality of the Exchange's MAX automatic execution system that automatically executes designated limit orders at the block price when a block size trade-through occurs in the primary market.

[4] *See* Securities Exchange Act Release No. 47800 (May 6, 2003), 68 FR 25667.

[5] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

general, to protect investors and the public interest.

The Commission believes that eliminating the requirement that a CHX specialist fill resting limit orders at the block price following a block trade trade-through in the primary market will permit specialists to handle block orders more quickly and efficiently. Based on representations by the Exchange, the Commission believes that this obligation was one the CHX assumed voluntarily in order to make its market more attractive to sources of order flow. The Commission believes that the business decision to potentially forego order flow by no longer requiring specialist to provide such protection to block orders is a judgment the Act allows the CHX to make.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–CHX–2003–08) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–16715 Filed 7–1–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48097; File No. SR–ISE–2003–10]

Self Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change by the International Securities Exchange, Inc., Relating to Its Obvious Error Rule

June 26, 2003.

I. Introduction

On February 28, 2003, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend ISE Rule 720 relating to obvious error transactions. On May 1, 2003, the ISE submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on May 15, 2003.[4] The Commission did not receive any comments on the proposed rule change. On June 10, 2003, the ISE filed Amendment No. 2 to the proposed rule change.[5] This order approves the proposed rule change, as amended, and notices and grants accelerated approval to Amendment No. 2.

II. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5)[7] of the Act, which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.[8]

The Commission considers that in most circumstances trades that are executed between parties should be honored. On rare occasions, the price of the executed trade indicates an ''obvious error'' may exist, suggesting that it is unrealistic to expect that the parties to the trade had come to a meeting of the minds regarding the terms of the transaction. In addition, in the Commission's view, the determination of whether such an ''obvious error'' has occurred should be based on specific and objective criteria and subject to specific and objective procedures. The Commission believes that the Exchange's proposed revisions to ISE Rule 720 establish specific and objective criteria for determining when a trade is an ''obvious error.'' The Commission also believes that the proposed amendments establish specific and objective procedures governing the adjustment or nullification of such trade.

The Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Amendment No. 2 does not make any substantive changes to the proposed rule text. It simply clarifies that an ''erroneous buy transaction'' is one in which the price paid by the person purchasing the option is erroneously high. Therefore, the Commission believes that granting accelerated approval of Amendment No. 2 is appropriate and consistent with section 6(b)(5)[9] and section 19(b)[10] of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to Amendment No. 2 that are filed with the Commission, and all written communications relating to Amendment No. 2 between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–2003–10 and should be submitted by July 23, 2003.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal, as amended, is consistent with the Act and the rules and regulations thereunder. It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–ISE–2002–10), as amended, be, and hereby is, approved,

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[8] 15 U.S.C. 78s(b)(2).

[9] 9 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated April 30, 2003 (''Amendment No. 1''). In Amendment No. 1, the ISE replaced the proposed rule text in its entirety.

[4] *See* Securities Exchange Act Release No. 47817 (May 8, 2003), 68 FR 26336 (May 15, 2003) (''Notice'').

[5] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division, Commission, dated June 9, 2003 (''Amendment No. 2''). In Amendment No. 2, the ISE amended proposed Supplementary Material .07 to ISE Rule 720 to clarify the definition of ''erroneous buy transaction.''

[6] For a description of the proposed rule change, *see* Notice, *supra,* n.4.

[7] 15 U.S.C. 78f(b)(5).

[8] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b).

[11] 15 U.S.C. 78s(b)(2).

and that Amendment No. 2 to the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48088; File No. SR–NASD–2003–85]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. and Amendments No. 1 and 2 Thereto Relating to a Post-Trade Anonymity Feature in SuperMontage

June 25, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 22, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Nasdaq has prepared. On June 2, 2003, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] On June 23, 2003, Nasdaq filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is seeking to add a post-trade anonymity feature to its SuperMontage trading system.

The text of the proposed rule change is below. Proposed new text is *italicized* and proposed deleted text is [bracketed].

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4712. Obligation To Honor System Trades

(a) If an NNMS Participant, or clearing member acting on his behalf, is reported by NNMS to clearing [at the close of any trading day], or shown by the activity reports generated by NNMS as constituting a side of a System trade, such NNMS Participant, or clearing member acting on his behalf, shall honor such trade on the scheduled settlement date.

(b) Nasdaq shall have no liability if an NNMS Participant, or a clearing member acting on his behalf, fails to satisfy the obligations in paragraph (a).

4719. Anonymity

(a) Transactions executed in NNMS in which at least one member submits a Non-Attributable Quote/Order will be processed anonymously. The transaction reports will indicate the details of the transactions, but will not reveal contra party identities.

(b)(1) The processing described in paragraph (a) shall not apply to transactions executed in NNMS when the member whose Quote/Order is decremented is an Order-Delivery ECN that charges an access fee.

(2) Except as required to comply with the request of a regulator, or as ordered by a court or arbitrator, Order-Delivery ECNs shall not disclose the identity of the member that submitted a Non-Attributable Quote/Order that decremented the Order-Delivery ECN's Quote/Order.

(c)(1) The Association may reveal a member's identity when the National Securities Clearing Corporation (''NSCC'') ceases to act for a member, or the member's clearing firm, and NSCC determines not to guarantee the settlement of the member's trades.

(2) The Association may reveal a member's identity for regulatory purposes or to comply with an order of an arbitrator or court.

(3) The Association may reveal a member's identity on risk management reports provided to the member's contra parties each day after 4 p.m., which disclose trading activity on an aggregate dollar value basis.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to add a post-trade anonymity feature to SuperMontage in response to demand from members. Today, systems that provide automatic executions of orders for Nasdaq stocks are commonplace and often it is the additional features offered by a system that determines whether market participants send orders to that system or a competing system. One such feature valued by market participants today is the ability to trade anonymously. When a member seeks to trade anonymously, it wants to prevent its contra party from knowing its identity.

Anonymity is important to market participants because sometimes the identity of a party can reveal important ''market intelligence'' and complicate a member's ability to execute its customer orders. For example, if members see a pattern in which a particular member is actively buying a security, and it is commonly known that this member handles the orders of several very large institutional customers, such as pension funds or mutual funds, the other members can adjust their trading strategy for that security in anticipation of the strong demand that should develop as the member attempts to fill the order of one or more of its large institutional customers. In such a scenario, the natural result is that the price of the security increases and it becomes more expensive to fill the order. This result commonly is referred

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, to Terri Evans, Assistant Director, Division of Market Regulation (''Division''), Commission, dated May 29, 2003 (''Amendment No. 1''). In Amendment No. 1, the Nasdaq added rule language in paragraph (c) of NASD Rule 4719 that states that the Nasdaq staff can limit a member's ability to submit anonymous orders upon request of the member's firm. This provision was subsequently withdrawn in Amendment No. 2.

[4] *See* Letter from Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, to Terri Evans, Assistant Director, Division, Commission, dated June 20, 2003 (''Amendment No. 2''). In Amendment No. 2, the Nasdaq withdrew the provision to restrict a member's ability to submit anonymous orders upon request of the member's firm in paragraph (c) of NASD Rule 4719. Nasdaq also codified the proposal, through proposed paragraph (c) of NASD Rule 4719, to indicate that a member's identity may be revealed: (1) When the National Securities Clearing Corporation (''NSCC'') ceases to act for a member or the member's clearing firm; (2) for regulatory purposes, or upon the order of a court or arbitrator; and (3) after 4 p.m. on trade date on an aggregate basis. Nasdaq also represented that it will retain the identities of the members that execute anonymous trades through SuperMontage for six years in order to satisfy members' record keeping obligations under Securities Exchange Act Rules 17a–3(a)(1) and 17a–4(a).

to as ''market impact.'' Nasdaq believes post-trade anonymity diminishes market impact, which can help members satisfy their duty of best execution.

Presently, SuperMontage only offers a pre-trade anonymity feature for certain trades, which means market participants do not know the identities of the members entering orders, but their identities are revealed to each other once a trade is executed.[5] The post-trade anonymity feature, or ''full anonymity'' feature, Nasdaq is proposing would reveal the members' identities to each other on a trade-by-trade basis in two circumstances: (1) if the member whose quote is hit (*i.e.*, the party providing the liquidity in the trade) is an ECN that participates in SuperMontage as an NNMS Order-Delivery ECN that charges an access fee;[6] or (2) the NSCC has ceased to act for the member involved in the trade, or for the clearing firm of the member involved in the trade, and the NSCC has decided not to guarantee the trades by the failed firm.[7] The reasons and process for revealing the members' identities in these circumstances is different and will be discussed in detail later. Nasdaq also proposes to provide members with additional risk management tools to complement the full anonymity feature.

Nasdaq's current pre-trade anonymity feature allows market makers, ECNs and Order Entry Firms to submit anonymous orders to SuperMontage for display under the ''SIZE'' market participant identifier (''MPID'').[8] When a trade is executed with an order that resides under the SIZE MPID, the identity of the member that anonymously submitted the order is revealed immediately to the other member involved in the trade—meaning anonymity is lost.[9]

The new full anonymity feature Nasdaq is proposing builds upon the pre-trade anonymity feature available today using the Non-Attributable Quote/Order feature and extends the anonymity beyond the time of execution by masking the identities of the members executing the trade. As discussed above, currently a member's identity is revealed immediately when a Non-Attributable Quote/Order is executed. SuperMontage produces an execution report that is sent to the parties to the trade and also creates a report in Nasdaq's Automated Confirmation Transaction Service (''ACT''). These reports contain the MPIDs for the members that executed the trade. Under the new proposal, when a member uses the Non-Attributable Quote/Order feature, instead of revealing the members' MPIDs, SuperMontage will substitute a four-letter identifier that indicates the trade is anonymous (*i.e.*, SIZE).[10] Therefore, instead of seeing its contra party's MPID on the reports, the reports will indicate SIZE as the contra party.[11] Replacing the members' MPIDs with SIZE does not alter how information is reported to the consolidated tape or Nasdaq's surveillance systems or the type of information reported to the consolidated tape or Nasdaq's surveillance systems. In addition, clearing firms will continue to receive immediate notification of trades executed by their correspondent firms,[12] and, except as described below, the new anonymity feature does not change how trades will be processed and settled through the NSCC.[13]

The ACT reports that the NSCC receives from Nasdaq for anonymous trades will contain the identities of the parties to the trade. This measure will enable the NSCC to continue its normal risk management functions and settle anonymous trades just the same as those that are executed without the anonymity feature, with one exception. The ACT report sent to the NSCC will contain an indicator noting that the trade is anonymous. The effect of this indicator is that, on the contract sheets the NSCC issues to its participants, the NSCC will substitute SIZE for the MPID of the contra party, in effect masking from members the identities of their contra parties.[14] The purpose of this masking is to preserve anonymity through settlement. If the NSCC did not mask the contra party identities, the contract sheets would reveal the identities of the parties to the trade and thus eliminate the full anonymity feature. With this minor change, anonymity is preserved through settlement.

Nasdaq also proposes to offer additional risk management tools to members to assist them in monitoring their exposure to members they have traded with on an anonymous basis. Nasdaq has discussed its proposed full anonymity feature with several clearing firms in an attempt to balance members' competing desires to trade anonymously and monitor their exposure to other members. An execution system that reveals a contra party's identity immediately when a trade is executed provides the maximum amount of information for risk management, but, of course, such a system does not provide the degree of anonymity desired to lessen market impact. On the other hand, a system that does not provide any information with respect to the identity of contra parties, which is desirable for minimizing market impact, withholds useful risk management information. Ultimately, the information that provides market intelligence and creates market impact is one and the same as the information used in risk

[5] Members seeking pre-trade anonymity submit ''Non-Attributable Quotes/Orders'' to SuperMontage. The term ''Non-Attributable Quote/Order'' is defined in Rule 4701(o) as ''a bid or offer Quote/Order that is entered by a Nasdaq Quoting Market Participant or NNMS Order Entry Firm and is designated for display (price and size) on an anonymous basis in the Nasdaq Order Display Facility.''

[6] The term ''NNMS Order-Delivery ECN'' is defined in Rule 4701(t)(2).

[7] A member's identity will be available to other members on certain compliance report cards issued by NASD's Market Regulation Department. However, the report cards normally are not issued until at least twenty-four days after trade date. In addition, NASD may reveal a member's identity to other members or others during a regulatory investigation or a routine oversight exam.

[8] Market makers and ECNs may also display Attributable Quotes/Orders under the market participant's MPID. However, Order Entry Firms can only post Non-Attributable Quotes/Orders for display in SuperMontage. *See* Securities Exchange Act Release No. 47830 (May 12, 2003), 68 FR 27126 (May 19, 2003).

[9] For the purpose of execution reports, Order Entry Firms have distinct MPIDs. Telephone conversation with Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, and Marc McKayle, Special Counsel, Division, Commission, on June 24, 2003.

[10] With one exception, trades will be processed anonymously if one of the parties submits a Non-Attributable Quote/Order. Thus, a member's trade can be processed anonymously even if it did not request anonymity. As discussed in detail later, the one exception is when the member whose quote is hit is an NNMS Order-Delivery ECN that charges a quote access fee.

[11] Nasdaq will know the identities of the members executing an anonymous trade and will provide a ''help desk'' that members can call to assist them in resolving disputed anonymous trades. Currently, members would contact each other and directly resolve disputed trades.

[12] When a correspondent firm executes an anonymous order in SuperMontage, its clearing firm will continue to receive a real-time SuperMontage report and ACT report containing all the trade details (*e.g.*, the number of shares and the price of the trade), except the identity of the correspondent's contra party. The details of anonymous trades also will be included in ACT's risk management tools. For example, anonymous trades will be included in the aggregate purchase and sales calculations performed by ACT and will be included in calculations for determining whether a correspondent firm is approaching the trading thresholds defined by the clearing firm.

[13] Nasdaq will not assume any responsibility to settle anonymous trades and the NSCC's settlement guarantee and close-out procedures for failed firms will not be affected by Nasdaq's anonymity proposal. Therefore, as required today by NASD Rules 4712 and 6160, members will be obligated to settle matched trades reported to the NSCC, including trades executed anonymously that have been matched and reported to the NSCC, but not yet guaranteed by the NSCC. Nasdaq will provide members several tools to manage their exposure prior to the NSCC's settlement guarantee attaching. These tools are described in detail later.

[14] The NSCC issues contract sheets throughout the day.

management. Therefore, Nasdaq's proposal provides anonymity but also provides members with information that will allow members to continue to manage their risk.

Nasdaq is proposing to add four new measures that should help members monitor their exposure to other members and take action quickly if a contra party ceases operation. Nasdaq believes that the first and second measures will assist members directly in their efforts to assess the risk associated with their anonymous trading, whereas the third and fourth measures involve closer coordination between Nasdaq and the NSCC, which indirectly should benefit members trading anonymously.

First, Nasdaq will provide members with an intra-day concentration report that will disclose a member's aggregate dollar value of purchases and sales with other members with whom it has traded anonymously. This information will help members quantify their ''worst case scenario,'' which would occur if one or all of their contra parties failed to settle all trades executed anonymously. With this information, members can determine whether any risk-limiting actions should be taken.

Second, Nasdaq will reveal after 4 p.m. Eastern Time the identities of the members listed on the intra-day concentration report.[15] With this information, members will know the exact dollar value of their aggregate purchases and sales with individual contra parties. This information then can be incorporated into a member's risk management system and analyzed on a contra party-by-contra party basis. If a member is concerned about trading with a particular member, the member will possess information that can help it assess whether any risk-limiting actions should be taken.

Third, Nasdaq will begin providing trade information to the NSCC in real time as trades are executed in SuperMontage. In comparison, today Nasdaq collects trade information and sends it to the NSCC at five pre-determined intervals throughout the day. With real time submission, the NSCC will possess trade information within seconds after a trade is executed and it can incorporate this information into its risk analysis of its participants. Ultimately, this could result in the NSCC reaching a decision earlier to cease to act for a participant, which would prevent other members from executing any additional trades with the firm or a firm that clears through that participant. Once the NSCC ceases to act for a participant, that firm, and any other firm that clears through the participant, will not be able to continue trading.

Fourth, once the NSCC has ceased to act for a participant and determined not to guarantee the settlement of the participant's trades, Nasdaq will coordinate with the NSCC and promptly disclose to members each trade executed anonymously with the firm the NSCC ceased to act for and any firms that cleared through that the NSCC participant.[16] As described earlier, when the NSCC ceases to act for a participant is one of the two general scenarios in which Nasdaq will reveal contra party identities on a trade-by-trade basis. This measure will allow members to determine quickly their potential exposure from anonymous trades with the failed firm and its correspondents and take any necessary risk-reducing actions.

The second scenario in which Nasdaq will reveal contra party identities on a trade-by-trade basis is when a member whose Quote/Order is decremented (*i.e.*, the liquidity providing member) is an Order-Delivery ECN that charges an access fee. The ultimate result is that members cannot trade with complete anonymity when accessing liquidity provided by Order-Delivery ECNs that charge access fees. Trades executed with these ECNs are processed differently because they have the discretion to reject trades with certain contra parties if the ECN is in dispute with the contra party concerning the ECN's quote access fee. Therefore, to provide fee-charging Order-Delivery ECNs with the opportunity to reject trades with certain members, Nasdaq must disclose each contra party's identity. Nasdaq believes that this process also will benefit members that execute trades with these ECNs because the members will be able to track the access fee charges accumulated with each ECN.

To preserve some degree of anonymity, while also accommodating the unique rights and needs of these ECNs, Nasdaq is proposing a rule that would prohibit fee-charging Order-Delivery ECNs from disclosing the identity of the member that submitted the Non-Attributable Quote/Order that decremented their Quote/Order.[17] The prohibition contains an exception, however, if the ECN is requested to provide such information to regulators or is ordered to disclose the information by a court or arbitrator. Based on conversations with ECNs, Nasdaq understands that ECNs do not normally disclose contra party identities for any trades executed through their systems because such a practice would diminish the anonymity features they provide. Therefore, Nasdaq believes the proposed rule prohibiting disclosure of this information is consistent with existing practices.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of section 15A(b)(6) of the Act.[18] Section 15A(b)(6) requires the rules of the NASD to be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Nasdaq believes the proposal is consistent with this standard because it balances two competing needs with respect to disclosure of contra party information. Masking contra party identities will help members in obtaining the best execution for their customer orders by limiting the market intelligence that is obtained, and the market impact that results, when a seller's or buyer's identity is revealed. Recognizing, however, that this same information is helpful to members in assessing contra party risk, Nasdaq has responded by proposing additional risk management features that should help members in monitoring trades executed anonymously.

Nasdaq also believes that the proposal balances the need to provide an anonymity feature in SuperMontage and the unique needs of Order-Delivery ECNs that charge quote access fees. The proposal will continue to provide fee-charging Order-Delivery ECNs with the identities of their contra parties so that they have the information necessary to decide whether to trade with an individual member or reject an order because of a dispute regarding the payment of fees. However, to limit the effect of the special processing on the anonymity provided by SuperMontage, Nasdaq is proposing to prohibit these ECNs from disclosing the identities of their contra parties for anonymous trades, which Nasdaq understands is consistent with existing practices. Fee-charging Order-Delivery ECNs would be permitted to disclose this information if

[15] *See* Amendment No. 2, *supra* note 4.

[16] *Id.*

[17] Non-Attributable Quotes/Orders contain an indicator noting that the order is to be processed anonymously. As such, Order-Entry ECNs will be able to distinguish Non-Attributable Quotes/Orders from those orders for which the prohibition will not apply.

[18] 15 U.S.C. 78*o*–3(b)(6).

requested by a regulator or ordered by a court or arbitrator.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NASD consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–85 and should be submitted by July 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–16712 Filed 7–1–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48093; File No. SR–NASD–2003–92]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Adopt NASD Rule 2370 To Govern Certain Lending Arrangements Between Registered Persons and Customers

June 26, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on June 11, 2003, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD proposes to adopt NASD Rule 2370 to govern lending arrangements between registered persons and customers. The text of the proposed rule change appears below. New text is in italics.

* * * * *

2370. Borrowing From or Lending to Customers

(a) No person associated with a member in any registered capacity may borrow money from or lend money to any customer of the member unless: (1) The member has written procedures allowing the borrowing and lending of money between such registered persons and customers of the member; (2) the lending or borrowing arrangement meets one of the following conditions: (A) the customer is a member of such person's immediate family; (B) the customer is a financial institution regularly engaged in the business of providing credit, financing, or loans, or other entity or person that regularly arranges or extends credit in the ordinary course of business; (C) the customer and the registered person are both registered persons of the same member firm; (D) the lending arrangement is based on a personal relationship with the customer, such that the loan would not have been solicited, offered, or given had the customer and the associated person not maintained a relationship outside of the broker/customer relationship; or (E) the lending arrangement is based on a business relationship outside of the broker-customer relationship; and (3) the member has pre-approved in writing the lending or borrowing arrangement.

(b) The term immediate family shall include parents, grandparents, mother-in-law or father-in-law, husband or wife, brother or sister, brother-in-law or sister-in-law, son-in law or daughter-in-law, children, grandchildren, cousin, aunt or uncle, or niece or nephew, and shall also include any other person whom the registered person supports, directly or indirectly, to a material extent.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed rule change is to prohibit registered persons from borrowing money from or lending money to a customer unless the member has written procedures allowing such lending arrangements consistent with the rule, the loan falls within one of five permissible types of lending arrangements, and the member pre-approves the loan in writing. The five types of permissible lending arrangements are: The customer is a member of the registered person's immediate family (as defined in the proposed rule); the customer is in the business of lending money; the

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

customer and the registered person are both registered persons of the same firm; the lending arrangement is based on a personal relationship outside of the broker-customer relationship; or the lending arrangement is based on a business relationship outside of the broker-customer relationship.

NASD believes that the solicitation of loans from customers by registered persons is an area of legitimate NASD interest because of the potential for misconduct. NASD has brought disciplinary action against registered persons who have violated just and equitable principles of trade by taking unfair advantage of their customers by inducing them to lend money in disregard of the customers' best interests, or by borrowing funds from, but not repaying, customers. The potential for misconduct also exists when a registered person lends money to a customer.

The proposed rule change establishes a regulatory framework that would give members greater control over, and more specific supervisory responsibilities for, lending arrangements between registered persons and their customers. Members could choose to permit their registered persons to borrow from or lend to customers consistent with the requirements of the rule or prohibit the practice in whole or in part. If members choose to permit their registered persons to engage in lending arrangements with customers, the proposed rule change would require members to have written procedures in place to monitor such lending arrangements. The notice and approval requirements of the proposed change would enhance members' ability to supervise the activities of registered personnel. Members would be able to evaluate, before granting approval, whether the lending arrangement falls within one of the five types of permissible arrangements. Members would be permitted to approve loans only if the loan falls within one of the five types of permissible lending arrangements. In addition, the notice requirement would place an affirmative obligation on registered persons that could be separately charged in a disciplinary action if not followed.

The proposed rule change also would enhance NASD's ability to monitor loans between registered persons and their customers. Currently, under controlling Commission decisions, to bring a disciplinary action against a registered person who has entered into an unethical lending arrangement with a customer, NASD generally must prove that the arrangement is inconsistent with just and equitable principles of trade under NASD Rule 2110 because the registered person has acted in bad faith or unethically. This can be difficult to prove in cases in which the customer is unable or unavailable to testify, or refuses to testify because he or she is relying on the registered person for financial advice. The proposed rule change would better enable NASD to monitor such loans, since members would be required to maintain written records of the loans as evidence of compliance. NASD also believes that the proposed rule change would be an effective deterrent to potential misconduct because members would require their registered persons to give prior notice of the loan and get approval from the member before engaging in the transaction, and the lending arrangement must fall within one of the five types of permissible arrangements. Members that do not wish to engage in this review and approval process could prohibit the practice altogether.

It is important to note that this proposal does not change the application of Regulation T [3] to lending activities by associated persons. Specifically, the definition of ''creditor'' under Regulation T extends to associated persons of broker/dealers and therefore, certain loans to customers by associated persons may require compliance with the provisions of Regulation T.[4]

(2) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[5] which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change is designed to accomplish these ends by establishing a regulatory framework that will give members greater control over lending arrangements by permitting members to prohibit such arrangements altogether or, in the alternative, permit such arrangements only if they fall within one of five types of permissible arrangements. Members that permit such arrangements would be required to keep written procedures. Providing the member permits such loans, registered persons would be required to give their firms prior notice of the loan, and the member will be required to pre-approve the loan in writing. These procedures would enable both members and NASD to proscribe customer-broker loans and monitor those that have been approved.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received for this rule proposal. Previously, in NASD Notice to Members 94–93 (December 1994), NASD requested comment on a more limited proposal regarding the adoption of a rule that would require registered persons to provide prior notification to, and obtain prior approval from, their employing member firm when personally borrowing funds or securities from customers. NASD has not included a discussion of the comments received on that proposal because the current rule proposal differs significantly in that it specifies the permissible types of lending arrangements and requires members to have written procedures that permit only those lending arrangements consistent with the rule.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the NASD consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

[3] 12 CFR 220.

[4] 12 CFR 220.2.

[5] 15 U.S.C. 78o–3(b)(6).

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Association. All submissions should refer to File No. SR–NASD–2003–92 and should be submitted by July 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–16714 Filed 7–1–03; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before July 17, 2003. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Disaster Home/Business Loan Inquiry Record.

No.: 700.

Frequency: On Occasion.

Description of Respondents: Disaster Victim's.

Responses: 42,196.

Annual Burden: 10,549.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 03–16696 Filed 7–1–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3516]

State of Arkansas

As a result of the President's major disaster declaration for Public Assistance on June 6, 2003, and subsequent amendments closing the incident period effective June 10 and adding Individual Assistance on June 20, 2003, I find that the following counties in the State of Arkansas constitute a disaster area due to damages caused by severe storms, tornadoes, and flooding that occurred on May 2, 2003 and continuing through June 10, 2003: Benton, Chicot, Cleburne, Columbia, Conway, Craighead, Cross, Crittenden, Faulkner, Fulton, Jackson, Lonoke, Nevada, Perry, Phillips, Poinsett, St. Francis, White, and Woodruff. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 19, 2003 and for economic injury until the close of business on March 22, 2004 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Arkansas, Ashley, Baxter, Carroll, Clark, Desha, Drew, Garland, Greene, Hempstead, Independence, Izard, Jefferson, Lafayette, Lawrence, Lee, Madison, Mississippi, Monroe, Ouachita, Pike, Pope, Prairie, Pulaski, Saline, Sharp, Stone, Union, Van Buren, Washington, and Yell in the State of Arkansas; Claiborne, East Carroll, Morehouse, Webster, and West Carroll in the State of Louisiana; Bolivar, Coahoma, De Soto, Issaquena, Tunica, and Washington in the State of Mississippi; Barry, Dunklin, Howell, McDonald, Oregon, and Ozark in the State of Missouri; Adair and Delaware in the State of Oklahoma; and Shelby and Tipton in the State of Tennessee.

The interest rates are:

For Physical Damage:

Homeowners with credit available elsewhere—*5.625%.*

Homeowners without credit available elsewhere—*2.812%.*

Businesses with credit available elsewhere—*5.906%.*

Businesses and non-profit organizations without credit available elsewhere—*2.953%.*

Others (including non-profit organizations) with credit available elsewhere—*5.500%.*

For Economic Injury:

Businesses and small agricultural cooperatives without credit available elsewhere—*2.953%.*

The number assigned to this disaster for physical damage is 351611. For economic injury, the numbers are 9W0600 for Arkansas, 9W0700 for Louisiana, 9W0800 for Mississippi, 9W0900 for Missouri, 9W1000 for Oklahoma, and 9W1100 for Tennessee.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: June 25, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–16698 Filed 7–1–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3512]

State of West Virginia; Amendment # 1

In accordance with the notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective June 21, 2003, the above numbered declaration is hereby amended to include Cabell, Mingo, and McDowell Counties in the State of West Virginia as a disaster area due to damages caused by severe storms, flooding, and landslides that occurred June 11, 2003 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Pike in the Commonwealth of Kentucky, and Buchanan, Mercer, and Tazewell counties in the Commonwealth of Virginia may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

The number for economic injury for the Commonwealth of Virginia is 9W13.

All other information remains the same, *i.e.*, the deadline for filing

[6] 17 CFR 200.30–3(a)(12).

applications for physical damage is August 20, 2003, and for economic injury the deadline is March 22, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: June 25, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–16697 Filed 7–1–03; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Social Security Ruling, SSR 03–1p.; Titles II and XVI: Development and Evaluation of Disability Claims Involving Postpolio Sequelae

AGENCY: Social Security Administration.

ACTION: Notice of Social Security ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling, SSR 03–1p. This Ruling clarifies the policies of the Social Security Administration for developing and evaluating title II and title XVI claims for disability on the basis of postpolio sequelae. Postpolio sequelae refer to the documented residuals of acute polio infection, as well as other disorders that have an etiological link to either the acute polio infection or to the chronic deficits that resulted from the infection. These disorders typically manifest late in the lives of polio survivors, and include such things as postpolio syndrome (also known as the late effects of poliomyelitis), the early presence of advanced degenerative arthritis, sleep disorders, respiratory insufficiency, and various mental disorders.

EFFECTIVE DATE: July 2, 2003.

FOR FURTHER INFORMATION CONTACT: Carolyn Kiefer, Office of Medical Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–9104 or TTY (410) 966–5609. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet Web site, *Social Security Online,* at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 402.35(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and policy interpretations of the law and regulations.

Although Social Security Rulings do not have the same force and effect as the statute or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 402.35(b)(1), and are relied upon as precedents in adjudicating cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Program Nos. 96.001 Social Security—Disability Insurance; 96.006 Supplemental Security Income)

Dated: June 26, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

Policy Interpretation Ruling

Purpose: To provide guidance on SSA policy concerning the development and evaluation of postpolio sequelae in disability claims filed under titles II and XVI of the Social Security Act (the Act).

Citations (Authority):

Sections 216(i), 223(d), 223(f), 1614(a)(3) and 1614(a)(4) of the Social Security Act, as amended; Regulations No. 4, subpart P, sections 404.1502, 404.1505, 404.1508, 404.1509, 404.1511–404.1513, 404.1520, 404.1520a, 404.1521, 404.1523, 404.1525,404.1526, 404.1528, 404.1529, 404.1530, 404.1545, 404.1546, 404.1560–404.1569a; and 404.1593–404.1594 and Regulations No. 16, subpart I, sections 416.902, 416.905, 416.906, 416.908, 416.909, 416.911, 416.913, 416.920, 416.920a, 416.921, 416.923, 416.924, 416.924a–416.924c, 416.925, 416.926, 416.926a, 416.928, 416.929, 416.930, 416.945, 416.946, 416.960–416.969a, 416.987, and 416.993–416.994a.

Introduction: ''Postpolio sequelae'' refers to the documented residuals of acute polioencephalomyelitis (polio)[1] infection as well as other disorders that have an etiological link to either the acute polio infection or to chronic deficits resulting from the acute infection. Disorders that may manifest late in the lives of polio survivors include postpolio syndrome (also known as the late effects of poliomyelitis), early advanced degenerative arthritis, sleep disorders, respiratory insufficiency, and a variety of mental disorders. Any one or a combination of these disorders, appropriately documented, will constitute the presence of ''postpolio sequelae'' for purposes of developing and evaluating claims for disability on the basis of postpolio sequelae under Social Security disability. Even though some polio survivors may have had previously undetected motor residuals following the acute polio infection, they may still report progressive muscle weakness later in life and manifest any of the disorders listed above.

The Act and our implementing regulations require that an individual establish disability based on the existence of a medically determinable impairment; *i.e.*, one that can be shown by medical evidence, consisting of symptoms, signs, and laboratory findings. Disability may not be established on the basis of an individual's statement of symptoms alone.

This Ruling explains that postpolio sequelae, when accompanied by appropriate symptoms, signs, and laboratory findings, is a medically determinable impairment that can be the basis for a finding of ''disability.'' It also provides guidance for the evaluation of claims involving postpolio sequelae.

Policy Interpretation: Postpolio sequelae constitute a medically determinable impairment when documented by appropriate medical signs, symptoms, and laboratory findings. Postpolio sequelae may be the basis for a finding of ''disability,'' as discussed below. When making a determination of disability in cases of postpolio sequelae, the adjudicator or decisionmaker must be sure that all of the individual's functional limitations have been considered. To do this, the adjudicator must make a comprehensive assessment of the cumulative and interactive effects of all of the

[1] Polio is caused by one of three types of polioviruses affecting the brain and spinal cord. No matter which neurons are attacked by the virus, the severity of any residual deficit depends upon how many cells within a specific area are destroyed. Fortunately, the polio infection was eradicated in the United States during the late 1950s following the development of oral polio vaccine and successful mass immunization. Most polio survivors in this country are now in their forties or older, but polio continues to be a common infection in underdeveloped countries. The World Health Organization is sponsoring immunization programs in hopes of completely eradicating the disease. Most individuals who contract polio only have mild symptoms at the time of the initial infection and then fully recover. Only 2 percent of infected persons experience paralysis from polio. Deaths from acute polio infection usually occur within the first few days following the onset of paralysis. About one-third of those individuals who do develop paralysis are left with some degree of permanent weakness, commonly involving a single extremity. Postpolio muscle paralysis is of the lower motor neuron variety and is characterized by weakness, muscle atrophy, and reflex loss.

individual's impairments and related symptoms, including the effects of postpolio sequelae.

What Is the Definition of ''Disability'' and ''Medically Determinable Impairment''?

Sections 216(i) and 1614(a)(3) of the Social Security Act (the Act) define ''disability'' [2] as the inability to engage in any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment (or combination of impairments) which can be expected to result in death or which has lasted or can be expected to last a continuous period of not less than 12 months. Sections 223(d)(3) and 1614(a)(3)(D) of the Act, and 20 CFR 404.1508 and 416.908, require that an impairment result from anatomical, physiological, or psychological abnormalities that can be shown by medically acceptable clinical and laboratory diagnostic techniques. The Act and regulations further require that an impairment be established by medical evidence that consists of signs, symptoms, and laboratory findings, and not only by an individual's statement of symptoms.

For Purposes of Disability Claims Adjudication, What Constitutes Postpolio Sequelae?

For purposes of disability claims adjudication, postpolio sequelae refer to multiple physical and mental disorders that may be manifested by polio survivors many years following acute polio infection. Any one or a combination of these disorders appropriately documented by signs, symptoms, and laboratory findings will constitute the presence of postpolio sequelae. The term ''postpolio sequelae'' includes the documented residuals of acute infection as well as all other documented clinical conditions that have an etiological link to either the acute infection or to its residual deficits.

Motor weakness is the most common residual of acute polio infection and is usually manifested by observable weakness, muscle atrophy, and reduced peripheral reflexes. These obvious clinical findings are used to document the history of poliomyelitis.

Electromyographic studies may be used by clinicians in clarifying the cause and extent of neuromuscular impairment, but should not be needed for purposes of disability decisionmaking. Nonetheless, when electromyography (EMG) results are available for review, these data should be considered in decisionmaking. Typically, we will not order or purchase EMG studies.

In the absence of evidence to the contrary, and as long as the medical findings support a reasonable medical link between the prior polio infection and the present manifestation of any one or combination of the disorders discussed in the ruling, we will find that the individual has postpolio sequelae. For example, an individual with a history of polio affecting the left lower extremity who, on examination, has weakness and atrophy of the left thigh musculature with an observable limp now complains of chronic left lower extremity pain and is found to have lumbar stenosis documented by medically acceptable imaging. As discussed below, due to the chronic postural imbalance related to the effects of polio, a reasonable medical link exists between this individual's current medical condition (degenerative lumbar spine disease) and his/her prior polio residuals. Accordingly, we would make a finding of postpolio sequelae. On the other hand, an individual with a history of polio (for example, stating ''I was in an iron lung'') who, on examination, has normal motor findings, including normal posture and gait, now complains of pain clinically consistent with chronic radiculopathy, and has medically acceptable imaging demonstrating degenerative arthritis in the lumbar spine. This individual's current medical condition does not demonstrate a reasonable medical connection with the prior polio; instead, the degenerative arthritis should be adjudicated as a musculoskeletal disorder unrelated to the prior polio infection.

Postpolio sequelae include such disorders as postpolio syndrome (also know as the late effects of poliomyelitis), early advanced degenerative arthritis, sleep disorders, respiratory insufficiency, and various mental disorders. These disorders and documentation issues concerning them are discussed in detail below.

What Is Meant by the Term ''Postpolio Syndrome''?

According to the National Institute of Neurological Disorders and Stroke (NINDS), postpolio syndrome is a condition that affects polio survivors anywhere from 10 to 40 years after recovery from an initial paralytic attack of the poliomyelitis virus. The NINDS states that postpolio syndrome is characterized by a further weakening of muscles that were previously affected by the polio infection. The signs and symptoms include fatigue, slowly progressive muscle weakness, and, at times, muscular atrophy. The NINDS states that joint pain and increasing skeletal deformities such as scoliosis are common. Not all polio survivors experience these clinical problems, and the extent to which polio survivors are affected by postpolio syndrome varies. The onset of new or worsening signs and symptoms is associated with a further reduction of the individual's capacity to independently carry out activities of daily living.

How Does the Presence of Early Advanced Degenerative Arthritis Constitute an Element of Postpolio Sequelae?

Polio survivors often manifest motor residuals in a single extremity and thus function day-to-day with chronic postural imbalance. Clinicians have described degenerative musculoskeletal disorders etiologically linked to long-standing postural imbalance. Abnormal weight-bearing in polio survivors produces exaggerated wear and tear on the bones and joints of the spine or limbs that are overused to compensate for limbs weakened by polio. Early onset of advanced degenerative arthritis can be found in a compensatory extremity or spine. Where such an etiological relationship is clear, clinically documented early advanced degenerative arthritis in a compensating limb or spine is considered one of the postpolio sequelae.

Documentation of early advanced degenerative arthritis may include medically appropriate imaging or abnormal physical findings of advanced arthritis on clinical examination.

Chronic pain disorders related to early degenerative osteoarthritis should be evaluated based on the impact of the pain and its treatment on the individual's physical and mental functioning.

Why Are Sleep Disorders and Respiratory Insufficiency Possible Manifestations of Postpolio Sequelae?

Some polio survivors report the occurrence of sleep disorders that are determined by clinical evaluation to be related to respiratory insufficiency during sleep. The poliovirus has demonstrated a propensity to attack the motor neurons responsible for respiratory function, and, during the acute infection, some individuals require ventilatory assistance. For example, years ago patients with acute polio infection were placed in an ''iron lung'' for ventilatory assistance. Some patients who required such assistance recovered and may have returned to normal lives without obvious signs of respiratory insufficiency. Some polio

[2] Except for statutory blindness.

survivors, however, have reported the onset of sleep disorders years following the acute polio infection, and physicians have linked these sleep disorders to weakening of the respiratory musculature. During sleep, even slight weakness of the respiratory musculature may become clinically significant and interfere with breathing capacity. Chronic sleep deprivation resulting from repeated episodes of sleep apnea may result in the development of excessive daytime drowsiness or cognitive and behavioral changes.

Respiratory insufficiency should be documented by abnormal pulmonary function studies. The presence of a sleep disorder related to respiratory insufficiency requires documentation by longitudinal treatment records, including such things as abnormal polysomnography or other appropriate evidence. Note, however, that we [3] generally will not purchase a polysomnogram (also called a PSG, sleep study, or sleep test). *See also* 3.00H of the Respiratory System medical listings for additional information concerning sleep-related breathing disorders (*see* 20 CFR appendix 1 to subpart P of part 404—Listing of Impairments).

What Types of Mental Disorders May Be Seen in Individuals With Postpolio Sequelae?

Some polio survivors report the onset of problems with attention, concentration, cognition, or behavior. Some researchers have suggested that certain cognitive and behavioral deficits are the result of the prior polio infection that involved the brain, although others do not agree with that concept. Other researchers have suggested that the traumatic psychological experiences associated with acute polio infection are revived when polio survivors recognize the onset of further weakness and functional loss.

Many polio survivors endured a life-threatening infection as young children. They may have spent extended periods away from their homes and families while hospitalized with paralysis or respiratory dysfunction, or while undergoing multiple orthopedic surgeries. Often they endured many months, or sometimes years, of hospitalization and rehabilitation. The psychological effect of perceiving the onset of further weakness, fatigue, respiratory dysfunction or joint pain, many years following the acute infection, can be significant. Signs and symptoms of anxiety and depression may produce further deterioration in function.

Any mental impairment that could have an etiological link to the acute polio infection or its chronic residuals may be considered a manifestation of postpolio sequelae. Deficits in attention, cognition, or behavior may be demonstrated by reduced concentration capacity, inability to persist in tasks, or memory problems. Also, behavioral abnormalities may be demonstrated by mood changes, social withdrawal, or other behaviors inappropriate for the individual. Mood disorders characterized by anxiety and depression may also be seen and clinically documented in these individuals.

How Do Postpolio Sequelae Affect an Individual's Functional Capacities?

Individuals experiencing postpolio sequelae may complain of the new onset of reduced physical and mental functional ability. Complaints of fatigue, weakness, intolerance to cold, joint and muscle pain, shortness of breath and sleep problems, mood changes, or decreased attention and concentration capacity may hallmark the onset of postpolio sequelae. Weakness, fatigue, or muscle and joint pain may cause increasing problems in activities such as lifting, bending, prolonged standing, walking, climbing stairs, using a wheelchair, transferring from a wheelchair (*e.g.*, from wheelchair to toilet), sleeping, dressing, and any activity that requires repetition or endurance. Changes in attention, cognition, or behavior may be manifested by reduced capacity to concentrate on tasks, memory deficits, mood changes, social withdrawal, or inappropriate behavior.

Many polio survivors who had been in a stable condition may begin to require new or additional assistive devices, such as braces, canes, crutches, walkers, wheelchairs, or pulmonary support. The reduced ability to sustain customary activities, including work, may result. A previously stable functional capacity may be further diminished.

Many individuals with medically severe polio residuals have worked despite their limitations. The new onset of further physical or mental impairments (even though they may appear to be relatively minor) in polio survivors may result in further functional problems that can limit or prevent their ability to continue work activity. Postpolio sequelae may effectively alter the ability of these individuals to continue functioning at the same level they maintained for years following their initial polio infection.

How Will We Document Claims Involving Postpolio Sequelae?

We generally will rely on documentation provided by the individual's treating physicians and psychologists (including a report of the medical history, physical examination, and available laboratory findings) to establish the presence of postpolio sequelae as a medically determinable impairment. In the absence of evidence to the contrary, we will make a finding that a medically determinable impairment is established if any of the disorders discussed above have been documented by acceptable clinical signs, symptoms, and laboratory findings.

However, if evidence indicates that the diagnosis is questionable, we will contact the treating source for clarification, in accordance with 20 CFR 404.1512(e) and 416.912(e). Of course, if a favorable disability determination or decision can be made based on the available evidence of record, whether or not a link to the prior polio infection is evident, no further development need be undertaken.

The careful development of postpolio sequelae should include descriptions of the past acute illness (old records are not required), as well as a report of the current findings on physical examination. The examination report should also include the severity of any residual weakness, as well as the onset, pattern, and severity of any new physical or mental deficits. A description of current functional limitations and restrictions on physical and mental activity should be obtained from the examiner.

When possible, detailed longitudinal treatment records from the treating source should be obtained. In cases where severity of the impairment is unclear, an examination by a physician or psychologist who is knowledgeable about polio and postpolio sequelae is appropriate, if such a specialist is available.

How Will We Use Evidence From Third Parties in Cases of Postpolio Sequelae?

Evidence from employers and other third party sources may be valuable in documenting a loss of a previous level of functioning and should be sought when there is a discrepancy or a question of credibility in the evidence of record and a fully favorable

[3] The terms *we* and *us* in this Social Security Ruling have the same meaning as in 20 CFR 404.1502 and 416.902. *We* or *us* refers to either the Social Security Administration or the State agency making the disability or blindness determination; that is, our adjudicators at all levels of the administrative review process and our quality reviewers.

determination or decision cannot be made based on the available evidence. For detailed discussions regarding these factors, please refer to SSR 96–7p, ''Titles II and XVI: Evaluation of Symptoms in Disability Claims: Assessing the Credibility of an Individual's Statements,'' and SSR 96–8p, ''Titles II and XVI: Assessing the Residual Functional Capacity (RFC) in Initial Claims.''

How Are Symptoms Assessed in Cases of Postpolio Sequelae?

Once postpolio sequelae has been documented as a medically determinable impairment, the impact of any of the symptoms of postpolio sequelae, including fatigue, weakness, pain, intolerance to cold, etc., must be considered both in determining the severity of the impairment and in assessing the individual's RFC. The adjudicator must make a comprehensive assessment of the cumulative and interactive effects of all of the individual's impairments and related symptoms, including the effects of postpolio sequelae. Evaluate all symptoms and their effects in accordance with 20 CFR 404.1529 and 416.929, and SSR 96–7p, ''Titles II and XVI: Evaluation of Symptoms in Disability Claims: Assessing the Credibility of an Individual's Statements.''

What Is the Expected Duration of Postpolio Sequelae?

Most postpolio sequelae are stable or very slowly progressive disorders. The medical evidence should readily support an expected duration of at least 12 or more months.

Can the Impairment of Postpolio Sequelae Meet or Equal Listing 11.11?

The listing criteria under our current listing 11.11, Anterior poliomyelitis, may be applied both to cases of static polio (where there has been no reported worsening after initial recovery) and to cases presenting with postpolio sequelae. All documented postpolio sequelae must be considered either alone or in combination to determine whether the medical criteria of listing 11.11, or any other listing, have been met or equaled. If the impairment is not found to meet or equal a listed impairment, we consider the impact of the impairment and any related symptoms in determining an individual's RFC and we proceed to evaluate the individual's impairment under our sequential evaluation procedures in accordance with 20 CFR 404.1545 and 416.945. It is essential that the cumulative and interactive effects of all of the individual's impairments, including symptoms, be carefully assessed in determining the individual's RFC in these cases.

How Is a Disability Onset Date Determined in Case of Postpolio Sequelae?

A disability onset date in cases involving postpolio sequelae is set based on the individual's allegations, his or her work history, and the medical and other evidence concerning impairment severity. Generally, the new problems associated with postpolio sequelae are gradual and non-traumatic, but acute injuries or events, such as herniated discs, or broken bones from falls, may be markers for establishing a disability onset date. For additional discussion concerning the determination of onset date, refer to SSR 83–20, ''Titles II and XVI: Onset of Disability.''

Effective Date: This ruling is effective upon publication in the **Federal Register**.

Cross References: SSR 83–20, ''Titles II and XVI: Onset of Disability,'' SSR 96–3p, ''Titles II and XVI: Considering Allegations of Pain and Other Symptoms in Determining Whether a Medically Determinable Impairment is Severe,'' SSR 96–4p, ''Titles II and XVI: Symptoms, Medically Determinable Physical and Mental Impairments, and Exertional and Nonexertional Limitations,'' SSR 96–7p, ''Titles II and XVI: Evaluation of Symptoms in Disability Claims: Assessing the Credibility of an Individual's Statements,'' SSR 96–8p, ''Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims,'' and SSR 96–9p, ''Titles II and XVI: Determining Capability to Do Other Work—Implications of a Residual Functional Capacity for Less Than a Full Range of Sedentary Work.''

[FR Doc. 03–16719 Filed 7–1–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4391]

Culturally Significant Objects Imported for Exhibition Determinations: ''Petra Rediscovered''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Petra Rediscovered,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the American Museum of Natural History, New York, from on or about September 10, 2004 to on or about January 16, 2005; at the Houston Museum of Science from on or about May 15, 2006 to on or about September 15, 2006 (following their exhibition at the Canadian Museum of Civilization, Ottawa, from on or about October 15, 2005 to on or about March 15, 2006); at the Fernbank Museum, Atlanta, from on or about November 15, 2006 to on or about March 15, 2007, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Orde F. Kittrie, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/401–4779). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: June 26, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs Department of State.

[FR Doc. 03–16723 Filed 7–1–03; 8:45 am]

BILLING CODE 4710–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Request for Public Comment on Duty Drawback and Deferral in Free Trade Agreement Negotiations

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments.

SUMMARY: The interagency Trade Policy Staff Committee (TPSC) seeks public comment on the treatment of duty drawback and deferral regimes in free trade agreement (FTA) negotiations currently underway with Central

America, Australia, Morocco, the Southern African Customs Union and the countries participating in the Free Trade Area of the Americas (FTAA).

DATES: Public comments should be received no later than Noon, July 30, 2003.

FOR FURTHER INFORMATION: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative at (202) 395–3475. For substantive questions pertaining to this request for public comment, contact Sarah Sipkins, Director for Market Access, Office of the USTR, at (202) 395–5656.

SUPPLEMENTARY INFORMATION: The U.S. Government is seeking public comment on appropriate disciplines regarding the use of domestic duty drawback and deferral programs for shipments between parties to the free trade agreements it is negotiating. Duty drawback and deferral regimes rebate, defer or reduce duties paid on material inputs contingent upon exportation of the processed or finished goods. In the context of an FTA, where inputs are dutiable in the United States and in the FTA partner country, duty drawback programs can distort investment decisions by creating an incentive for investors to locate in the FTA partner country in order to benefit from duty drawback when exporting processed goods for sale in the U.S. market. These programs also can create ''export platforms'' for materials produced in third countries since they de facto provide duty free treatment negotiated under the FTA to inputs from third countries when the processed goods are exported to the territory of the FTA partner. For industries in FTA partner countries, the gains from tariff reduction under an FTAs on average far exceed any tariff refunds foregone under these programs.

Thus, restrictions on the use of these programs are a standard feature of most FTAs around the globe. The NAFTA restricts duty deferral and drawback to the lesser of duties paid on the imported input or duties paid on the processed good exported to a NAFTA trading partner. The United States-Chile FTA provides for a gradual phase out of the use of these programs for shipments between the Parties. U.S. proposals in ongoing FTA negotiations are modeled on the U.S.-Chile provision.

All interested parties are invited to provide their written views and recommendations on this matter. Persons submitting comments should specify whether the comments apply to all or only some of the FTA negotiations currently underway.

Request for Comments

Consideration will be given to any written comments that are timely submitted to USTR. Each person submitting a comment should include his or her name and address, give reasons for any recommendation and indicate whether those recommendations apply to all of the above-referenced negotiations.

In order to facilitate prompt consideration of submissions, USTR strongly urges and prefers electronic e-mail submissions in response to this notice. The e-mail address is *FR0079@ustr.gov*. It is strongly recommended that comments submitted by mail or express delivery service to the address for Ms. Sipkins listed above also be sent by e-mail. Persons making submissions by e-mail should use the following subject line: ''Duty Drawback in FTAs.'' Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters ''BC-'', and the file name of the public version should begin with the characters ''P-''. The ''P-'' or ''BC-'' should be followed by the name of the submitter. Persons making submissions by e-mail should not provide separate cover letters; information that appears in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files. Persons submitting written comments by mail or express delivery service should provide 20 copies, in English.

Written comments will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked ''BUSINESS CONFIDENTIAL'' at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file may be made by calling (202) 395–6186.

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 03–16783 Filed 7–1–03; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending June 20, 2003

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2003–15429.
Date Filed: June 16, 2003.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 305, PTC COMP 1061 dated 17 June 2003, General Increase Resolution 002mm, (except within Europe, between USA/US Territories and Austria, Chile, Czech Republic, Finland, France (including French Guiana, French Polynesia, Guadeloupe, Martinique, New Caledonia, Reunion, Saint Pierre and Miquelon), Germany, Iceland, Italy, Korea (Rep. of), Malaysia, Netherlands, New Zealand, Panama, Scandinavia, Switzerland) Intended effective date: 1 July 2003.

Docket Number: OST–2003–15430.
Date Filed: June 16, 2003.
Parties: Members of the International Air Transport Association.
Subject: PTC12 CAN–EUR 0093 dated 13 June 2003, TC12 Canada-Europe Expedited Resolution 002j r1-r9. Intended effective date: 1 August 2003.

Docket Number: OST–2003–15474.
Date Filed: June 19, 2003.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 304, PTC123 0240 dated 20 June 2003, North, Mid, South Atlantic, Special Passenger Amending Resolution 010r from India r1-r15. Intended effective date: 1 July 2003.

Docket Number: OST–2003–15480.
Date Filed: June 20, 2003.
Parties: Members of the International Air Transport Association.
Subject: PTC31 South 0142 dated 23 May 2003, TC31 South Pacific (except between French Polynesia, New Caledonia, New Zealand and USA) Resolutions r1-r29, PTC31 South 0143 dated 23 May 2003, TC31 South Pacific between French Polynesia, New Caledonia, New Zealand and USA Resolutions r30-r46, Minutes—PTC31 South 0144 dated 20 June 2003, Tables—PTC31

South Fares 0033 dated 17 June 2003. Intended effective date: 1 October 2003.

Dorothy Y. Beard,

Chief, Docket Operations & Media Management, Federal Register Liaison.

[FR Doc. 03–16709 Filed 7–1–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending June 20, 2003

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2003–15451.

Date Filed: June 18, 2003.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 9, 2003.

Description: Application of Atlasjet Uluslararasi Havacilik A.S., pursuant to 49 U.S.C. Section 41301, 14 CFR part 211 and subpart B, requesting a foreign air carrier permit authorizing it to engage in charter foreign air transportation of persons, property, and mail between points in Turkey and points in the United States and between points in the United States and points in third countries as authorized by and in accordance with the provisions of the Air Transport Agreement executed between the Governments of the Republic of Turkey and the United States.

Dorothy Y. Beard,

Chief, Docket Operations & Media Management, Federal Register Liaison.

[FR Doc. 03–16710 Filed 7–1–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular (AC) 20–146, Methodology for Dynamic Seat Certification by Analysis for Use in Parts 23, 25, 27, and 29 Airplanes and Rotorcraft

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 20–146, Methodology for Dynamic Seat Certification by Analysis for Use in parts 23, 25, 27, and 29 Airplanes and Rotorcraft. The AC sets forth an acceptable means, but not the only means, for demonstrating compliance to certain sections of the regulations and the technical standard order associated with those regulations. The AC provides guidance on how to validate the computer model and under what conditions the model may be used in support of certification or TSO approval/authorization.

DATES: Advisory Circular 20–146 was issued by the Acting Manager of the Aircraft Engineering Division on May 19, 2003.

How To Obtain Copies: A paper copy of AC 20–146 may be obtained by writing to the U.S. Department of Transportation, Subsequent Distribution Office, DOT Warehouse, SVC–121.23, Ardmore East Business Center, 3341Q 75th Avenue, Landover, MD 20785, telephone 301–322–5377, or by faxing your request to the warehouse at 301–386–5394. The AC will also be available on the Internet at *http://www.airweb.faa.gov/AC.*

Issued in Kansas City, Missouri, on June 17, 2003.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–16641 Filed 7–1–03; 8:45 am]

BILLING CODE 4910–13–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 Mangement 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 March 28, 2003 on pages 15259–15260.

DATES: Comments must be submitted on or before August 1, 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)

Title: Revisions to Digital Flight Data Recorders.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0616.

Forms(s): N/A.

Affected Public: A total of 2960 air carriers.

Abstract: This rule requires that certain airplanes be equipped to accommodate additional digital flight data recorder parameters. The revisions require additional information to be collected to enable more thorough accident or incident investigation and to enable industry to predict certain trends to make necessary modifications before an accident or incident happens.

Estimated Annual Burden Hours: An estimated 1 hour 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 June 25, 2003.

Judith D. Street,

FAA Information Collection Clearance Officer, APF–100.

[FR Doc. 03–16646 Filed 7–1–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–36]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for amendment to exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before July 22, 2003.

ADDRESSES: Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–12918 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Annette Kovite (425–227–1262), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave., SW., Renton, WA 98055–4056; or Vanessa Wilkins (202–267–8029), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on June 24, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–12918.
Petitioner: Asia Pacific Airlines.
Section of 14 CFR Affected: 14 CFR 25.785(j), § 25.813(b), § 25.857(e), and § 25.1447(c)(1).
Description of Relief Sought: To amend Exemption No. 9765, previously issued to Asia Pacific Airlines on January 29, 2003, to allow carriage of two supernumeraries on Boeing Model 727–200 all-cargo airplanes with the flight deck door closed during taxi, takeoff, and landing and the designation of exits in the Class E compartment, instead of the right flight deck window exit, for supernumerary use.

[FR Doc. 03–16642 Filed 7–1–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–39]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before July 22, 2003.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–200X-XXXXX] by any of the following methods:

- *Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590-001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

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

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Denise Emrick (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on June 26, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2003–15315.
Petitioner: Northwest Airlines.
Docket No.: FAA–2003–15427.
Petitioner: Delta Air Lines.
Docket No.: FAA–2003–15347.
Petitioner: Continental Airlines.
Docket No.: FAA–2003–15365.
Petitioner: Continental Micronesia, Inc.
Docket No.: FAA–2003–15271.
Petitioner: United Airlines.
Section of 14 CFR Affected: 14 CFR 121.333(c)(3).

Description of Relief Sought: To permit a pilot to be alone on the flight deck without having to put on and use an oxygen mask when at or below FL 410. This relief is being sought for domestic, flag and supplemental operations on aircraft equipped with quick-donning oxygen masks.

[FR Doc. 03–16643 Filed 7–1–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application No. 03–04–C–00–ICT To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Wichita Mid-Continent Airport, Wichita, KS

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 invites public comment on the application to impose and use the revenue from a PFC at Wichita Mid-Continent Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 1, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 901 Locust, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bailis F. Bell, Director of Airports, at the following address: Wichita Airport Authority, 2173 Air Cargo Road, Wichita, Kansas 67209.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Wichita Airport Authority, under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, PFC Program Manager, FAA, Central Region, 901 Locust, Kansas City, MO 64106, (816) 329–2641. 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 the Wichita Mid-Continent Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 20, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Wichita Airport Authority, was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 18, 2003.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: November 1, 2003.

Proposed charge expiration date: September 1, 2007.

Total estimated PFC revenue: $9,470,000.

Brief description of proposed projects: Runway and taxiway shoulders/blast pad rehabilitation; south air cargo apron and road reconstruction; north air cargo apron construction (phase IV); perimeter service and security road rehabilitation; general aviation ramp reconstruction (phases I and II); north general aviation ramp reconstruction; north T-hanger complex pavement rehabilitation; pavement condition inventory; airport access road rehabilitation; Mid-Continent Drive bridge rehabilitation; security gate entrance driveway reconstruction; Terminal Loop Road rehabilitation; runway liquid materials spreader; snow sweeper/blower; snow removal equipment; airfield sweeper truck replacement; mobile stair truck; two disabled passenger boarding assistance devices; two aircraft rescue fire fighting (ARFF) vehicles replacements; ARFF quick response vehicle; electrical vault flood protection; guard stations; terminal restroom remodel; loading bridge program; terminal area planning study; master plan update.

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 Wichita Mid-Continent Airport.

Issued in Kansas City, Missouri on June 23, 2003.

George A. Hendon,

Manager, Airports Division, Central Region.

[FR Doc. 03–16645 Filed 7–1–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Electronic Map Display Equipment for Graphical Depiction of Aircraft Position

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability and requests for public comment.

SUMMARY: This notice announces the availability of and requests comments on a proposed Technical Standard Order (TSO)–C165, Electronic Map Display Equipment for Graphical Depiction of Aircraft Position. This proposed TSO tells persons seeking a TSO authorization or letter of design approval what minimum performance standards (MPS) their Electronic Map Displays must first meet in order to obtain approval and be identified with the applicable TSO marking.

DATES: Comments must identify the TSO file number and be received on or before August 5, 2003.

ADDRESSES: Send all comments on the proposed technical standard order to: Federal Aviation Administration (FAA), Aircraft Certification Service, Aircraft Engineering Division, Avionics Systems Branch, AIR–130, 800 Independence Avenue, SW., Washington, DC 20591. ATTN: Mr. Brad Miller. You may deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Brad Miller, Federal Aviation Administration (FAA), Aircraft Certification Service, Aircraft Engineering Division, Avionic Systems Branch, AIR–130, 800 Independence Avenue, SW., Washington, DC 20591. Telephone: (202) 385–4628, FAX: (202) 385–4651.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. Comments received on the proposed TSO may be examined, before and after the comment closing date, in Room 815,

FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final TSO.

Background

The FAA has developed a new Technical Standard Order, TSO–C165, Electronic Map Display Equipment for Graphical Depiction of Aircraft Position. This proposed TSO prescribes the MPS for moving map equipment set forth in section 2 of RTCA Document No. (RTCA/DO)–257A, ''Minimum Operational Performance Standards for the Depiction of Navigational Information on Electronic Maps,'' dated June 25, 2003. The standards of this TSO apply to equipment intended to provide graphical depiction of navigation information on electronic moving map displays for use as an aid to other approved means of navigation. For portable devices, this TSO may be used in combination with Advisory Circular (AC) 120–76A, ''Guidelines for the Certification, Airworthiness, and Operational Approval of Electronic Flight Bag Computing Devices,'' to obtain a TSO authorization or letter of design approval for an Electronic Map Display for use on the airport surface.

How To Obtain Copies

You may get a copy of the proposed TSO from the internet at: *http://www.faa.gov/certification/aircraft/TSOA.htm*. You may request a copy from Mr. Brad Miller. See the section entitled **FOR FURTHER INFORMATION CONTACT** for the complete address.

Issued in Washington, DC, on June 26, 2003.

David W. Hempe,

Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 03–16644 Filed 7–1–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Prince George, Sussex, Surry, Southampton and Isle of Wight Counties, and the City of Suffolk, VA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for proposed highway improvements in the U.S. Route 460 corridor from I–295 near Petersburg to the City of Suffolk in Virginia.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Myers, Planning & Environmental Program Manager, Federal Highway Administration, PO Box 10249, Richmond, Virginia 23240–0249. Telephone: (804)775–3353.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Virginia Department of Transportation (VDOT), will prepare an environmental impact statement on the proposed transportation improvements to the Route 460 corridor from the intersection of Routes 460 and I–295 in Prince George County near Petersburg to the interchange of Routes 460 and 58 along the Suffolk Bypass. The study area for the proposed corridor improvements would be approximately 10 miles in width and 50 miles in length. Alternatives under consideration include: (1) Taking no action (no-build); (2) transportation system management alternative, which would provide, to the extent possible, safety upgrades to the existing alignment, signalization improvements, intersection improvements, intelligent transportation system (ITS) technologies, and access management techniques; (3) a mass transit alternative which, to the extent feasible, will evaluate commuter rail, light rail, express bus and bus rapid transit options and, (4) alternative corridor alignment build alternatives which will include new location freeway alternatives, and one alternative along existing 460 with the option for bypasses around several towns along the route.

The FHWA and VDOT are seeking input as a part of the scoping process to assist in determining and clarifying issues relative to this project. Letters describing the proposed action and soliciting comments will be sent by the VDOT to appropriate Federal, State, and local agencies, and to private organizations and other interested parties as part of the scoping effort. Scoping meetings are being planned and will be announced by VDOT when schedules have been confirmed. Early coordination with State and Federal permit and resource agencies has been initiated and will continue through the development of the EIS. The Corps of Engineers, the Environmental Protection Agency and the Fish and Wildlife Service are being requested to be cooperating agencies. At least one location public hearing will be held for which public notice will be given of the time and place. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: June 26, 2003.

Kenneth R. Myers,

Planning & Environmental Program Manager.

[FR Doc. 03–16695 Filed 7–1–03; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 552 (Sub–No. 7)]

Railroad Revenue Adequacy—2002 Determination

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of decision.

SUMMARY: On July 2, 2003, the Board served a decision announcing the 2002 revenue adequacy determinations for the Nation's Class I railroads. No carrier is found to be revenue adequate.

EFFECTIVE DATE: This decision is effective July 2, 2003.

FOR FURTHER INFORMATION CONTACT: Leonard J. Blistein, (202) 565–1529. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.)

SUPPLEMENTARY INFORMATION: The Board is required to make an annual determination of railroad revenue adequacy. A railroad is considered revenue adequate under 49 U.S.C. 10704(a) if it achieves a rate of return on net investment equal to at least the current cost of capital for the railroad industry for 2002, determined to be 9.8% in *Railroad Cost of Capital—2002,* STB Ex Parte No. 558 (Sub-No. 6) (STB served June 19, 2003). This revenue adequacy standard was applied to each Class I railroad, and no carrier was found to be revenue adequate for 2002.

Additional information is contained in the Board's formal decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Da-To-Da Legal, Room 405, 1925 K Street, NW., Washington, DC 20423. Telephone: 202–293–7776. (Assistance for the hearing impaired is available through FIRS at 1–800–877–8339.) The decision is also available on the Board's Internet site at *www.stb.dot.gov.*

Environmental and Energy Considerations

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 603(b), we conclude that our action in this proceeding will not have a significant economic impact on a substantial number of small entities. The purpose and effect of the action is merely to update the annual railroad industry revenue adequacy finding. No new reporting or other regulatory requirements are imposed, directly or indirectly, on small entities.

Decided: June 20, 2003.

By the Board, Chairman Nober.

Vernon A. Williams,

Secretary.

[FR Doc. 03–16589 Filed 7–1–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 207X)]

Union Pacific Railroad Company-Abandonment Exemption-in Lancaster County, NE

On June 12, 2003, Union Pacific Railroad Company (UP), filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a rail line known as the Jamaica Industrial Lead, formerly called the Lincoln Subdivision, from the Burlington Northern and Santa Fe Railway Company connection at milepost 56.43 to the end of the line at milepost 57.00 in Lincoln, NE, a distance of 0.57 miles in Lancaster County, NE. The line traverses United States Postal Service zip codes 68508 and 68528.

The line does not contain federally granted rights-of-way. Any documentation in UP's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by September 30, 2003.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,100 filing fee. See 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than July 22, 2003. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–33 (Sub-No. 207X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Mack H. Shumate, Jr., 101 North Wacker Drive, Room 1920, Chicago, IL 60606. Replies to the petition are due on or before July 22, 2003.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment and discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1552. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.)

An environmental assessment (EA) (or an environmental impact statement (EIS), if necessary), prepared by SEA, will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days after the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: June 23, 2003.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–16309 Filed 7–1–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Financial Management Service

Proposed Collection; Comment Request

ACTION: Notice and Request for Comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently, the Financial Management Service (FMS) within the Department of the Treasury is soliciting comments concerning an Electronic Funds Transfer (EFT) Survey of Federal Benefit Recipients. The Federal Reserve Bank (FRB) of St. Louis, on behalf of FMS/Treasury, is conducting this EFT Survey in support of FMS' on-going initiatives to increase the use of EFT for Federal payments. The FRB of St. Louis and its contractor, Wirthlin Worldwide, will conduct this study of Social Security Title II and Supplemental Security Income (SSI) benefit payment recipients to identify barriers to significant increases in EFT for benefit payments.

DATES: Written comments should be received on or before September 2, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to the U.S. Department of the Treasury, Financial Management Service, Michael Dressler, 401 14th St., SW., Room 426B, Washington, DC 20227, (202) 874–7082; e-mail address: *eftsurvey@fms.treas. gov*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed tot the U.S. Department of the Treasury, Financial Management Service, Eleanor Kelly, 401 14th St., SW., Room 314, Washington, DC 20227, (202) 874–6838, e-mail address: *eleanor.kelly@fms.treas.gov*

SUPPLEMENTARY INFORMATION: *Title:* Electronic Funds Transfer (EFT) Study of Federal Benefit Recipients.

Regulation Project Number: Public Law 104–134, Debt Collection Improvement Act of 1996.

Current Actions: The legislative language accompanying Public Law 104–134, The Debt Collection Improvement Act of 1996, direct the disbursing official (the Secretary of the Treasury) ''to study the characteristics of those who currently do not have Direct Deposit and determine how best to increase usage among all groups.'' 142 Cong. Rec. H4091 (daily ed. April 25, 1996). The Federal Reserve Bank (FRB) of St. Louis and its contractor, Wirthlin Worldwide Communications, on behalf of FMS/Treasury, plan to conduct five phases of a study that includes: (1) A mail survey with Federal benefit check recipients, and (2) a follow-up postcard survey to the non-respondent mail survey recipients; (3) a telephone survey with Federal benefit recipients who use Direct Deposit; (4) an incidence screen (postcard) survey of unbanked Federal benefit recipients; and, (5) a pilot survey in one location of indigent benefit check recipients. The mail survey phase of the study will provide quantitative research information from approximately 2,000 Federal benefit check recipients. The telephone survey phase of the study will provide research information from approximately 200 Federal benefit recipients who use Direct Deposit. The postcard survey will provide research information from approximately 200 unbanked benefit check recipients and the pilot survey will provide research information from approximately 15 indigent benefit check recipients. FMS, the FRB of St. Louis and its contractor estimated that the mail survey questions will take approximately 30 minutes for response; the follow-up non-response postcard survey will take approximately 10 minutes for response; the telephone survey questions will be asked in approximately a 25-minute telephone call with each respondent; the unbanked postcard survey will take approximately 5 minutes for response; and, the pilot survey of indigent benefit check recipients will take approximately 60 minutes for each respondent. The results of the study will be used to develop a marketing and communications plan that will serve as the basis for a nationwide multi-media EFT campaign. The results of the study also will provide information that will guide the development of potential new electronic payment mechanisms and possible modifications to existing EFT products, including Direct Deposit and the Electronic Transfer Account (ETA).

Type of Review: New.

Affected Public: Individuals or households.

Estimated Number of Respondents: 2,000 mail survey, 100 non-respondent survey, 200 telephone survey, 200 unbanked postcard survey, 15 indigent survey (mail survey tool), 2,515 total respondents

Estimated Time Per Respondent: 30 minutes—mail survey, 10 minutes—non-respondent survey, 23 minutes—telephone survey, 5 minutes—unbanked postcard survey, 60 minutes—indigent survey

Estimated Total Annual Burden: 1,137 hours.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 26, 2003.

Bettsy H. Lane,

Assistant Commissioner, Federal Finance.

[FR Doc. 03–16650 Filed 7–1–03; 8:45 am]

BILLING CODE 4810–35–M

Federal Register

Wednesday,
July 2, 2003

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Designation and Nondesignation of Critical Habitat for 46 Plant Species From the Island of Hawaii, HI; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH02

Endangered and Threatened Wildlife and Plants; Final Designation and Nondesignation of Critical Habitat for 46 Plant Species From the Island of Hawaii, 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 58 listed plant species known historically from the island of Hawaii. A total of approximately 84,200 hectares (208,063 acres) of land on the island of Hawaii fall within the boundaries of the 99 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 four species, *Cyanea copelandii* ssp. *copelandii, Ochrosia kilaueaensis*, *Pritchardia affinis*, and *Pritchardia schattaueri.* 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 August 1, 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:

Designation of Critical Habitat Provides Little Additional Protection to Species

In 30 years of implementing the ESA, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of available conservation resources. The Service's present system for designating critical habitat has evolved since its original statutory prescription into a process that provides little real conservation benefit, is driven by litigation and the courts rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs. The Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. [Sidle (1987) stated, ''Because the ESA can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7.''

Currently, only 306 species or 25% of the 1,211 listed species in the U.S. under the jurisdiction of the Service have designated critical habitat. We address the habitat needs of all 1,211 listed species through conservation mechanisms such as listing, section 7 consultations, the Section 4 recovery planning process, the Section 9 protective prohibitions of unauthorized take, Section 6 funding to the States, and the Section 10 incidental take permit process. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court ordered designations have left the Service with almost no ability to provide for adequate public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially-imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis provides relatively little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with NEPA, all are part of the cost of critical habitat designation. None of these costs result in any benefit to the species that is not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions. Sidle, J.G. 1987. Critical Habitat Designation: Is it Prudent? Environmental Management 11(4):429–437.

Background

In the List of Endangered and Threatened Plants (50 CFR 17.12(h)), there are 58 plant species that, at the time of listing, were reported from the island of Hawaii.

Twenty-seven of these species are endemic to the island of Hawaii, while 31 species are reported from the island of Hawaii and one or more other

Hawaiian islands. Each of these species is described in more detail below in the section named, ''Discussion of Plant Taxa.'' Although we considered designating critical habitat on the island of Hawaii for each of the 58 plant species, for reasons described below, the final designation includes critical habitat for 41 of 58 plant species. Species that also occur on other Hawaiian islands may have critical habitat designated on those other islands in previous rulemakings.

The Island of Hawaii

This largest island of the Hawaiian archipelago comprises 10,458 square kilometers (sq km) (4,038 sq miles (mi)) or two-thirds of the land area of the State of Hawaii, giving rise to its common name, the ''Big Island.'' We provided a detailed physical description for the island of Hawaii in the proposed critical habitat designation (67 FR 36970).

Species Endemic to Hawaii

These species and their distribution by island are identified in Table 1 in the **Federal Register** notice proposing this critical habitat designation (67 FR 36969). However, it is important to note that in this final rule we are using the word ''occurrence'' rather than ''population'' in most cases. This was done to avoid confusion regarding the number of location occurrences for each species, which do not necessarily represent viable populations, and the number of recovery populations (*e.g.*, 8 to 10 with 100, 300, or 500 reproducing individuals). For those species where we have substantial new or corrected information, including revisions to the number occurrence, we list that information below by species. For all other species and additional species specific background information on the species listed below please refer to the proposed rule (May 28, 2002, 67 FR 36968).

A summary of occurrences and landownership for the 58 plant species on the island of Hawaii appears given in Table 1.

TABLE 1.—SUMMARY OF EXISTING OCCURRENCES ON THE ISLAND OF HAWAII AND OF LANDOWNERSHIP FOR 58 SPECIES REPORTED FROM THE ISLAND OF HAWAII

Species	Number of current occurrences	Landownership/jurisdiction		
		Federal	State	Private
Achyranthes mutica	1			X
Adenophorus periens	4	X[1]	X	X
Argyroxiphium kauense	4	X[1]	X	X
Asplenium fragile var. *insulare*	36	X[1 2]	X	X
Bonamia menziesii	2			X
Cenchrus agrimonioides	0			
Clermontia drepanomorpha	2		X	X
Clermontia lindseyana	15	X[3]	X	
Clermontia peleana	0			
Clermontia pyrularia	2	X[1]	X	
Colubrina oppositifolia	5		X	X
Cyanea copelandii ssp. *copelandii*	0			
Ctenitis squamigera	0			
Cyanea hamatiflora ssp. *carlsonii*	4	X[3]	X	
Cyanea platyphylla	6		X	X
Cyanea shipmanii	3	X[3]	X	X
Cyanea stictophylla	6		X	X
Cyrtandra giffardii	8	X[1]	X	X
Cyrtandra tintinnabula	4		X	X
Delissea undulata	2		X	
Diellia erecta	5		X	
Flueggea neowawraea	12		X	X
Gouania vitifolia	4		X	
Hedyotis cookiana	0			
Hedyotis coriacea	41	X[2]		
Hibiscadelphus giffardianus	1 (planted)	X[1]		
Hibiscadelphus hualalaiensis	2 (planted)		X	
Hibiscus brackenridgei	4		X	X
Ischaemum byrone	6	X[1]	X	X
Isodendrion hosakae	3			X
Isodendrion pyrifolium	1		X	
Mariscus fauriei	2		X	X
Mariscus pennatiformis	0			
Melicope zahlbruckneri	3	X[1]	X	
Neraudia ovata	9	X[1 2]	X	X
Nothocestrum breviflorum	66	X[1 3]	X	X
Ochrosia kilaueaensis	0			
Phlegmariurus mannii	0			
Phyllostegia parviflora	0			
Phyllostegia racemosa	6	X[1 3]	X	X
Phyllostegia velutina	8	X[3]	X	X
Phyllostegia warshaueri	7		X	X
Plantago hawaiensis	6	X[1]	X	
Plantago princeps	0			
Pleomele hawaiiensis	22	X[1]	X	X
Portulaca sclerocarpa	24	X[1 2]	X	X
Pritchardia affinis	unknown			

TABLE 1.—SUMMARY OF EXISTING OCCURRENCES ON THE ISLAND OF HAWAII AND OF LANDOWNERSHIP FOR 58 SPECIES REPORTED FROM THE ISLAND OF HAWAII—Continued

Species	Number of current occurrences	Landownership/jurisdiction		
		Federal	State	Private
Pritchardia schattaueri	3			X
Sesbania tomentosa	31	X [1 4]	X	
Sicyos alba	5	X [1]	X	
Silene hawaiiensis	156	X [1 2]	X	X
Silene lanceolata	69	X [2]		
Solanum incompletum	1	X [2]		
Spermolepis hawaiiensis	30	X [1 2]	X	
Tetramolopium arenarium	8	X [2]		
Vigna o-wahuensis	1			X
Zanthoxylum dipetalum var. *tomentosum*	14		X	
Zanthoxylum hawaiiense	186	X [2]	X	

[1] Hawaii Volcanoes National Park.
[2] PTA.
[3] Hakalau Forest National Wildlife Refuge.
[4] Government Services Administration

Previous Federal Action

On May 28, 2002, we published the court-ordered proposed critical habitat designations for 58 plant species from the island of Hawaii (67 FR 36968). In that proposed rule (beginning on page 36990), we included a detailed summary of the previous Federal actions completed prior to publication of the proposal. We now provide updated information on the actions that we have completed since the proposed critical habitat designation. In Table 2, we list the final critical habitat designations or nondesignations previously completed for 46 of the 58 plant species from the island of Hawaii, some of which also occur on other islands.

TABLE 2.—SUMMARY OF CRITICAL HABITAT ACTIONS FOR 58 PLANT SPECIES FROM THE ISLAND OF HAWAII

Species	Final critical habitat	
	Date(s)	**Federal Register**
Achyranthes mutica	NA	NA
Adenophorus periens	2/27/2003	68 FR 9116
	3/19/2003	68 FR 12982
	6/17/2003	68 FR 35949
Argyroxiphium kauense	NA	NA
Asplenium fragile var. *insulare*	5/14/2003	68 FR 25934
Bonamia menziesii	2/27/2003	68 FR 9116
	5/14/2003	68 FR 25934
	6/17/2003	68 FR 35949
Cenchrus agrimonioides	5/14/2003	68 FR 25934
	6/17/2003	68 FR 35949
Clermontia drepanomorpha	NA	NA
Clermontia lindseyana	5/14/2003	68 FR 25934
Clermontia peleana	NA	NA
Clermontia pyrularia	NA	NA
Colubrina oppositifolia	5/14/2003	68 FR 25934
	6/17/2003	68 FR 35949
Ctenitis squamigera	2/27/03	68 FR 9116
	3/19/2003	68 FR 12982
	5/14/2003	68 FR 25934
	6/17/2003	68 FR 35949
Cyanea copelandii ssp. *copelandii*	NA	NA
Cyanea hamatiflora ssp. *carlsonii*	NA	NA
Cyanea platyphylla	NA	NA
Cyanea shipmanii	NA	NA
Cyanea stictophylla	NA	NA
Cyrtandra giffardii	NA	NA
Cyrtandra tintinnabula	NA	NA
Delissea undulata	2/27/2003	68 FR 9116
Diellia erecta	2/27/2003	68 FR 9116
	3/19/2003	68 FR 12982
	5/14/2003	68 FR 25934
	6/17/2003	68 FR 35949
Flueggea neowawraea	2/27/2003	68 FR 9116
	3/19/2003	68 FR 12982
	5/14/2003	68 FR 25934
	6/17/2003	68 FR 35949

TABLE 2.—SUMMARY OF CRITICAL HABITAT ACTIONS FOR 58 PLANT SPECIES FROM THE ISLAND OF HAWAII—Continued

Species	Final critical habitat	
	Date(s)	**Federal Register**
Gouania vitifolia	5/14/2003	68 FR 25934
	6/17/2003	68 FR 35949
Hedyotis cookiana	2/27/2003	68 FR 9116
Hedyotis coriacea	5/14/2003	68 FR 25934
	6/17/2003	68 FR 35949
Hibiscadelphus giffardianus	NA	NA
Hibiscadelphus hualalaiensis	NA	NA
Hibiscus brackenridgei	3/19/2003	68 FR 12982
	5/14/2003	68 FR 25934
	6/17/2003	68 FR 35949
Ischaemum byrone	2/27/2003	68 FR 9116
	3/19/2003	68 FR 12982
	5/14/2003	68 FR 25934
Isodendrion hosakae	NA	NA
Isodendrion pyrifolium	3/19/2003	68 FR 12982
	5/14/2003	68 FR 25934
	6/17/2003	68 FR 35949
Mariscus fauriei	3/19/2003	68 FR 12982
Mariscus pennatiformis	2/27/2003	68 FR 9116
	5/14/2003	68 FR 25934
	5/22/2003	68 FR 28054
	6/17/2003	68 FR 35949
Melicope zahlbruckneri	NA	NA
Neraudia ovata	NA	NA
Nothocestrum breviflorum	NA	NA
Ochrosia kilaueaensis	NA	NA
Phlegmariurus mannii	5/14/2003	68 FR 25934
Phyllostegia parviflora	6/17/2003	68 FR 35949
Phyllostegia racemosa	NA	NA
Phyllostegia velutina	NA	NA
Phyllostegia warshaueri	NA	NA
Plantago hawaiensis	NA	NA
Plantago princeps	2/27/2003	68 FR 9116
	3/19/2003	68 FR 12982
	5/14/2003	68 FR 25934
	6/17/2003	68 FR 35949
Pleomele hawaiiensis	NA	NA
Portulaca sclerocarpa	1/09/2003	68 FR 1220
Pritchardia affinis	NA	NA
Pritchardia schattaueri	NA	NA
Sesbania tomentosa	2/27/2003	68 FR 9116
	3/19/2003	68 FR 12982
	5/14/2003	68 FR 25934
	6/17/2003	68 FR 35949
Sicyos alba	NA	NA
Silene hawaiiensis	NA	NA
Silene lanceolata	2/27/2003	68 FR 9116
	3/19/2003	68 FR 12982
	6/17/2003	68 FR 35949
Solanum incompletum	NA	NA
Spermolepis hawaiiensis	2/27/2003	68 FR 9116
	3/19/2003	68 FR 12982
	5/14/2003	68 FR 25934
	6/17/2003	68 FR 35949
Tetramolopium arenarium	NA	NA
Vigna o'wahuensis	5/14/2003	68 FR 25934
	6/17/2003	68 FR 35949
Zanthoxylum dipetalum var. *tomentosum*	NA	NA
Zanthoxylum hawaiiense	2/27/2003	68 FR 9116
	3/19/2003	68 FR 12982
	5/14/2003	68 FR 25934

For many of the 58 plant species from the island of Hawaii, the issue of whether critical habitat would be prudent was discussed in previous proposals and incorporated into the May 28 proposal (see 65 FR 79192; 65 FR 83158; 67 FR 3939; 67 FR 15856; 67 FR 9806; 67 FR 16492; 67 FR 36968; 67 FR 37108). We also proposed that critical habitat was not prudent for *Cyanea copelandii* ssp. *copelandii* and *Ochrosia kilaueaensis* because it would be of no benefit to these species. In the May 28 proposal, we proposed that critical habitat was not prudent for two

species of the native palm, *Pritchardia affinis* and *Pritchardia schattaueri,* because it would increase the threat of vandalism or collection of those species on the island of Hawaii. Critical habitat was not proposed for seven species (*Cenchrus agrimonioides, Ctenitis squamigera, Hedyotis cookiana, Mariscus pennatiformis, Phlegmariurus mannii, Phyllostegia parviflora,* and *Plantago princeps*), which no longer occur on the island of Hawaii, because we were unable to identify any habitat essential to their conservation on the island. Critical habitat for 47 (*Achyranthes mutica, Adenophorus periens, Argyroxiphium kauense, Asplenium fragile* var. *insulare, Bonamia menziesii, Clermontia drepanomorpha, Clermontia lindseyana, Clermontia peleana, Clermontia pyrularia, Colubrina oppositifolia, Cyanea hamatiflora* ssp. *carlsonii, Cyanea platyphylla, Cyanea shipmanii, Cyanea stictophylla, Cyrtandra giffardii, Cyrtandra tintinnabula, Delissea undulata, Diellia erecta, Flueggea neowawraea, Gouania vitifolia, Hedyotis coriacea, Hibiscadelphus giffardianus, Hibiscadelphus hualalaiensis, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion hosakae, Isodendrion pyrifolium, Mariscus fauriei, Melicope zahlbruckneri, Neraudia ovata, Nothocestrum breviflorum, Phyllostegia racemosa, Phyllostegia velutina, Phyllostegia warshaueri, Plantago hawaiensis, Pleomele hawaiiensis, Portulaca sclerocarpa, Sesbania tomentosa, Sicyos alba, Silene hawaiiensis, Silene lanceolata, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium arenarium, Vigna o-wahuensis, Zanthoxylum dipetalum* var. *tomentosum,* and *Zanthoxylum hawaiiense*) of 58 plant species from the island of Hawaii was proposed on approximately 176,968 ha (437,285 ac) of land on the island of Hawaii (67 FR 36968).

The publication of the proposed rule opened a 60-day public comment period, which closed on July 29, 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 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 26, 2002, we published a notice (67 FR 54766) reopening the public comment period until September 30, 2002, on the proposal to designate critical habitat for plants from the island of Hawaii. On September 24, 2002, we published a notice (67 FR 59811) announcing the reopening of the comment period until November 30, 2002, and a notice of a public hearing. On October 8, 2002, we held a public information meeting at the Hilo State Office Building, Hilo, Hawaii. On October 9, 2002, we held a public information meeting at Waimea Civic Center, Waimea, Hawaii. On October 29, 2002, we held a public hearing at King Kamehameha Hotel, Kailua-Kona, Hawaii. On October 30, 2002, we held a public hearing at Hawaii Naniloa Resort, Hilo, Hawaii. On December 18, 2002, we published a notice (67 FR 77464) announcing the availability of the draft economic analysis on the proposed critical habitat and reopening the comment period until January 17, 2003.

In the final rule for Lanai plants (68 FR 1220), we found that critical habitat was prudent for the following 16 multi-island species that also occur on the island of Hawaii: *Adenophorus periens, Bonamia menziesii, Cenchrus agrimonioides, Ctenitis squamigera, Diellia erecta, Hedyotis cookiana, Hibiscus brackenridgei, Isodendrion pyrifolium, Mariscus fauriei, Portulaca sclerocarpa, Sesbania tomentosa, Silene lanceolata, Solanum incompletum, Spermolepis hawaiiensis, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense.* In the final rule for Kauai and Niihau plants (68 FR 9116), we found that critical habitat was prudent for the following seven multi-island species that are also found on the island of Hawaii: *Achyranthes mutica, Delissea undulata, Flueggea neowawraea, Ischaemum byrone, Mariscus pennatiformis, Phlegmariurus mannii,* and *Plantago princeps.* In the final rule for Maui and Kahoolawe plants (68 FR 25934), we found that critical habitat was prudent for the following eight multi-island species that also occur on the island of Hawaii: *Asplenium fragile* var. *insulare, Clermontia lindseyana, Clermontia peleana, Colubrina oppositifolia, Gouania vitifolia, Hedyotis coriacea, Phyllostegia parviflora,* and *Tetramolopium arenarium.*

Summary of Comments and Recommendations

In the proposed rule published on May 28, 2002 (67 FR 36968), we requested that all interested parties submit written comments on the proposal. We also contacted all appropriate Federal, State, and local agencies, scientific organizations, and other interested parties and invited them to comment. Two requests for public hearings were received. We announced the date, time, and locations of the public hearings in letters to all interested parties, appropriate State and Federal agencies, county governments, and elected officials, and in notices published in the **Federal Register** (67 FR 59811) on September 24, 2002, and in the *Honolulu Star-Bulletin* on October 11, 2002. Transcripts of the hearings held in Kailua-Kona and Hilo on October 29 and 30, 2002, respectively, are available for inspection (*see* **ADDRESSES** section).

We received a total of 29 oral and 672 written comments during the three comment periods on the proposal published on May 28, 2002 (67 FR 36968), and the draft economic analysis, including the public information meetings and the public hearings held on October 29 and October 30, 2002. These included responses from 12 State offices, the Department of Defense (7 responses), and 10 designated peer reviewers. Approximately 586 of these written comments were identical letters submitted as part of a mailing campaign in support of the proposed critical habitat designations. Of the 86 parties who did not respond as part of the mailing campaign, 21 supported the proposed designation, 78 were opposed, and 16 provided information or expressed neither opposition nor support for the proposed designation.

We reviewed all comments received for substantive issues and new information regarding critical habitat for *Achyranthes mutica, Adenophorus periens, Argyroxiphium kauense, Asplenium fragile* var. *insulare, Bonamia menziesii, Clermontia drepanomorpha, Clermontia lindseyana, Clermontia peleana, Clermontia pyrularia, Colubrina oppositifolia, Cyanea hamatiflora* ssp. *carlsonii, Cyanea platyphylla, Cyanea shipmanii, Cyanea stictophylla, Cyrtandra giffardii, Cyrtandra tintinnabula, Delissea undulata, Diellia erecta, Flueggea neowawraea, Gouania vitifolia, Hedyotis coriacea, Hibiscadelphus giffardianus, Hibiscadelphus hualalaiensis, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion hosakae, Isodendrion*

pyrifolium, Mariscus fauriei, Melicope zahlbruckneri, Neraudia ovata, Nothocestrum breviflorum, Phyllostegia racemosa, Phyllostegia velutina, Phyllostegia warshaueri, Plantago hawaiensis, Pleomele hawaiiensis, Portulaca sclerocarpa, Sesbania tomentosa, Sicyos alba, Silene hawaiiensis, Silene lanceolata, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium arenarium, Vigna o-wahuensis, Zanthoxylum dipetalum var. tomentosum, and Zanthoxylum hawaiiense. Similar comments were grouped into general issues and are addressed in the following summary.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited independent opinions from 23 knowledgeable individuals (''peer reviewers'') 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 10 of these reviewers. All generally supported our methodology and conclusions. Four of the peer reviewers supported the designation of critical habitat on the island of Hawaii and the other six neither specifically supported or opposed the designation. Comments received from the peer reviewers are summarized in the following section and were considered in developing this final rule.

Issue 1: Biological Justification and Methodology

(1) *Comment:* A peer reviewer commented on the configuration of the units, stating that with irregular boundaries, the units will be difficult to identify on the ground and that such boundaries will complicate management and increase the risk of fragmentation and edge effects on plant populations within the units. The reviewer also noted that proposed units do not appear to be representative of known geographic and elevation ranges for species and that unit boundaries appear to encompass the minimum area needed to capture known site localities, which may not provide the full spectrum of habitat conditions necessary for long-term survival and recovery.

Our Response: The irregular boundaries are a result of attempting to map the primary constituent elements for each species and of the overlapping effect of multiple species' critical habitat. Universal Transverse Mercator coordinates are given to help locate these properties on the ground. We concur with the peer reviewer on the importance of protecting the ecosystems on which these species depend, as stated in the purpose of the Act (section 2(b)), and of conserving areas large enough to maintain and expand populations. We considered the importance of this, as well as the location of primary constituent elements, when delineating the boundaries of critical habitat for these final designations. While we acknowledge the potential negative impacts of edge effects on small habitat fragments, we only included areas that provide the biological and other processes that are essential for the conservation of the species.

(2) *Comment:* We received several comments regarding the incorporation of unoccupied habitat with critical habitat. A peer reviewer commented on the incorporation of unoccupied habitat to allow for the recovery of species that have been reduced to an unsustainable number of populations and said that it is unclear whether sufficient habitat is protected to provide the minimum populations needed for recovery. Another commenter raised the issue that more acreage of unoccupied habitat than occupied habitat was being proposed as critical habitat. This commenter felt that critical habitat should encompass the best populations of each species unless this is entirely impractical. One peer reviewer stated that the Service relied too heavily on currently occupied habitat and did not address potential habitat that currently lacks rare species.

Our Response: The recovery plans for these species identify the need to expand existing populations and re-establish wild populations within the historical range of each species. Due to the extremely limited extant range of many of these species, designation of only occupied areas would not allow us to achieve the recovery goals developed for the species. Occupied areas, as well as similar contiguous or nearby habitat that occurs 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 (*i.e.*, primary constituent elements) of these species.

The protection of additional unoccupied critical habitat is essential to ensure the recovery of these species through reintroduction. Although propagation and reintroduction are difficult for some species, both are vitally important to their recovery. Many recovery plans therefore include research into best methods of propagation and reintroduction as important tasks prior to attempting reintroduction. Areas of unoccupied habitat are essential to the conservation of the species because they provide habitat for the establishment of new populations.

(3) *Comment:* Several commenters, including one peer reviewer, expressed concern regarding the Service's decision to not propose critical habitat for *Pritchardia* species. One reviewer concurred with our finding that designation was not prudent, citing their knowledge of theft and over-collection of the species; however, nine did not agree with the Service's finding that critical habitat was not prudent (particularly for *P. affinis* and *P. schattaueri*). Several commenters disagreed with the Service's decision to not propose critical habitat for *P. affinis* and *P. schattaueri,* stating that they felt the claim that designation would increase threats to these species was speculative.

Our Response: In this final rule to designate or not designate critical habitat for 58 plants from the island of Hawaii, we have incorporated new information, and we have 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 affinis* and *Pritchardia schattaueri* from vandalism or collection would not increase if critical habitat were designated for these species on the island of Hawaii. We believe that designation of critical habitat would likely increase the threat from vandalism to or collection of these species of *Pritchardia* on the island of Hawaii. First, they are easy to identify, and second, they 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 species of *Pritchardia* may be attractive to such collectors. Several nurseries advertise and sell *Pritchardia* palms, including these and other federally listed *Pritchardia* species.

(4) *Comment:* The majority of the peer reviewers supported the multi-population approach and the Service's definition of a population for purposes of recovery; however, several peer reviewers commented on the recovery strategy of 8 to 10 populations for each species. Two peer reviewers commented that it might be difficult to achieve recovery plan goals of 8 to 10 populations for each species as some of these species are rare, localized island endemics that likely never had 8 to 10

populations throughout their evolutionary history and that the Service assumes that each population will be viable in the future when there is no guarantee of this.

Our Response: The recovery objectives found in recovery plans for these species state that 8 to 10 viable populations are required for recovery of most of these species. 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 fires and nonnative plant invasions. 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 (*e.g., Argyroxiphium kauense,* for which the recovery goal is 10 or more large, widespread populations of at least 2,000 individuals each), and designation of critical habitat reflects these exceptions. For the majority of the species, however, 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. Each recovery plan stated that these recovery goals will be revised as more specific information becomes available for each species.

(5) *Comment:* Several peer reviewers raised the issue of genetic drift and the difficulty of measuring this phenomenon in terms of the 8 to 10 populations. One reviewer recommended that we consider the consequences of this proposed population structuring on genetic drift or inbreeding, and how this potential problem might be alleviated. One peer reviewer commented that he did not believe that defining a population on the basis of low/no gene flow would benefit the species. One reviewer cautioned that for clonal species, the number (100, 300, 500) needs to reflect genetic individuals, not ramets. Another stated that, ideally, every population should be genetically isolated from all other conspecific populations.

Our Response: Many of the species have been reduced to such low numbers that the recovery plans identify propagation and reintroduction as a key step. While we do not have direct evidence for most species to indicate that reduced reproductive vigor or inbreeding are problems, we believe they should be considered, based on current conservation biology theory and practice. This is particularly important to consider when developing a propagation and reintroduction program, to ensure that recovery efforts do not cause or exacerbate genetic issues. While measures of genetic diversity do not directly measure relative fitness, it is reasonable to assume that the two are correlated. The issue of gene flow and genetic drift will be addressed through research actions identified as needed in the recovery plans.

(6) *Comment:* One peer reviewer stated that the 8 to 10 population approach should not preclude the high priority of building large populations both through population growth and the merger of multiple small populations (which will require a breeding plan to conserve and increase the genetic diversity of remnant populations).

Our Response: The areas designated as critical habitat in this rule allow for merging of multiple, small populations (where they exist) and the increase of population numbers as outlined in our recovery plans. Because the general use of the word ''population'' in the proposed rule caused some confusion, we replaced it with ''occurrence'' in this rule when referring to existing locations of plants, and we use ''population'' only in the context of recovery guidelines.

(7) *Comment:* Several commenters, including two peer reviewers, stated that the species' need for pollinators is important to consider. One peer reviewer stated that designation of critical habitat needs to consider the presence of appropriate pollinators for species that do not self-pollinate or feasible, sustainable alternatives to key pollinators that may be absent. The Service's consideration of this issue did not appear to be explicitly listed in the proposed rule.

Our Response: Very little is known about the life histories of many of these plant species. The species' accounts provided in the proposed rule acknowledged that loss of pollinators, through habitat loss or predation by nonnative insects, could be a factor in lack of species' regeneration. As such, we created critical habitat units that were of sufficient size to provide habitat for at least one population of the target species in which the individuals could be regularly cross-pollinated. We also recommend, as a management action, maintenance (to the extent we have data) of natural pollinators and pollination systems.

(8) *Comment:* Two commenters stated that the Service failed to demonstrate that proposed critical habitat is essential to species conservation.

Our Response: In order to be included in a critical habitat designation, if within range occupied by the species at time of listing, habitat must contain the biological or physical features essential to the conservation of the species and may require management. If outside the range at time of listing, it must be essential to the conservation of the species.

(9) *Comment:* Several peer reviewers and other commenters, including the Department of Land and Natural Resources, Division of Forestry and Wildlife, a State agency, expressed concern over the inclusion of degraded habitat within critical habitat. Several peer reviewers stated that as much habitat as possible, even degraded habitat, should be protected as it has potential for reintroduction. One commenter noted that while they felt that focusing conservation efforts on the most pristine, least degraded sites is a logical, efficient, and cost-effective strategy when possible, for many of the listed plant species there is not enough suitable habitat remaining, and, as a result, it is essential to include degraded areas for future restoration. One commenter specifically requested that excessively degraded areas and those dominated by nonnative plants be excluded from critical habitat as these areas would not, or only have nominal value to, support the taxa for which critical habitat is proposed.

Our Response: We agree that recovery of a species is more likely in designated critical habitat in the least degraded areas containing primary constituent elements. However, for some species, especially those only known from low elevation areas, only degraded habitat remains. Therefore, some units contain essential habitat that, while currently degraded, is essential to the conservation of the species. Management for the restoration of these habitats is addressed in the species' recovery plans. However, we have excluded manmade features that do not contain the primary constituent elements, and we have revised this list based on information received during the public comment periods.

(10) *Comment:* One peer reviewer commented on the omission of large areas of high quality dry forest that contain key populations of *Neraudia ovata, Nothocestrum brevifolium,* and *Pleomele hawaiiensis* from critical habitat. The commenter noted that hundreds of acres of the best dry forest were not proposed to be included as critical habitat; however, degraded shrublands (as low quality dry forest) were proposed for inclusion. One peer reviewer commented that some lowland

populations do not appear to have been included in the proposal. This reviewer recommended that suitable areas in lowlands that still support semi-natural plant communities and that have the potential to be restored should be considered.

Our Response: This rule designates four critical habitat units for *Neraudia ovata* for a total of six populations. In addition, four populations of *N. ovata* occur on the excluded lands at PTA. Three critical habitat units for *Nothocestrum breviflorum* are designated in this rule for a total of nine populations. Four critical habitat units for *Pleomele hawaiiensis* are designated in this rule for a total of nine populations. In addition, excluded Kamehameha Schools land provides habitat for one population of *Pleomele hawaiiensis*. Thus, we have designated habitat for 8 to 10 populations for each of these species as outlined in our recovery plans. We evaluated all suitable habitat identified for each species under consideration in this rule, but are designating only those areas deemed essential for the conservation of these species. Nevertheless, the habitat outside of these areas may contribute to the conservation of these species and are subject to other provisions of the Act.

(11) *Comment:* One peer reviewer did not agree that critical habitat should not be proposed for the seven plant species believed to be extirpated on the island of Hawaii, stating that even if they are believed extirpated, it is possible that some species may be found during future surveys. Even if this is not the case, future restoration efforts for these seven species may be more effective if currently unoccupied habitat on the island of Hawaii is included in designated critical habitat.

Our Response: Critical habitat is not designated for *Cenchrus agrimonioides*, *Ctenitis squamigera*, *Hedyotis cookiana*, *Mariscus pennatiformis*, *Phlegmariurus mannii*, *Phyllostegia parviflora*, and *Plantago princeps* on the island of Hawaii because these species no longer occur on this island, and we are unable to determine habitat essential to their conservation. There is an undocumented report of *Cenchrus agrimonioides* on the island of Hawaii made in 1800. *Ctenitis squamigera* was last collected on the island of Hawaii in 1909, at ''Kalua,'' an indeterminable place name. *Hedyotis cookiana* was last collected on the island of Hawaii in 1816. *Mariscus pennatiformis* has not been seen on the island of Hawaii since the middle of the 1800s. *Phlegmariurus mannii* was last collected on the island of Hawaii in 1949. *Phyllostegia parviflora* has not been observed on the island of Hawaii since the 1800s. *Plantago princeps* has not been seen on the island of Hawaii since the 1860s. Until these species are rediscovered, we are unable to identify habitat essential to their conservation due to lack of information in the historical record. We chose not to speculate on the needs of these species on the island of Hawaii. Therefore, no change is made to our not prudent determinations here. If these species are rediscovered on the island of Hawaii, we may propose critical habitat for these species at that time.

(12) *Comment:* Several commenters expressed concern over the Service's failure to propose critical habitat for *Cyanea copelandii* ssp. *copelandii* and *Ochrosia kilaueaensis* ''because they have not been seen recently in the wild and no viable genetic material is known to exist.'' One commenter considered this finding to be the first step in delisting the species.

Our Response: Historically, *Cyanea copelandii* ssp. *copelandii* was found at two sites on the southeastern slope of Mauna Loa, near Glenwood. *Ochrosia kilaueaensis* is known historically only from Puuwaawaa and at Kipuka Puaulu in Hawaii Volcanoes National Park. Neither of these species have been seen in the wild since 1957 and 1927, respectively. No viable genetic material is known to exist for either species, so there is no possibility of propagation materials for use in restoration efforts. For these reasons, critical habitat is not designated, as it would be of no benefit.

(13) *Comment:* One peer reviewer commented that in order to fully assess the validity of proposed critical habitat, an indication of the uncertainties in the data used in its identification should be included. This would include things such as whether expert opinion, data from surrogate species, or direct quantitative assessments were used and the relative reliability of those data sources. This type of information could then serve as a guide for further data collection and to highlight which critical habitat areas were likely to be modified once new data become available.

Our Response: All data and information on species' status received in preparation of this rule were equally weighted and considered to come from reliable sources. Where discrepancies existed between different data sources, the most current data were used. Changes in this final rule that decrease the boundaries of many units are based on additional information received during the public comment period and in meetings with additional species experts and land managers.

(14) *Comment:* Several commenters stated that they did not concur that the Service used the best available scientific information.

Our Response: In accordance with sections 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, we are required to base critical habitat determinations on the best scientific and commercial data available. The use of information gathered from reliable sources determined which lands were proposed as critical habitat. Based upon newly available information, coordination with landowners and stakeholders, and input received during the public comment period, we have made revisions to the areas designated as critical habitat, which are reflected in this final rule. We are not aware of any reliable information that is currently available to us that was not considered in this designation process.

(15) *Comment:* One commenter noted that there are several listed plants historically known from the Hawaiian Islands that are not included in the proposals; they suggested that the proposals for critical habitat should clearly state that only plants listed from 1990 to 1996 are included. Another commenter expressed concern over the Service's failure to propose critical habitat for *Cyrtandra crenata.* One peer reviewer commented that it was unclear why critical habitat was not proposed for designation on the island of Hawaii for *Caesalpinia kavaiensis*, *Abutilon menziesii*, *Argyroxiphium sandwicense* ssp. *sandwicense, Lipochaeta venosa,* and *Gardenia brighamii*, especially when A. *sandwicense* ssp. *sandwicense* and *L. venosa* are only known from the island of Hawaii, and the recovery plan for *Gardenia brighamii* calls for the establishment and maintenance of three populations on this island. The same reviewer recommended that the Service discuss why the above species are not included in the action and provide notice of the subsequent action in which critical habitat for these species will be addressed. The reviewer also noted that a discussion of the relationship of other designated critical habitat (*e.g.*, for *Kokia drynarioides*) to the critical habitat proposed in this rule should have been included.

Our Response: The species named by the commenters were not included in the court order in *Conservation Council for Hawaii* v. *Babbitt,* 2F. Supp. 2d 1280 (D. Haw. 1998) and subsequent stipulations, and therefore were not included in this rulemaking. We may consider critical habitat for these species in the future if warranted and if funding and resources are available.

(16) *Comment:* One commenter stated that the Service should consider recovering threatened and endangered plant species in areas that are already protected and managed (*e.g.*, Hawaii Volcanoes National Park and Hakalau National Wildlife Refuge) as these areas are pristine and free of threats and are locations where native species have made a dramatic recovery.

Our Response: We agree that these managed areas should be a focus for recovery actions. We have included several such areas in critical habitat on the island of Hawaii that contain the appropriate primary constituent elements for each species. However, these areas alone do not include all of the habitat essential for the conservation of the species for which critical habitat is designated on the island of Hawaii.

(17) *Comment:* The Department of Land and Natural Resources, Division of Forestry and Wildlife, a State agency, stated that the proposal did not provide information on the critical habitat proposed on other islands, did not separately map or identify how much acreage is needed for each of the populations, and did not specify how many separate populations are within each unit. As such, it did not contain enough information to evaluate the adequacy of the proposal.

Our Response: While the proposed rule for critical habitat on the island of Hawaii did not repeat the information contained in the critical habitat designations for the other islands, we made the data available upon request. In this rule, we have mapped each species' critical habitat and provide separate maps, acreage, and population numbers. For multiple-island species, we have included information on whether critical habitat has been designated on other islands and the number of populations allowed for, both in critical habitat and in excluded lands.

(18) *Comment:* One commenter stated that while the Navy will manage endangered species found on its property, they would not agree to the introduction of an endangered species to an area where it does not occur.

Our Response: No Navy lands are included in critical habitat on the island of Hawaii.

Issue 2: Site-Specific Biological Comments

(19) *Comment:* The Department of Land and Natural Resources, Division of Forestry and Wildlife, a State agency, asked why units Hawaii A1 and Hawaii A2 are separated.

Our Response: Hawaii A1 provides habitat for *Pleomele hawaiiensis.* Three other critical habitat units for this species are designated in this rule for a total of nine populations, and excluded Kamehameha Schools lands provide habitat for one additional population (see ''*Analysis of Impacts Under Section 4(b)(2)*''). Unit Hawaii A2 was proposed as critical habitat for one species, *Nothocestrum breviflorum*. There is habitat designated elsewhere on the island of Hawaii for this species, providing habitat for nine populations. The area between the two units is not considered essential for the conservation of either of these species.

(20) *Comment:* One commenter stated that proposed critical habitat areas for *Achyranthes mutica* (unit Hawaii B) should be plotted using a global positioning system and identified on the critical habitat maps, with the subsequent removal of any other areas.

Our Response: We have revised the unit to include only the gulches in this area. Ten critical habitat units, encompassing a total of 603 ha (1,491 ac), have been designated for this multi-island species. The remaining area outside of the gulches has been removed.

(21) *Comment:* The Department of Land and Natural Resources, Division of Forestry and Wildlife, a State agency, stated that unit Hawaii C contains only planted individuals of *Sesbania tomentosa* and is not considered to be critical habitat for this species. However, Lapakahi State Park in North Kohala should be considered for critical habitat.

Our Response: The entire area proposed for *Sesbania tomentosa* in this unit was excluded, as it is not essential to the conservation of this species because it has a lower proportion of associated native species than other areas we consider to be essential to the conservation of this species. There is critical habitat designated elsewhere on the island of Hawaii for this species that provides habitat for two populations. We have not included Lapakahi State Park in the critical habitat designation for *Sesbania tomentosa* because it was not deemed essential to the conservation of the species. There are other locations that have been designated as critical habitat in order to meet the recovery goal of 8 to 10 populations throughout its historical range on this and other islands.

(22) *Comment:* The Department of Land and Natural Resources, Division of Forestry and Wildlife, a State agency, recommended that the boundary for unit Hawaii B follow the Puu O Umi NAR boundary on the northeast side, noting that the Kohala Forest Reserve is very degraded and does not merit status as critical habitat. Another commenter noted that unit Hawaii B contains prime and other important agricultural lands along both sides of Kohala Mountain Road.

Our Response: Unit Hawaii B provides habitat for six populations of *Clermontia drepanomorpha* and three populations of *Phyllostegia warshaueri* within their historical ranges. Modifications were made to this unit to exclude areas that do not contain the primary constituent elements for these species.

(23) *Comment:* One commenter suggested that unit Hawaii D be expanded to include more endangered plant species and that perhaps this could be accomplished by transferring some of the acreage allocated to unoccupied habitat in unit Hawaii D3 to occupied habitat in unit Hawaii D7. Several commenters provided information on species present within unit Hawaii D, including: *Portulaca sclerocarpa* in unit Hawaii D1; *Lipochaeta venosa* in unit Hawaii D2; *Acacia koaia* in unit Hawaii D4; the largest known population of *Lipochaeta venosa* and unoccupied habitat for *Tetramolopium arenarium* in unit Hawaii D4, and a very extensive population of *Portulaca sclerocarpa* and two populations of *Isodendrion hosakae* and *Silene hawaiiensis* in unit Hawaii D7.

Our Response: Unit Hawaii D1 through Hawaii D8 were proposed as critical habitat for *Isodendrion hosakae, Portulaca sclerocarpa*, and *Vigna o-wahuensis*. Habitat is provided for two populations of *Isodendrion hosakae* and one population of *Vigna o-wahuensis* on the excluded lands at PTA. Modifications were made to these units to exclude areas that do not contain the primary constituent elements for these species or were considered not essential to the conservation of these species because they have a lower proportion of associated native species than other areas we consider to be essential to the conservation of these species, and there are at least eight other locations that have been designated to meet the recovery goal of 8 to 10 populations throughout their historical ranges on this and other islands. Other endangered species in this area are not part of this rulemaking.

(24) *Comment:* The Department of Land and Natural Resources, Division of Forestry and Wildlife, a State agency, suggested removing the northeast corner of unit Hawaii E that extends into Hawaiian Home Lands property as it is degraded pasture land. If the unit followed the Laupahoehoe section of the Hilo Forest Reserve boundary, it would be more accurate.

Our Response: This unit was proposed as critical habitat for three species: *Clermontia lindseyana*, *Clermontia pyrularia*, and *Phyllostegia racemosa*. Modifications were made to this unit to exclude areas that do not contain the primary constituent elements for these species. The unit now lies only in the Hakalau Forest National Wildlife Refuge and the Hilo Forest Reserve.

(25) *Comment:* One commenter provided information for unit Hawaii F regarding two populations of *Cyrtandra tintinnabula* (at Nauhi in the Honohina Tract and in the Maulua Tract) occurring at the highest elevation cutoff in this unit and in unit Hawaii E at about 5,000 feet elevation.

Our Response: Unit Hawaii E was proposed as critical habitat for three species: *Clermontia lindseyana*, *Clermontia pyrularia*, and *Phyllostegia racemosa*. Modifications were made to this unit to exclude areas that do not contain the primary constituent elements for these species. Unit Hawaii F was proposed as critical habitat for seven species: *Clermontia peleana*, *Cyanea platyphylla*, *Cyanea shipmanii*, *Cyrtandra giffardii*, *Cyrtandra tintinnabula*, *Phyllostegia racemosa*, and *Phyllostegia warshaueri*. Two critical habitat units are designated in this rule with habitat for a total of nine populations of *Cyrtandra tintinnabula*. Although the habitat in unit Hawaii E may be important for the conservation of this species, we do not believe that it is essential at this time.

(26) *Comment:* One commenter stated that he had not been provided with specific information on how the decision to propose critical habitat in unit Hawaii G was made. The Department of Land and Natural Resources, Division of Forestry and Wildlife, a State agency, stated that in unit Hawaii G, the area north of Stainback Highway that is above 3,200 feet elevation should be added to this unit and the area around Kulani, south of the highway, should be omitted, as it is dominated by timber plantations.

Our Response: This unit was proposed as critical habitat for 12 species: *Argyroxiphium kauense, Asplenium fragile* var *insulare, Clermontia lindseyana, Clermontia peleana, Cyanea platyphylla, Cyanea shipmanii, Cyanea stictophylla, Cyrtandra giffardii, Phyllostegia racemosa, Phyllostegia velutina, Plantago hawaiensis, and Sicyos alba.* Modifications were made to this unit to exclude areas that do not contain the primary constituent elements for these species or were considered not essential to the conservation of these species. Some portions excluded were not essential to the conservation of these species because they have a lower proportion of associated native species than other areas we consider to be essential to the conservation of these species, and there are at least eight other locations that have been designated or proposed to meet the recovery goal of 8 to 10 populations throughout these species' historical ranges on this and other islands. We excluded the proposed critical habitat for the multi-island species *Asplenium fragile* var. *insulare* in unit Hawaii G because it is not essential to the conservation of this species. *Asplenium fragile* var. *insulare* is historically known from Maui, and we designated critical habitat for two populations of this species on that island. There is also habitat for seven populations on lands excluded from this final rule on the island of Hawaii in PTA (*see* ''*Analysis of Impacts Under Section 4(b)(2)*''), and this rule designates critical habitat for one population elsewhere on the island. We excluded the proposed critical habitat on Kamehameha Schools lands in this area because the benefits of excluding these lands outweighed the benefits of including them in critical habitat (see ''*Analysis of Impacts Under Section 4(b)(2)*''). Those excluded lands provide habitat for recovery populations of *Phyllostegia racemosa* and *Phyllostegia velutina*.

(27) *Comment:* One commenter stated that the lone justification for unit Hawaii J is the presence of *Adenophorus periens*, which is currently found on Kauai, Molokai, and Hawaii. Within this unit, that species is threatened by volcanic emissions and acid precipitation, feral pigs and goats, and competition from nonnative plants.

Our Response: Unit Hawaii J (now called unit Hawaii 28—Adenophorus periens—a) is designated as critical habitat for *Adenophorus periens* and provides habitat within its historical range for one population of this multi-island species. This unit, along with designated critical habitat for this species on Kauai (four populations), Oahu (one population), and Molokai (four populations), is needed to help achieve the recovery goal of 8 to 10 populations of this multi-island species.

(28) *Comment:* One peer reviewer suggested that unit Hawaii J should be extended toward the coast to provide an elevation corridor with unit Hawaii M5. This reviewer also asked why units Hawaii K and Hawaii H or Hawaii J and Hawaii L were not linked and why unit Hawaii AA does not include areas to the south. The Department of Land and Natural Resources, Division of Forestry and Wildlife, a State agency, recommended that the boundary of Hawaii K should exclude the plantations in the Waihaka Gulch area. Also, the commenter questioned why a large section of the Waihaka and Kaalaala drainages is omitted from this unit.

Our Response: The Act requires us to use the best available scientific and commercial information in undertaking species listing and recovery actions, including the designation of critical habitat as set forth in this rule. In the proposed rule, we concluded that many areas were not essential for the conservation of plant species on the island of Hawaii, based on available information concerning status of the species in specific areas and level of habitat degradation. Several areas of the island were not included in the proposed rule, or are excluded from this final rule, because they are not essential for the conservation of the species. We determined them to be nonessential due to their lacking primary constituent elements or lacking the primary constituent elements and being more degraded when compared to other areas.

(29) *Comment:* One commenter stated that they did not understand how the Service could propose critical habitat in unit Hawaii L that is used by the Volcano Wilderness Run (an annual sports event).

Our Response: Operation, use, and maintenance of existing manmade features and structures adjacent to critical habitat, or where primary constituent elements are absent, are not subject to consultation pursuant to section 7 of the Act. The Volcano Wilderness Run uses existing manmade structures and thus would not be affected by a critical habitat designation in Hawaii Volcanoes National Park, which contains proposed unit Hawaii L unless there are impacts on adjacent critical habitat.

(30) *Comment:* The Department of Land and Natural Resources, Division of Forestry and Wildlife, a State agency, suggested that the boundaries for units Hawaii N1 and Hawaii N2 should be closer to the coast and include the coastline itself.

Our Response: Unit Hawaii N1 is situated along the coast and includes the coastline from Keoneokanuku Bay to Kamilo Point. Unit Hawaii N2 is also situated along the coast and includes the coastline from Mahana Bay to Pohakea.

(31) *Comment:* The Department of Land and Natural Resources, Division of Forestry and Wildlife, a State agency, stated that unit Hawaii P should include the Hawaiian Ranchos subdivision and

be extended toward the ocean. Another commenter stated that this unit was proposed due to the presence of one occurrence of *Pleomele hawaiiensis.*

Our Response: Unit Hawaii P was proposed as critical habitat for one species, *Pleomele hawaiiensis;* however, the entire area proposed for this species has been removed. This change was made because we determined that this unit is not essential to the conservation of this species because it has a lower proportion of associated native species than other areas we consider to be essential to the conservation of this species and because there are 10 other locations that have been designated to meet the recovery goal of 8 to 10 populations throughout its historical range on this island.

(32) *Comment:* The Department of Land and Natural Resources, Division of Forestry and Wildlife, a State agency, stated that unit Hawaii Q should be extended to match the Manuka NAR boundary, with the southern boundary moved to the south-southeast (to the 200-meter elevation contour) and concurrent with the Manuka NAR southeastern boundary.

Our Response: This unit was proposed as critical habitat for six species: *Colubrina oppositifolia, Diellia erecta, Flueggea neowawraea, Gouania vitifolia, Neraudia ovata,* and *Pleomele hawaiiensis.* Modifications were made to this unit to remove areas that do not contain the primary constituent elements for these species. The portions not included were not essential to the conservation of these species because they have a lower proportion of associated native species than other areas we consider to be essential to the conservation of these species, and there are at least eight other locations that have been designated to meet the recovery goal of 8 to 10 populations throughout their historical ranges. We did not add any area to this unit because there is enough habitat to provide 10 populations throughout the historical ranges of each of these species.

(33) *Comment:* The Department of Land and Natural Resources, Division of Forestry and Wildlife, a State agency, stated that the boundary of unit Hawaii R should be moved south to match up the with the boundary of State lands at Honomalino.

Our Response: The northern boundary of unit Hawaii R was moved south to include only the South Kona Forest Reserve.

(34) *Comment:* The Department of Land and Natural Resources, Division of Forestry and Wildlife, a State agency, provided information that unit Hawaii T contains habitat for *Clermontia lindseyana,* so critical habitat for this species should be added the unit.

Our Response: Clermontia lindseyana is currently found on Maui and the island of Hawaii. Critical habitat for two populations was designated on Maui and habitat for eight populations is designated for this species on the island of Hawaii in this rule. Therefore, additional populations were not deemed essential.

(35) *Comment:* The Department of Land and Natural Resources, Division of Forestry and Wildlife, a State agency, provided information that unit Hawaii W is not currently occupied by wild individuals of *Delissea undulata* but does contain historical habitat for this species and for *Zanthoxylum hawaiiense.*

Our Response: Unit Hawaii W was proposed as critical habitat for one species, *Delissea undulata.* The entire area proposed for this species was excluded. Portions of this unit are not essential to the conservation of this species. We excluded the proposed critical habitat on Kamehameha Schools lands in this area because the benefits of excluding these lands outweighed the benefits of including them in critical habitat (*see* ''*Analysis of Impacts Under Section 4(b)(2)*''). These excluded lands are still essential and provide habitat for three populations of *Delissea undulata.* There is habitat designated elsewhere on the island of Hawaii for this species, providing habitat for two populations. *Delissea undulata* is known historically on Maui and is currently found on Kauai and the island of Hawaii. In addition to the designation in this rule, we have also designated critical habitat on Kauai (habitat for three populations). *Zanthoxylum hawaiiense* is known historically on Lanai and is currently found on Kauai, Molokai, Maui, and the island of Hawaii. We designated critical habitat for this species on Kauai (habitat for two populations), Molokai (habitat for one population), and Maui (habitat for one population). There is additional habitat for six populations of *Zanthoxylum hawaiiense* on the island of Hawaii in the excluded PTA lands (*see* ''*Analysis of Impacts Under Section 4(b)(2)*'').

(36) *Comment:* The Department of Land and Natural Resources, Division of Forestry and Wildlife, a State agency, provided information that unit Hawaii X contains *Phyllostegia velutina* (in Honuaula Forest Reserve).

Our Response: Two critical habitat units for *Phyllostegia velutina* are designated in this rule for a total of 10 populations. Although the habitat in the Honuaula Forest Reserve may be important for the conservation of this species, it is not considered to be essential.

(37) *Comment:* The Department of Land and Natural Resources, Division of Forestry and Wildlife, a State agency, suggested that *Pleomele hawaiiensis* be added to unit Hawaii Y1 and *Caesalpinia kavaiensis* added to unit Hawaii Y2.

Our Response: Caesalpinia kavaiensis is not included in the court order, and therefore was not included in this rulemaking. There is habitat designated elsewhere on the island of Hawaii for *Pleomele hawaiiensis* for 10 populations. Although the habitat in the Honuaula Forest Reserve may be important for the conservation of this species, it is not essential.

(38) *Comment:* The Department of Land and Natural Resources, Division of Forestry and Wildlife, a State agency, stated that much of unit Hawaii Z contains badly degraded areas, and these areas should be excluded from designation, as they are currently being managed for hunting, ranching, and other multiple use programs that may not be compatible with plant critical habitat management.

Our Response: Unit Hawaii Z was proposed as critical habitat for 12 species: *Bonamia menziesii, Colubrina oppositifolia, Cyanea stictophylla, Delissea undulata, Flueggea neowawraea, Hibiscadelphus hualalaiensis, Hibiscus brackenridgei, Nothocestrum breviflorum, Phyllostegia velutina, Plantago hawaiensis, Pleomele hawaiiensis, and Zanthoxylum dipetalum* var. *tomentosum.* Modifications were made to this unit to exclude areas that do not contain the primary constituent elements for these species or are not essential to the conservation of these species. Some portions removed are not essential to the conservation of these species because they have a lower proportion of associated native species than other areas we consider to be essential to the conservation of these species, and there are at least 8 other locations that have been designated to meet the recovery goal of 8 to 10 populations throughout their historical ranges on this and other islands.

(39) *Comment:* The Department of Land and Natural Resources, Division of Forestry and Wildlife, a State agency, stated that much of unit Hawaii AA is badly degraded; dominated by weedy, fire-prone vegetation; and is currently being managed for hunting, which may not be compatible with plant critical habitat management. The commenter also suggested that the lower boundary of this unit be at the 3,500-foot elevation level and configured in accordance with

the Service's map of the upper Puu Anahulu area in order to omit the central portion, which is dominated by *Pennisetum setaceum.*

Our Response: This unit was proposed as critical habitat for 10 species: *Asplenium fragile* var. *insulare, Hedyotis coriacea, Neraudia ovata, Portulaca sclerocarpa, Silene hawaiiensis, Silene lanceolata, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium arenarium,* and *Zanthoxylum hawaiiense.* The entire area proposed for these species was excluded (see ''*Analysis of Impacts Under Section 4(b)(2)*'').

(40) *Comment:* One peer reviewer suggested that the northern and eastern portion of PTA be removed from critical habitat, even though this area has numerous populations of *Silene hawaiiensis,* since there are large populations of this species in other critical habitat units.

Our Response: All of PTA lands are being excluded from critical habitat in this rule (see ''*Analysis of Impacts Under Section 4(b)(2)*'').

(41) *Comment:* One commenter stated that critical habitat units Hawaii B, D2, N, O, Z, and AA affect grazing lands; units M2 and M3 affect papaya orchards in mauka areas of Puna; and unit Q affects macadamia nut orchards and livestock grazing.

Our Response: Modifications were made to units Hawaii B, D2, O, Q, and Z to remove areas that do not contain the primary constituent elements. Units Hawaii N1, N2, M2, and M3 were all removed, as these areas are not essential to the conservation of *Sesbania tomentosa* and *Ischaemum byrone.* They are not essential because they have a lower proportion of associated native species than other areas we consider to be essential to the conservation of these species, and there are at least 10 other locations that have been designated for each of these species. In addition, Unit Hawaii AA was excluded (see ''*Analysis of Impacts Under Section 4(b)(2)*'').

Issue 3: Species-Specific Biological Comments

(42) *Comment:* One peer reviewer commented that the following should be included in critical habitat: Cinder cone habitats in the Waimea area for *Isodendrion hosakae* and *Lipochaeta venosa;* eastern Mauna Kea wet forests, especially the areas downslope from Hakalau National Wildlife Refuge; dry forests north of Kona (for *Neraudia ovata, Isodendrion pyrifolium,* and *Nothocestrum brevifolium*); and dry and mesic forests in south Kona.

Our Response: Lipochaeta venosa is not one of the species at issue in the court order in *Conservation Council of Hawaii* v. *Babbitt* (D. Hawaii 1998) and subsequent stipulations and therefore was not included in this rulemaking. Critical habitat is designated elsewhere on the island of Hawaii for *Isodendrion hosakae* (for eight populations). Four other critical habitat units for *Neraudia ovata* are designated on the island of Hawaii for a total of six populations, and habitat is provided for four populations on the excluded lands at PTA (see ''*Analysis of Impacts Under Section 4(b)(2)*''). *Isodendrion pyrifolium* is known historically on Oahu, Molokai, Lanai, and Maui and is currently found on the island of Hawaii. We designated critical habitat for this species on Oahu (habitat for three populations), Molokai (habitat for one population), and Maui (habitat for two populations). Habitat for two additional populations is in the lands excluded from critical habitat on Lanai. Three critical habitat units for *Nothocestrum breviflorum* are designated in this rule for a total of nine populations. Although the habitat outside of these areas may be important for the conservation of these species, it is not essential.

(43) *Comment:* Several commenters suggested that we update the distribution of *Cyrtandra tintinnabula* by contacting a local expert; another provided information that *Hibiscus brackenridgei* had recently been located on Puuwaawaa.

Our Response: We have revised the designated critical habitat in the final rule to incorporate new information and to address comments and new information received during the comment periods, including information on species occurrences and areas of potentially suitable unoccupied habitat for some of these species.

(44) *Comment:* One commenter stated that the subdivisions of Kona Coastview, Kona Wonderview, and Kona Highlands are not appropriate for propagation of *Pleomele hawaiiensis,* as they are residential areas that are covered with roads, driveways, houses, and lawns.

Our Response: The subdivisions of Kona Coastview, Kona Wonderview, and Kona Highlands are not included in the proposed or final critical habitat for *Pleomele hawaiiensis.*

Issue 4: Mapping and Primary Constituent Elements

(45) *Comment:* One peer reviewer suggested that it would be informative to show State and Federal property boundaries as well as roads and elevation contours.

Our Response: Depending on the scale of the map (which is dependent on unit size), major roads, geographical landmarks, and elevation contours were included in the maps. It would be cost-prohibitive and make the rule unnecessarily large to include all the information available. Specific maps, such as landownership and land use maps, are available upon request.

(46) *Comment:* One commenter stated that most of the primary constituent elements put forth by the Service are non-specific plant community associations or general physical locations and lack a clear and quantifiable relationship to the species, but this information will be essential for future consultations with the Service.

Our Response: As described in the discussions for each of the 47 species for which critical habitat was proposed, very little is known about the specific physical and biological requirements of these species. As such, we defined the primary constituent elements on the basis of the habitat features of the areas from which the plant species are reported, such as the type of plant community, associated native plant species, locale information (*e.g.*, steep rocky cliffs, talus slopes, stream banks), and elevation. The habitat features represent the ecological components required by the plant. The type of plant community and associated native plant species represent on specific microclimate conditions, retention and availability of water in the soil, soil microorganism community, and nutrient cycling and availability. The locale indicates 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 and the plant communities associated with the species represent the primary constituent elements for these species.

(47) *Comment:* One commenter remarked that only a rudimentary map was provided with no indication of the boundaries of the proposed areas, acreage involved, nor any indication of how the Service determined what lands were in or out of proposed critical habitat.

Our Response: The maps in the **Federal Register** provide the general location and shape of critical habitat and are provided for reference purposes to guide Federal agencies and other interested parties in locating the general boundaries of the critical habitat (50 CFR 17.94). The legal descriptions are readily plotted and transferable to a variety of mapping formats and were made available electronically upon request for use with GIS programs. Unit

boundaries were defined by giving the coordinates in UTM Zone 5 with units in meters using North American Datum of 1983 (NAD83). These coordinates can be used to determine boundaries with some accuracy. At the public hearing, the maps were expanded to wall-size to assist the public in better understanding the proposed critical habitat. These larger scale maps were also provided to individuals upon request. Furthermore, we provided direct assistance in response to written or telephone questions with regard to mapping and landownership within the proposed critical habitat. Designated critical habitat in this final rule consists of units separately mapped for each species and is more true to the elevation contours, the distribution of habitat, and other natural features while excluding, to the extent feasible, areas where primary consistent elements are absent.

(48) *Comment:* The Department of Transportation, a State agency, stated that designation of critical habitat would significantly increase the costs of planning, design, construction, and maintenance of a number of State highways and recommended that the buffer zones on each side of the State highway right-of-way (minimum 100 feet), along with all planned roads, be excluded from designation of critical habitat.

Our Response: Operation and maintenance of existing manmade features and structures adjacent to critical habitat would not be subject to consultation pursuant to section 7 of the Act because such features or structures do not contain the PCEs, unless there are effects to adjacent critical habitat. If regular maintenance of the roads extends 100 feet from the road base, it is excluded from critical habitat. Otherwise, areas that contain primary constituent elements and which have been determined to be essential to the conservation of a number of the plant species on the island of Hawaii are designated as critical habitat.

Issue 5: Effects of Designation

(49) *Comment:* Several commenters, including the Department of Land and Natural Resources, Land Division, a State agency, remarked on the need for consultation, pursuant to section 7 of the Act, which would be triggered by designation of critical habitat, and the potentially adverse effect such consultation could have on flexibility of land management and activities such as water diversion projects, manipulation of vegetation, grazing, applications for Federal loans or grants (*e.g.*, the NRCS), conservation district use applications, property maintenance, and construction projects.

Our Response: Under section 7 of the Act, all Federal agencies must consult with us to insure that any action that they authorize, fund, or carry out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat. If we find that the proposed actions are likely to jeopardize the continued existence of an endangered or threatened species or result in destruction or adverse modification of critical habitat, we suggest reasonable and prudent alternatives that would allow the Federal agency to implement their proposed action without such adverse consequences. Every consultation is unique, and it is impossible to comment on what the results of a future consultation would be without details of the proposed activity and the status of the species and its critical habitat at the time of the consultation.

(50) *Comment:* Several commenters stated that designation of critical habitat would unnecessarily adversely affect military training (some of which cannot be duplicated elsewhere) and may delay construction of required training facilities.

Our Response: The potential direct and indirect costs to the Army are discussed in detail in Chapter 3, section 3f, of the Draft Economic Analysis (DEA) and in sections 3h and 4f of the Addendum. We have had numerous discussions with the Army regarding these areas, and, as a result, we have removed PTA, based on either the lack of primary constituent elements or other reasons (*see* ''*Analysis of Impacts Under Section 4(b)(2)*'').

(51) *Comment:* One commenter stated that all species should be offered protection, but they cannot support protection for some and not for others. They are concerned about the nonnative animals, whose fate would be decided by agencies that consider them invasive and kill them. The current interpretation of critical habitat in effect allows the Federal government and its partners to utilize any methodology they wish in dealing with feral animals with impunity, although such methods may be cruel and environmentally unsound.

Our Response: The designation of critical habitat does not give the Federal government or its partners the authority to manage feral animals. Any potential animal management program would be subject to all applicable State, Federal, and local laws.

(52) *Comment:* Several commenters expressed concern over the effect that designation of critical habitat would have on subsistence hunting and gathering, particularly that the control of feral pigs and ungulates would result in adverse economical and cultural effects to Native Hawaiian people and the State's economy. Others stated that the removal of ungulates from the forest would result in an increased threat and frequency of fire.

Our Response: 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 affected only where there is Federal involvement in the action and when the action is likely to destroy or adversely modify critical habitat. Such designation also does not require the State or a private landowner to fence the designated area and/or remove game mammals. We also recognize that under certain circumstances, removal of ungulates can result in an increase in weedy growth and associated fire risk, and we recommend that ungulate management programs assess and address this issue.

(53) *Comment:* The Department of Hawaiian Homelands, a State agency, stated that Hawaiian home lands in the area of the Waimea and South Point parcels have already been subdivided into individual lots. The Department of Hawaiian Home Lands does not have the authority to retroactively impose management plans on individual lessees. Therefore, any regulatory impact will fall on these lessees.

Our Response: A critical habitat designation does not constitute a land management plan, does not mandate a management plan, and does not mandate particular management actions. On State or private lands, there is no direct Federal regulatory impact from a critical habitat designation unless some sort of Federal permit, license, or funding is involved. If there is a Federal nexus, the Federal agency granting or issuing the permit, license, or funding, not an individual lessee, is required to consult with the Service to ensure that the activity being permitted, licensed, or funded is not likely to destroy or adversely modify critical habitat. By consulting with the Service, the Federal agency can usually minimize or avoid potential conflicts with listed species and their critical habitat, and the proposed activity may be undertaken.

(54) *Comment:* One commenter raised the issue of the number of fires currently burning in the landfill at Keahuolu that have the potential to explode and raised concerns that

designation of critical habitat could adversely affect plans for remediation.

Our Response: The burning landfill is not within the final critical habitat designation. Operation and maintenance of existing manmade features and structures adjacent to critical habitat are not subject to section 7 consultation. Unless a Federal action related to landfill remediation activities directly or indirectly affects nearby habitat containing the primary constituent elements, these activities would not be affected by the designation of critical habitat.

Issue 6: Legal Issues

(55) *Comment:* One commenter stated that the Service cannot lawfully exclude areas from critical habitat based on a finding that they currently are adequately managed or protected. To do so would violate the mandatory duty to designate critical habitat to the maximum extent prudent and determinable. The commenter urges the Service not to exclude any areas from designation on this basis (*i.e.*, lands already managed or protected), since doing so would violate the mandatory duty to designate critical habitat ''to the maximum extent prudent and determinable.''

Our Response: In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. If an area is covered by a plan that meets our management criteria, we believe it does not constitute critical habitat as defined by the Act because the primary constituent elements found there are not considered to be in need of special management or protection. For a detailed explanation of this evaluation see the ''*Analysis of Managed Lands Under Section 3(5)(A)*'' section below. However, to the extent that special management considerations and protection may be required for any of these areas and they, therefore, would meet the definition of critical habitat according to section 3(5)(A)(i), they are also properly excluded from designation under section 4(b)(2) of the Act (*see* ''*Analysis of Impacts under Section 4(b)(2)*'' section below).

(56) *Comment:* Several commenters, including the Department of Land and Natural Resources, Land Division, a State agency, stated that the proposal appeared to not recognize the interplay in Hawaii between Federal and State laws, particularly environmental laws. They stated that harming endangered and threatened plants, even on private property, is already prohibited under State law and that designation of critical habitat duplicates existing regulations, zoning laws, and land use laws, creating an additional unnecessary regulatory burden and decrease in land values, thus resulting in ''taking.''

Our Response: The designation of critical habitat requires all Federal agencies to ensure, in consultation with the Service, that any action authorized, funded, or carried out by the agency is not likely to result in the destruction or adverse modification of designated critical habitat. If, after consultation, our biological opinion concludes that a proposed action is likely to result in the destruction or adverse modification of critical habitat, we are required to suggest reasonable and prudent alternatives to the action that would avoid the destruction or adverse modification of the critical habitat (16 U.S.C. 1536(b)(3)(A)). If we cannot suggest acceptable reasonable and prudent alternatives, the agency (or the applicant) may apply for an exemption from the Endangered Species Committee under section 7(e) through (p) of the Act. Possible effects resulting from interplay of the Federal Endangered Species Act and Hawaii State law are also discussed in the DEA and Addendum under indirect costs.

However, the mere promulgation of a regulation, like the enactment of a statute, does not take private property unless the regulation on its face denies the property owners all economically beneficial or productive use of their land (*Agins* v. *City of Tiburon,* 447 U.S. 255, 260–263 (1980); *Hodel* v. *Virginia Surface Mining and Reclamation Ass'n,* 452 U.S. 264, 195 (1981); *Lucas* v. *South Carolina Coastal Council,* 505 U.S. 1003, 1014 (1992)). The Act does not automatically restrict all uses of critical habitat, but only imposes restrictions under section 7(a)(2) on Federal agency actions that may result in destruction or adverse modification of designated critical habitat. Furthermore, as discussed above, if a biological opinion concludes that a proposed action is likely to result in destruction or modification of critical habitat, we are required to suggest reasonable and prudent alternatives. Finally, habitat value is only one factor among many that State and local governments consider in making decisions on allowable property uses, (*See, e.g.* HRS 205–17) and would not necessarily be solely attributable to critical habitat.

(57) *Comment:* Several commenters, including the Department of Land and Natural Resources, Land Division, a State agency, raised concerns over the temporal relationship of the economic analysis relative to designation of critical habitat. One commenter stated that economic impacts should be considered concurrent with all other information and objected to the disjointed process. Another commenter wanted to ensure that the economic analysis be completed prior to the designation of critical habitat to ensure the Service meets the ''prudent and determinable'' standard for such designation.

Our Response: An economic analysis of the impact of critical habitat cannot be performed without knowing the location of the critical habitat. This fact is easily realized by considering the difference of proposed critical habitat on land zoned for protective conservation versus land zoned for urban development. These types of zoning issues, as well as other issues, will greatly affect any economic analysis of critical habitat and cannot be taken into consideration until a proposal of critical habitat is put forth. The proposed prudency finding is not a final prudency finding since it has not considered the economic issues. The fact that the proposed critical habitat is published in a proposed rule emphasizes that no final decision has been made on location or extent of critical habitat. The final designation of critical habitat occurs after public comments have been taken into consideration and the economic analysis on the proposed critical habitat has been completed. The effects of the public comments and the economic analysis are then reflected in the final rulemaking.

(58) *Comment:* Several commenters stated that designation of critical habitat could have an adverse affect on the voluntary cooperation for species conservation between the private sector and the Federal government and may actually result in less species recovery. Several commenters suggested the use of alternatives to critical habitat designation that would result in greater net benefits to the species and recommended that the Service and landowners focus their resources towards proactive cooperation between the Federal and State agencies and private landowners, including the development of monetary and other incentives to engage in species protection and recovery.

Our Response: We are required under section 4 of the Act to designate critical habitat based on the best available information we have at the time of designation. In addition, we are directed by the Act to recover the species and the ecosystems on which they depend, not just preserve them in a horticultural facility. We realize that designation of critical habitat alone will not achieve recovery. Many threatened and endangered species occur on private lands, and we recognize the importance of conservation actions by private landowners. Cooperation from private landowners is an important element of our conservation efforts, and we have had considerable success in developing partnerships with large and small landowners, government agencies, and nongovernmental organizations for conservation activities on the island of Hawaii, in the State of Hawaii, and throughout the nation.

We administer several programs aimed at providing incentives to landowners to conserve endangered and threatened species on their lands. One of these programs is the Endangered Species Landowner Incentive Program, which was first funded by Congress in fiscal year 1999. Under this program, we provide technical assistance and funding to landowners for carrying out conservation actions on their lands. In the first year alone, 145 proposals totaling $21.1 million competed for $5 million in grant money. Additional information on landowner incentive programs that we administer may be found on our Web site (*http://endangered.fws.gov/landowner/index.html*).

(59) *Comment:* Several commenters raised concerns about the nature of the public hearings. Several commenters requested that there be a process that would reach the more rural areas, and others requested that more public hearings be held, particularly after the economic analysis was completed, to make the conclusions available to the general public.

Our Response: Section 4(b)(5)(E) of the Act requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. In response to two requests from recreational hunting organizations, we published a notice of two public hearings on the proposed critical habitat designations for 47 plants from the island of Hawaii, and we reopened the comment period, which originally closed on July 29, 2002. The two public hearings were held on the island of Hawaii in Kailua-Kona and Hilo on October 29 and October 30, 2002, respectively. These notices were advertised in the *Honolulu Star-Bulletin.* We also held several informal meeting to discuss critical habitat with a variety of groups, including trade organizations, community associations, and hunting clubs. Although we did not have a public hearing on the economic analysis, notice of its availability was published in the **Federal Register** and comments were solicited.

(60) *Comment:* One commenter asked how long it would take to undo designation of critical habitat if necessary to correct or adjust for future conditions.

Our Response: If provided with new information, we may revise the critical habitat designation at any time in the future. The time it takes to produce a proposed rule, receive peer review and public comment, and to publish a final rule varies with the situation.

(61) *Comment:* One commenter stated that, should current public use of any area that is designated as critical habitat be reduced or removed, the Service should provide in-kind mitigation.

Our Response: Possible effects resulting from interplay of the Federal Endangered Species Act and Hawaii State law are discussed in the DEA and Addendum under indirect costs (*e.g.*, possible conservation management mandate for the private landowner and reduction in game mammals' population). Further, the DEA and Addendum discuss the indirect impacts resulting from the possible redistricting of private land into the Conservation District, noting that, under a most extreme scenario, areas designated as critical habitat could be placed in the Protective Subzone with the most severe restrictions, which could restrict development or 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.

(62) *Comment:* One commenter stated that the newly elected governor and her staff be allowed time to comment, as she will need to deal with any economic or social fallout from the designation of critical habitat on the island of Hawaii. Another commenter stated that as more than 50 percent of the lands proposed for designation are State lands, the Hawaii State legislature should have significant input into the designation.

Our Response: All persons were invited to comment on the proposed rule. Four public comment periods were open for this rule. The first opened upon publication of the rule on May 28, 2002, for initial comments on the rule, and remained open until July 29, 2002 (67 FR 36968). The second was open from August 26, 2002, until September 30, 2002 (67 FR 54766). The third was open from September 24, 2002, until November 30, 2002 (67 FR 59811). The fourth opened on December 18, 2002, to allow comments on the DEA and closed on January 17, 2003 (67 FR 77464). Comments were received from representatives of various State agencies.

(63) *Comment:* Several commenters stated that the designation of critical habitat will result in a flood of lawsuits. One commenter was concerned that if it is found that more critical habitat was designated than is needed, it will be impossible to rescind the designation for these areas.

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 designated. However, the DEA does discuss the potential impacts pursuant to the interplay with State law, including the possibility of litigation. 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, and increased risk of litigation over approvals, are not expected.

(64) *Comment:* One commenter stated that proposed critical habitat on lands owned by the Queen Liliuokalani Trust at Keahuolu are surrounded by urban development and have been designated for future urban development by the State and County of Hawaii.

Our Response: We have excluded Queen Liliuokalani Trust lands and other lands in this area (see ''*Analysis of Impacts Under Section 4(b)(2)*''). We met with owners of land in the proposed critical habitat in the Keahuolu area and have revised unit Hawaii Y2 based on new information received during the public comment period.

(65) *Comment:* We received a comment letter on February 21, 2003 (after the close of the comment period), requesting additional time to work with us to implement interim conservation measures believed to be more beneficial to *Neraudia ovata* (and Blackburn's sphinx moth (*Manduca blackburni*)) and their respective habitats on lands owned by TSA and MID corporations. The landowner offered to: (1) Set aside 100 to 130 contiguous areas located in the proposed critical habitat unit Hawaii Y1 (and proposed Blackburn's sphinx moth proposed critical habitat); (2) Enter into

good faith negotiations with Federal, State, or county entities for acquisition of the area; (3) Agree to enter into a Safe Harbor Agreement with us to ensure the protection and management of a baseline level of *Neraudia ovata* (and Blackburn's sphinx moth); and (4) Enter into a memorandum of understanding or cooperative agreement that addresses habitat protection, land access, and monitoring and management actions.

Our Response: Unit Hawaii Y1 was proposed as critical habitat for two species: *Isodendrion pyrifolium* and *Neraudia ovata.* We have excluded lands in this area (see ''Analysis of Impacts Under Section 4(b)(2)'').

Issue 7: Economic Issues

(66) *Comment:* One commenter expressed concern over the potential for designation of critical habitat to have significant adverse effects on private lands, both Agricultural and Urban Districts, due to increased State regulatory implications.

Our Response: The potential adverse effect on private lands in both the Agricultural and Urban Districts are discussed in the Indirect Costs sections of the DEA and in the Addendum. The effects include redistricting, conservation management, State and county development approvals, reductions in property values, etc. The DEA and Addendum estimate the costs of such impacts. For certain parcels, a reduction in certain property values is reasonably foreseeable, but the magnitude and duration of the loss is not known. As such, the Addendum estimates these impacts to be some undetermined fraction of $71.2 million to $124.4 million over 10 years.

(67) *Comment:* One commenter expressed concern that the designation of critical habitat would result in a lawsuit to remove game animals, which would cause a tremendous financial burden on the State and destroy traditional and cultural practices of its people.

Our Response: Chapter VI, Section 4.b.(3) of the DEA acknowledges that, if it were to occur, the removal of game animals would result in a loss in hunting activity, economic activity, hunter benefits, consumption of hunting meat, and social and cultural value of hunting, and it would increase State expenditures. However, the concern about the removal of game animals is based in part on the premise that critical habitat will require the State to undertake steps to avoid the taking of a listed species. As stated in the Conservation Management section of the Addendum, while critical habitat may provide information to help a landowner identify where take may occur, take prohibitions—to the extent they apply to listed plants—are triggered by the listing of a species and would apply whether or not critical habitat is designated. As such, designating critical habitat is not anticipated to result in the removal of game animals.

(68) *Comment:* Several commenters expressed concern that the designation of critical habitat would constrain community and infrastructure growth, business growth, and development of affordable housing.

Our Response: We have excluded lands in this area (*see* ''Analysis of Impacts Under Section 4(b)(2)'').

(69) *Comment:* Several commenters expressed concern that the designation of critical habitat would constrain outdoor recreation and subsistence hunting and gathering.

Our Response: The impacts to outdoor recreation and subsistence hunting and gathering are discussed in the DEA and the Addendum. Specifically, the Direct Costs section of the DEA, as amended by the Addendum, discusses impacts to State-managed hunting, National Parks and Wildlife Refuges, State-managed areas, and the State trail and access system. The Indirect Costs section of the DEA, as amended by the Addendum, discusses the impacts to management of game mammals and hunting lands, and subsistence and Native Hawaiian practices. Potential benefits to ecotourism and outdoor recreation are discussed in the Benefits Section of the DEA. The impacts, if any, for each of these activities are summarized below.

In summary, our final economic analysis estimates that the probability of a major State-initiated change in game mammal management, *i.e.*, that the State would adopt a policy to substantially reduce game mammal populations in critical habitat units that overlap with State hunting units, is small. The probability that restriction of access and prohibition of subsistence activities in all critical habitat areas is undetermined but unlikely. It is more likely that subsistence activities would be consistent with conservation restrictions, should any be imposed. Thus it is anticipated that the impact of critical habitat on subsistence activities will be minimal. Ecotourism could benefit from project modifications, that may result from critical habitat designation, that enhance the quality of the ecosystem and expand the geographic scope of high-quality ecosystems, thereby increasing the appeal of ecotourism tours to visitors.

(70) *Comment:* Some commenters raised concerns over the ability of wildlife and other projects to receive Pittman-Robertson or other Federal funding or grants.

Our Response: Chapter VI, Section 3.a. of the DEA discusses Pittman-Robertson funding for wildlife projects. The State Department of Land and Natural Resources (DLNR) already consults with the Service regarding projects that receive Pittman-Robertson funding. As stated in the DEA, the designation of critical habitat may increase the level of effort required to analyze the effects of feral ungulates, especially in areas that are unoccupied by the listed plants. However, Hawaii currently receives the minimum amount of Pittman-Robertson funds, so the critical habitat designation would not impact the amount of Pittman-Robertson funds the State receives.

Impacts to other projects that receive Federal funding or grants, or have Federal involvement, are discussed in the Direct Costs section of the DEA, as amended by the Addendum. As shown in Table Add-3, the total direct costs range from $46.6 million to $62.7 million over 10 years.

(71) *Comment:* Two commenters had concerns regarding funding and assistance to farmers and ranchers in the form of U.S. Department of Agriculture (USDA) loans, grants, subsidy payments, etc., or other Federal funding such as Veterans Administration (VA) loans, Federal Housing Administration (FHA) loans, NMHA loans or similar Housing and Urban Development (HUD) programs.

Our Response: The impacts associated with USDA and HUD programs are discussed in the Ranching Operations and Residential Development sections of the Addendum. Potential impacts to ranching operations include $38,800 to $82,400 in costs to ranchers, NRCS, and the Service in section 7 consultation costs with no project modifications. The Addendum anticipates no impacts to residential development because areas planned for development are removed from the final designation and other planned developments have no reasonably foreseeable Federal involvement.

(72) *Comment:* One commenter was concerned that the designation of critical habitat would adversely affect their sale of conservation easements to the U.S. Forest Service.

Our Response: The commenter's land was not included in the proposed designation and is also not included in the critical habitat designation, so this analysis anticipates that the designation of critical habitat will not impact the sale of conservation easements on these parcels.

(73) *Comment:* One commenter had specific concerns about the effect the designation of critical habitat would have relative to the Department of Hawaiian Homelands (DHHL) homesteading program.

Our Response: As discussed in the Residential Development section in the Addendum, there is no DHHL land within the critical habitat designation that is planned to be developed within the next 20 years. As such, any potential impacts to the DHHL homestead program are well beyond the 10-year timeframe of this analysis.

(74) *Comment:* Several commenters commented that the economic analysis did not thoroughly consider the nexus between the State of Hawaii's environmental laws and the Federal Endangered Species Act and other Federal laws (such as the Coastal Zone Management Act). At least two commenters commented that these plant species are already protected under State of Hawaii law, which virtually assures that a violation of the Federal Endangered Species Act will also be a violation of the State law prohibition on harm to federally listed and State-listed plants.

Our Response: The nexus between the State of Hawaii's environmental laws and Federal laws is discussed in detail in the Indirect Costs section of the DEA, as amended by the Addendum. Specifically, impacts associated with State redistricting, mandated conservation management, State and county development approvals, and State and county environmental review are considered.

The DEA and Addendum examine any indirect costs of critical habitat designation, such as when critical habitat designation triggers the applicability of a State or local statute. Prohibition of ''harm'' is associated with State laws regarding the take of listed plants. Take prohibitions are attributable to a listing decision and they are not coextensive costs of critical habitat designations. There are no take prohibitions associated with critical habitat. Other possible indirect impacts, such as loss in property values due to State redistricting of land from agricultural or rural to conservation were analyzed (see also our response to Comment 81). However, there is considerable uncertainty as to whether any or all of these indirect impacts may occur since they depend on actions and decisions other than those required under the ESA, and there is only limited history to serve as guidance.

The commenters' reference to the Coastal Zone Management Act discusses the possibility of delays or denials of county Special Management Area (SMA) Use Permits for development projects in critical habitat. None of the planned development projects in the critical habitat designation are located in the SMA, so this analysis anticipates no impacts associated with SMA Use Permits.

(75) *Comment:* Several commenters, including the Department of Land and Natural Resources, Land Division, a State agency, commented that the economic analysis needs to take into consideration all economic impacts, including those in addition to ''indirect'' effects, those effects in the ''reasonably foreseeable'' future, or for those projects that are expected to occur within the next 10 years. Several commenters, including the Department of Agriculture, a State agency, commented that the scope of the economic analysis was too narrow and needed to go beyond those direct economic impacts associated with project compliance with section 7 of the Act.

Our Response: Both direct and indirect impacts are analyzed in Chapter VI of the DEA and in the Addendum, and both are summarized in Table Add-3. Information is limited and unreliable for projects, land uses, and activities that may occur at some time beyond the reasonably foreseeable future, so in general, these projects, land uses, and activities are not considered in the DEA or in the Addendum. A 10-year time horizon is used because many landowners and managers do not have specific plans for projects beyond 10 years. In addition, the forecasts in the analysis of future economic activity are based on current socioeconomic trends and the current level of technology, both of which are likely to change over the long term.

(76) *Comment:* Several commenters commented that the economic analyses should also include those significant beneficial economic benefits that are provided by the designation of critical habitat, particularly since the economic analysis provides text to this effect. These benefits include, but are not necessarily limited to, things such as groundwater recharge, maintenance of surface water quality, erosion control, funding for research, development of nursery and landscape products, volunteer conservation work, careers in biology, and ecotourism. One commenter commented that protecting critical habitat is essential not only for the recovery of threatened and endangered plants but also to protect the ecosystems upon which they rely for long-term survival and recovery.

Our Response: The Benefits sections of the DEA and the Addendum discuss the benefits mentioned above. It is not feasible, however, to fully describe and accurately quantify these benefits in the specific context of the critical habitat designation because of the scarcity of available studies and information relating to the size and value of beneficial changes that are likely to occur as a result of designating critical habitat. In particular, the following information is not currently available: (1) Scientific studies on the magnitude of the recovery and ecosystem changes resulting from the critical habitat designation, and (2) economic studies on the per-unit value of many of the changes.

(77) *Comment:* One commenter commented that the only benefit that would arise from designation of critical habitat would be the availability of funding for the DLNR that would be used for the implementation of management plans prepared by The Nature Conservancy to fence and eradicate all game mammals within these areas.

Our Response: As mentioned in the Indirect Costs section of the DEA, the designation of critical habitat is not expected to change the nature of the ongoing debate regarding the management of the game mammal population in Hawaii, although it may expand or refine the geographic focus. However, even with critical habitat, the DEA assumes that the probability is small that the State DLNR would adopt a policy to substantially reduce game mammal populations in critical habitat units that overlap with State Hunting Units, even if critical habitat caused an increase in funding. This judgment is based on discussions with DLNR, others familiar with the subject, and a decade of public testimony by hunters.

(78) *Comment:* One commenter stated that to avoid legal liability (*i.e.*, ''taking''), a landowner may have to incur substantial costs associated with conservation management actions (*e.g.*, fencing and exotics control) on their lands that contain designated critical habitat. Another commenter raised concerns over the amount of funds necessary to manage all the lands proposed for critical habitat, citing costs associated with a 15-acre restoration project in North Kona (Kaupulehu) that was initiated in 1990, has used over $600,000, and still continues to require management actions.

Our Response: Although the costs of conservation management were presented in the DEA for the purposes of illustration, this analysis assumes that these costs are not reasonably

foreseeable for the reasons explained in Section 4.b. of the Addendum.

(79) *Comment:* One commenter commented that the designation of critical habitat on the majority of Hawaiian Home Lands at South Point and Waimea, which would require beneficiaries to conduct environmental assessments and consultations under section 7 of the Act in order to build homes or commence farming, would represent a substantial economic impact.

Our Response: Much of the DHHL land at South Point and Waimea is not included in the final designation. North of Waimea, only gulches that are not suitable for housing development are included in Hawaii Unit 9. Near South Point, we have reduced the amount of DHHL land from 603 ha (1,490 ac) in the proposed designation to 126 ha (313 ac) in the critical habitat designation. The 126 ha (313 ac) in Hawaii Unit 19 are part of the Kamaoa-Puueo tract. As stated in the DEA, the 2002 DHHL *Hawaii Island Plan* identifies the Kamaoa-Puueo tract as a non-priority development, which means that its development is not likely in the next 20 years. There is no more DHHL land included in the critical habitat designation. As such, this analysis estimates no impacts associated with DHHL land within the 10-year timeframe of this analysis.

(80) *Comment:* One commenter commented that there are 23,000 hunters in Hawaii who contribute an estimated $31 million annually to State revenue. A disproportionately large percentage of these hunters live on the Island of Hawaii, so, designation of critical habitat will have a correspondingly adverse effect on the island's economic condition.

Our Response: For illustrative purposes, the loss in direct sales, indirect sales, employment, and income associated with a loss of hunting activity in critical habitat is presented in Chapter VI, Section 4.b.(3) of the DEA. However, the DEA assumes that the probability that the State will adopt a policy to remove game animals from critical habitat is low. The Addendum makes no changes to this conclusion.

(81) *Comment:* Several comments commented on how designation of critical habitat would trigger the DLNR initiation of review, and potential reclassification, of lands to the Conservation District pursuant to Hawaii Revised Statutes (HRS) 195D–5.1. Costs associated with this review were pointed out by another commenter who stated that they needed to be factored into the economic analysis along with reductions in tax revenues to Hawaii County, which would result from these actions.

Our Response: HRS section 195D–5.1 states that the Department of Land and Natural Resources (DLNR) ''shall initiate amendments to the conservation district boundaries consistent with section 205–4 in order to include high quality native forests and the habitat of rare native species of flora and fauna within the conservation district.'' HRS section 205–2(e) specifies that ''conservation districts shall include areas necessary for * * * conserving indigenous or endemic plants, fish and wildlife, including those which are threatened or endangered * * *.'' Unlike the automatic conferral of State law protection for all federally listed species (*see* HRS 195D–4(a)), these provisions do not explicitly reference federally designated critical habitat and, to our knowledge, DLNR has not proposed amendments in the past to include all designated critical habitat in the Conservation District. Nevertheless, according to the Land Division of DLNR, DLNR is required by HRS 195D–5.1 to initiate amendments to reclassify critical habitat lands to the Conservation District (Deirdre Mamiya, Administrator, Land Division, in litt. 2002).

State law only permits other State departments or agencies, the county in which the land is situated, and any person with a property interest in the land to petition the State Land Use Commission (LUC) for a change in the boundary of a district. HRS section 205–4. The Hawaii Department of Business, Economic Development & Tourism's (DBEDT) Office of Planning also conducts a periodic review of district boundaries taking into account current land uses, environmental concerns and other factors and may propose changes to the LUC.

The State Land Use Commission determines whether changes proposed by DLNR, DBEDT, other state agencies, counties or landowners should be enacted. In doing so, State law requires LUC to take into account specific criteria, set forth at HRS 205–17. While the LUC is specifically directed to consider the impact of the proposed reclassification on ''the preservation or maintenance of important natural systems or habitats,'' it is also specifically directed to consider five other impacts in its decision: (1) ''Maintenance of valued cultural, historical, or natural resources;'' (2) ''maintenance of other natural resources relevant to Hawaii's economy, including, but not limited to, agricultural resources;'' (3) ''commitment of state funds and resources;'' (4) ''provision for employment opportunities and economic development;'' and (5) ''provision for housing opportunities for all income groups, particularly the low, low-moderate, and gap groups.'' HRS 205.17. Approval of redistricting requires six affirmative votes from the nine commissioners, with the decision based on a ''clear preponderance of the evidence that the proposed boundary is reasonable.'' HRS 205–4.

The costs associated with redistricting are discussed in detail in the Indirect Costs sections of the DEA and the Addendum. As stated in the Addendum, this analysis assumes that the probability is low that land currently planned for development in Hawaii Units 12 and 13 will be redistricted to the Conservation District, especially if landowners agree to certain conditions to protect portions of the critical habitat designation. This determination is the result of the requirements for redistricting, including the requirement that the LUC consider ''provision for employment opportunities and economic development;'' ''commitment of State funds and resources;'' the ''provision for housing opportunities for all income groups, particularly the low, low-moderate, and gap groups;'' and ''preservation or maintenance of important natural systems or habitats'' when considering a petition for redistricting (HRS 205–17).

However, it is reasonably foreseeable that certain other privately owned parcels in the Agricultural District in the critical habitat designation may be redistricted. Redistricting is more likely for these parcels because there are no current plans for economic or community development and they are not prime agricultural land. This redistricting could be completed by State agencies or mandated as a result of a third-party lawsuit. The economic costs associated with redistricting these unplanned parcels are expressed in terms of a loss in property values and a loss in agricultural activity as discussed in the Indirect Costs section of the Addendum.

This analysis assumes that the impacts on county tax revenues as a result of redistricting are expected to be small. Much of the land that is at risk of redistricting is already assessed at a low agricultural value. In many cases, the agricultural value is lower than the assessed value for land in the Conservation District. This counter-intuitive result reflects the tax break the State gives to encourage agriculture. If the land is redistricted to a subzone other than the Protective Subzone,

agriculture could continue in these areas, and the land would still be assessed at a low agricultural value. Land that is not assessed at a low agricultural value is assessed based on its future development potential. However, a loss in development potential for land in the critical habitat designation could result in an increase in the development potential of land outside of the critical habitat designation. This would result in little or no net change in the total property values on the island of Hawaii. As such, while there may be a positive or negative effect on county tax revenues associated with redistricting, this analysis assumes that the net effect will be small.

(82) *Comment:* One commenter disagreed with the finding that any redistricting of private lands would likely be limited for the following reasons: (1) The DLNR mandate to initiate down-zone; (2) the extensive amount of critical habitat proposed for designation; and (3) the Service's efforts to document and justify critical habitat boundaries.

Our Response: As mentioned in the Indirect Costs section of the Addendum, even if DLNR initiates amendments to the Conservation District boundaries based on critical habitat, or is forced to do so by a third-party lawsuit, the LUC makes the final decision to redistrict a parcel. State law requires the LUC to consider a variety of factors when making this decision, including the ''maintenance of other resources relevant to Hawaii's economy, including, but not limited to, agricultural resources;'' ''provision for employment opportunities and economic development;'' ''commitment of State funds and resources;'' ''provision for housing opportunities for all income groups, particularly the low, low-moderate, and gap groups;'' and ''the preservation or maintenance of important natural systems or habitats'' when considering a petition for redistricting (HRS 205–17). Portions of Hawaii Units 12 and 13 are planned for economic and community development. Based on the LUC's criteria, this analysis assumes that there is a low probability that the LUC will redistrict (either on its own accord or as a result of a third-party lawsuit) these portions of Hawaii Units 12 and 13 to the Conservation District.

Most of the land (approximately 104,288 ha (257,700 ac), or 95 percent) in the critical habitat designation is (1) already in the Conservation District, or (2) owned by the State or Federal Government. Much of the remaining land either (1) is planned for development and thus not likely to be redistricted for the reasons mentioned above, or (2) has little economic value because it is a cinder cone (puu), gulch, or established endangered plant preserve. The remaining 3,806 ha (9,404 ac) of land are in the Agricultural District and are not currently planned for economic or community development. It is reasonably foreseeable that this land will be redistricted to the Conservation District because of its importance to the conservation of the plant species. The economic costs associated with redistricting this land are presented in the State Redistricting of Land section of the Addendum. Specifically, these costs and other costs associated with redistricting are estimated to be $22.3 million to $27.9 million.

(83) *Comment:* One commenter commented that the figures for indirect costs should be totaled in Table VI–3, as the commenter did not agree with the Service's finding that these costs were ''speculative.''

Our Response: A total indirect costs figure is not presented in Table VI–3 or in Table Add-3 because the probability that some of the indirect costs will occur is undetermined and the magnitude of other indirect costs is undetermined. Instead, the probabilities and magnitudes of certain categories of indirect costs are presented in the tables, with further discussion presented in the Indirect Costs sections of the DEA and Addendum.

The probability that certain indirect costs will occur depends on the interaction of Federal, State, and county officials; landowners; and other interested parties. The outcome of these interactions will depend on a variety of factors that are not subject to accurate quantification or prediction. Furthermore, the probability that third parties will file lawsuits and the probability that these lawsuits will be successful is not known. Thus, the probability that certain indirect costs will occur is undetermined.

(84) *Comment:* A reference to the Kaloko Town Center and Kaloko Properties Development needs to be added to Table ES–1 under ''residential development.''

Our Response: The Kaloko Town Center and Kaloko Properties development are referenced in Section 3.c. of the Addendum and are included in the heading ''Other Residential Development'' in Table Add-3.

(85) *Comment:* Text on page VI–9, Section 3.b (residential development), needs to add a discussion regarding the proposed residential development that would be part of the Kaloko Town Center and Kaloko Properties Development.

Our Response: The Kaloko Town Center and Kaloko Properties development are referenced in Section 3.c. of the Addendum; however, there is no change in the DEA cost estimate.

(86) *Comment:* Text on page VI–16, Section 3.c (industrial, commercial and other urban development), should include a discussion regarding the proposed Kaloko Town Center office, commercial, retail, school, and park uses.

Our Response: The Kaloko Town Center office, commercial, retail, school, and park uses are referenced in Section 3.f. of the Addendum; however, there is no change in the DEA cost estimate.

(87) *Comment:* Text on page VI–17, second paragraph under 3.c, should be revised to reflect that the developer is TSA Corporation and that a county zone change allowing for commercial industrial mixed use development was granted.

Our Response: This information is included in Section 3.e. of the Addendum; however, there is no change in the DEA cost estimate.

(88) *Comment:* Text on page VI–41, last paragraph, should be revised to reflect the proposed Kaloko Town Center development and proposed residential uses that would be affected. In addition, reference to the donation of land to the National Park Service should be deleted.

Our Response: As discussed in Section 3.k. of the Addendum, since the land is planned for development, this analysis estimates that the conservation set-aside scenario for construction of the Main Street Road project is no longer feasible. As such, the $10.7 million to $15.7 million total project modification cost for the K-to-K road projects mentioned in the DEA is adjusted to $10.5 million to $15.3 million.

(89) *Comment:* Text on page VI–69 should add Kaloko Town Center and Kaloko Properties development to the cost of development loss due to redistricting.

Our Response: The economic cost of the loss of development potential of the Kaloko Town Center is not discussed in the redistricting section of the Addendum because the land is currently in the Conservation District. Instead, the cost of development loss for the Kaloko Town Center is included in the State and County Development Approvals section of the Addendum.

As discussed in the State Redistricting of Land section in the Addendum, the planned development in the portions of the Kaloko Properties development that are included in critical habitat include

a golf course and single-family homes. The employment that could be generated by this project is not known. However, construction of the golf course and homes will generate employment on the island. Since the LUC must consider factors such as the ''provision for employment opportunities and economic development'' (HRS 205–17) when making redistricting decisions, this analysis assumes there is a low probability that the Kaloko Properties will be redistricted to the Conservation District.

(90) *Comment:* Text on page VI–74 regarding the expansion of Kaloko Industrial Park needs to be revised to reflect an economic loss of $33 million due to an estimated loss of 82 acres affecting 72 lots.

Our Response: As discussed in the State Redistricting of Land section in the Addendum, the planned development in the portions of the Kaloko Industrial Park expansion that are included in critical habitat include light industrial development and industrial/commercial mixed use development. Approximately 88 percent of the project is in Hawaii Unit 12. The entire project is expected to generate 19,345 direct full-time equivalent jobs during the build-out phase and 2,789 direct full-time equivalent jobs upon full build-out (Wilson Okamoto & Associates, Inc. 2000). Since the LUC must consider factors such as the ''provision for employment opportunities and economic development'' (HRS 205–17) when making redistricting decisions, this analysis assumes there is a low probability the Kaloko Industrial Park expansion will be redistricted to the Conservation District.

As mentioned in the State and County Development Approvals section of the Addendum, all of the major discretionary approvals for the Kaloko Industrial Park expansion have been obtained, so the designation of critical habitat is expected to have little impact on development approvals for the project. As such, this analysis anticipates there will be no loss of development potential attributable to the critical habitat designation.

(91) *Comment:* Text on pages VI–76 and VI–85 should add the proposed Kaloko Town Center and Kaloko Properties development.

Our Response: These planned developments are considered in the State Redistricting of Land and the Reduced Property Value sections of the Addendum.

(92) *Comment:* Text on page VI–83, section 4e(3), needs to indicate that the completed Environmental Impact Statement for Kaloko Town Center will likely need to be updated and supplemented if that land is included within designated critical habitat.

Our Response: This information is included and discussed in the State and County Environmental Review section of the Addendum.

(93) *Comment:* If total economic loss of Kaloko Properties lands resulted from designation of critical habitat, this loss would be an estimated $390 million, which would be in addition to direct impacts to three proposed roadway projects.

Our Response: As discussed in the State and County Development Approvals section in the Addendum, the Kaloko Properties and Kaloko Town Center developments (Kaloko Developments) will require major discretionary approvals from the State and county. The commenter estimates that the total economic impact if these developments do not occur as an indirect result of the critical habitat designation will be approximately $390 million, based on the allowable density; average regional selling values of single-family and multi-family homes; the development cost of office, commercial, and retail buildings; and the development costs per acre of golf courses and parks.

However, the methodology used by the commenter to derive the estimated economic impact of $390 million is not consistent with the methodology presented in the DEA. The landowner's estimate is based on selling values and development cost, not profits. As mentioned in the DEA, only the previous expenditures (sunk costs) and future potential profits to the landowner are considered an economic impact of critical habitat designation. Additional construction and development costs are not considered because it is assumed that if development cannot occur in critical habitat, it will relocate elsewhere in the region. This assumption is supported by the fact that a large area surrounding critical habitat is planned for urban expansion in the County of Hawaii's General Plan, and because there are other entitled projects awaiting development (such as a 1,068 ha (2,640 ac) project on State lands that is just north of Hawaii Unit 13 and planned for residential, commercial, and light industrial development; parks; a golf course; and other uses).

As estimated in the State and County Development Approvals section in the Addendum, the sunk costs associated with the Kaloko Developments in the critical habitat designation is $5.8 million, and the present value of the future stream of profits ranges from $17 million to $34 million. Again, the specific likelihood that the Kaloko Developments will not obtain State and county development approvals as a result of the critical haibitat designation is unknown.

(94) *Comment:* The Department of Business, Economic Development and Tourism, a State agency, commented that the designation of critical habitat would compromise the financial feasibility of the VOLA (Village of Laiopua) project should there be future Federal involvement. As such, the commenter does not agree that the economic impacts of the designation of critical habitat would be ''moderate'' or ''modest.''

Our Response: Section 3.b of the Addendum specifically addresses the commenter's concerns. The State Housing and Community Development Corporation of Hawaii (HCDCH) is the primary agency responsible for planning the VOLA (Village of Laiopua) project. As a result of further discussions with HCDCH and a review of the Service's record regarding the VOLA project, this analysis concludes that no section 7 consultations are anticipated in the next 10 years. First, HCDCH is not currently seeking Federal funding for the project and was unable to identify specific potential Federal funding programs. Second, HUD indicates that there are currently no competitive grant programs for the development of affordable housing and that there are not likely to be any in the near future (HUD 2003). Third, the U.S. Department of Agriculture Rural Housing Service (RHS) has a loan guarantee program and a competitive loan program for the development of affordable housing, but this program is used primarily by individual homeowners and has never been used by State and county agencies in Hawaii (RHS 2003). Thus, because there is no reasonably foreseeable Federal involvement for the VOLA development, no section 7 consultations are anticipated.

(95) *Comment:* One commenter provided information on a proposed plan for the rehabilitation of the landfill site at Keahuolu, which involves development of a golf course to be used to teach children both a sport and a skill, and commented that designation of critical habitat in this area would adversely affect the proposal. The commenter also commented that in the area currently occupied by the sewage plant, there was a desire to build a wetlands endangered species park and designation of critical habitat could affect potential Federal funding sources.

Our Response: Section 3.m of the Addendum discusses the K2020 project.

Specifically, due to likely Federal involvement, the K2020 project would be subject to a section 7 consultation. As a result of the consultation, the Service indicates that K2020 may have to obtain funding for planned endangered plant preserves in Hawaii Unit 13 and the restoration of the portions of critical habitat that are temporarily disturbed.

The area currently occupied by the sewage plant and planned for a wetlands endangered species park is not included in the critical habitat designation and thus this analysis anticipates no costs associated with this portion of the K2020 planned project.

(96) *Comment:* One commenter commented that the designation of critical habitat would restrict the Department of Transportation's options in the design, maintenance, and construction of highways in affected areas and threaten the limited resources available to maintain and improve State highways. This commenter also stated that the designation of critical habitat would significantly increase the cost of planning design, construction, maintenance, and repair of the following roads: Saddle Road, Kohala Mountain Road, Kawaihae Road, Queen Kaahumanu Highway, Mamalahoa Highway, Volcano Road, and Kealakehe Parkway.

Our Response: The costs associated with planned road projects in critical habitat are discussed in Chapter VI, Section 3.i. of the DEA and in Sections 3.j. and 3.k. of the Addendum. These sections discuss the Saddle Road Improvement and Realignment project and the planned widening of the Queen Kaahumanu Highway. The Kawaihae Road is not included in the critical habitat designation. Within the 10-year timeframe of this analysis, there are no known construction, maintenance, and repair projects for the Kohala Mountain Road and the Volcano Road that will impact the primary constituent elements for the listed plants in the critical habitat designation.

The Mamalahoa Highway (Route 190) safety improvements in Hawaii Unit 10 involve simple re-paving and resurfacing of the existing roadway. As mentioned in the DEA, the critical habitat provisions of section 7 do not apply to the operation and maintenance (O&M) of existing manmade features and structures because these features do not contain any primary constituent elements. Thus, the safety improvements planned for Mamalahoa Highway in Hawaii Unit 10 would not be subject to section 7 consultation because they involve operation and maintenance activities rather than new construction.

Finally, while the widening of Kealakehe Parkway (Route 197) in Hawaii Unit 13 is a long-term project, there is no timetable given for the project. It is likely that extension of the Parkway (outside of the critical habitat designated critical habitat area) would be required before widening the existing portion of roadway; however, no timetable is given for the completion of the extension. In addition, the State DOT is working on several other widening projects in the area, with its main focus on widening the Queen Kaahumanu Highway from downtown Kailua to the Airport, that are not estimated to be completed until 2011. Given the circumstances, it is unlikely that widening of Kealakehe Parkway (Route 197) will occur within the next 10 years.

(97) *Comment:* Several commenters commented that the designation of critical habitat on trust lands (*e.g.*, the Queen Liliuokalani Trust and Kamehameha Schools) could negate decades of planning as well as millions of dollars of infrastructure investment. This, in turn, could adversely affect future revenues that would be generated by these entities and, therefore, their ability to carry out social and cultural mandates to provide for their beneficiaries. One commenter specifically referenced concerns over Keahuolu Ahupuaa being the last and only future of producing lands owned by the Queen Liliuokalani Trust and the need for those lands to continue the legacy left by the Queen.

Our Response: The economic, social, cultural, and political impacts associated with the loss of the development potential on Queen Liliuokalani Trust (QLT) land in Hawaii Unit 13 are discussed in detail in Chapter VI, Section 4.c.(7) of the DEA and the State and County Development Approvals section in the Addendum. Specifically, the Addendum estimates that the critical habitat designation could lead to a delay in State and county development approvals. This would delay completion of the project and the associated lease-rent revenues for QLT. This could have related social and cultural costs for the community.

The portions of the parcel owned by Kamehameha Schools and leased by PIA-Kona Limited Partnership that are planned for housing development are not included in the final designation. The portions of this parcel that are included in the critical habitat designation are currently managed as an endangered plant preserve, and there are no plans for a change in management. Kamehameha Schools did not identify other lands in the critical habitat designation that are planned for development or are likely to generate significant future revenues.

(98) *Comment:* One commenter commented on areas of the economic analysis where they felt it both overestimated and underestimated economic costs. The commenter requested that the DEA be revised to reflect that QLT's own analysis did acknowledge that additional funds would be expended to achieve build-out of Phases I and II. The commenter also asked that the economic analysis include the increased likelihood of loss of entitlements and revenue and increased costs associated with permitting costs and development of infrastructure for Phase III.

Our Response: Chapter VI, Section 4.c.(7) of the DEA discusses the costs associated with the loss of development potential at the Keahuolu project site. The DEA references an economic impact analysis supplied by QLT that states the portions of the planned development in Phases I and II in the proposed critical habitat would yield $44.2 million per year in lease-rent revenue after the project is fully completed. The DEA states that this estimate tends to overstate the total economic impact because it does not include additional funds that would have to be expended by QLT in order to reach full completed. The QLT analysis acknowledges this fact, and thus the QLT analysis did not overstate the total economic impact.

The economic impacts associated with a delay of entitlements, a loss of revenue, and a potential modification to the development approvals for Phase III of the Keahuolu Project are discussed in the State and County Development Approvals section of the Addendum. In particular, costs are anticipated to range from $14.1 million to $21.9 million.

(99) *Comment:* One commenter raised a specific concern about the economic impact to Kamehameha Schools and PIA-Kona Limited Partnership.

Our Response: The portions of the parcel owned by Kamehameha Schools and leased by PIA-Kona Limited Partnership that are planned for housing development are not included in the final designation. The portions of this parcel that are included in the critical habitat designation are currently managed as an endangered plant preserve, and there are no plans for a change in management. As such, this analysis anticipates there will be no economic impact to the owners of this parcel as a result of the critical habitat designation.

(100) *Comment:* Two commenters commented that critical habitat in the Kailua to Keahole area of Kona is

proposed in a region that has been master-planned for urban expansion by the State and county for over 30 years and for which $50 million of infrastructure (*e.g.*, Kealakehe Parkway and Kealakehe High School) is already in place. This area also includes a currently undeveloped portion of the State's Villages at Laiopua (VOLA) project that is intended for affordable housing, although that project is currently stalled in litigation. The commenter noted that this West Hawaii area is one of the fastest growing regions in the State and there is no other viable area for expansion.

Our Response: The direct and indirect impacts to the Kailua to Keahole area of Kona within Hawaii Units 12 and 13 are discussed in detail in the DEA and in the Addendum, including impacts to State VOLA project, the Keahuolu Project, the Kaloko Industrial Park expansion, the Kaloko Town Center, the Kaloko Properties development, three road projects, and the K2020 county landfill project. However, Hawaii Units 12 and 13 cover a relatively small portion of the area planned for urban expansion in the County of Hawaii General Plan. While the DEA and the Addendum estimate the economic costs to landowners in areas designated as critical habitat, it is estimated that any development displaced by critical habitat will occur elsewhere on the island of Hawaii, due to the availability of comparable land. Thus, the net economic impacts to the economic development of the island of Hawaii will be small.

(101) *Comment:* Several commenters commented regarding the potential adverse effect that designation of critical habitat could have on the military. Specifically, hindering the Army and Navy's (Marines') ability to perform their missions because of the limitations imposed by critical habitat would not only have an adverse effect on the nation's military readiness but would also be a costly waste of fiscal resources or an additional financial burden.

Our Response: The impacts on the readiness and budget of the military are discussed in the Military Activities section in the Direct Costs section of the Addendum and in the Military Readiness section in the Indirect Costs section of the Addendum. Specifically, the direct costs to military operations over the next 10 years range from $31 million to $40 million. The indirect costs include an undetermined probability of a loss of $693 million in transformation projects and a possible reduction in readiness.

(102) *Comment:* One commenter commented that designation of critical habitat will cause private landowners to spend their own resources to determine the possible consequences of such designation on their lands (*e.g.*, legal fees).

Our Response: The costs associated with determining the possible consequences of critical habitat are included in the Investigating the Implications of Critical Habitat section of the Addendum. Specifically, approximately 19 private landowners may investigate the implications of critical habitat on their lands at a cost of $50,000 to $181,000.

Summary of Changes From the 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 have designated 99 single species critical habitat units for 41 plant species on the island of Hawaii instead of multi-species units to clarify the exact location of critical habitat for each species.

(2) The scientific names were changed for the following associated species found in the ''*Supplementary Information: Discussion of the Plant Taxa*'' section: *Cocculus trilobus* changed to *Cocculus orbiculatus* in the discussions of *Neraudia ovata* and *Pleomele hawaiiensis. Jacquemontia sandwicensis* changed to *Jacquemontia ovalifolia* ssp. *sandwicensis* in the discussion of *Sesbania tomentosa. Scaevola sericea* changed to *Scaevola taccada* in the discussions of *Ischaemum byrone* and *Sesbania tomentosa. Styphelia tameiameiae* changed to *Leptecophylla tameiameiae* in the discussions of *Argyroxiphium kauense, Asplenium fragile* var. *insulare, Clermontia drepanomorpha, Clermontia lindseyana, Colubrina oppositifolia, Hedyotis coriacea, Isodendrion hosakae, Plantago hawaiensis, Sesbania tomentosa, Silene hawaiiensis, Silene lanceolata,* and *Tetramolopium arenarium. Wollastonia venosa* changed to *Melanthera venosa* in the discussions of *Isodendrion hosakae, Portulaca sclerocarpa, and Sesbania tomentosa.* We replaced *Passiflora mollissima* with *Passiflora tarminiana* in the discussions of *Clermontia lindseyana, Clermontia pyrularia, Cyanea hamatiflora* ssp. *carlsonii, Delissea undulata, Phyllostegia racemosa,* and *Sicyos alba* (Palmer 2003; Wagner and Herbst 2002).

(3) In ''*Supplementary Information: Discussion of the Plant Taxa*'': We removed *Carex montis-eeka* from the list of associated species for *Argyroxiphium kauense.* We replaced *Psychotria mariniana* and *Psychotria greenwelliae* with *Psychotria* spp. (because those two specific species are not found on the island of Hawaii) in the discussion of *Delissea undulata.* We replaced: *Blechnum occidentale* with *Blechnum appendiculatum* in the discussion of *Diellia erecta; Nototrichium breviflorum* with *Nothocestrum breviflorum* in the discussion of *Hibiscus hualalaiensis; Cyathea cooperi* with *Sphaeropteris cooperi* in the discussion of *Phlegmariurus mannii;* and *Athyrium sandwicensis* with *Diplazium sandwichianum* in the discussions of *Phyllostegia warshaueri.*

(4) 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 viable populations needed for recovery (*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 1.—Summary of existing occurrences on the island of Hawaii, and landownership for 58 species reported from the island of Hawaii'': *Adenophorus periens* changed from 13 populations to 4 occurrences; *Argyroxiphium kauense* changed from 3 populations to 4 occurrences; *Asplenium fragile* var. *insulare* changed from 17 populations to 36 occurrences; *Bonamia menziesii* and *Clermontia drepanomorpha* changed from 1 population to 2 occurrences; *Clermontia lindseyana* changed from 17 populations to 15 occurrences; *Clermontia pyrularia* changed from 1 population to 2 occurrences; *Colubrina oppositifolia* changed from 8 populations to 5 occurrences; *Cyanea platyphylla* changed from 9 populations to 6 occurrences; *Cyanea shipmanii* changed from 5 populations to 3 occurrences; *Cyanea stictophylla* changed from 5 populations to 6 occurrences; *Cyrtandra giffardii* changed from 7 populations to 8 occurrences; *Cyrtandra tintinnabula* changed from 6 populations to 4 occurrences; *Isodendrion hosakae* changed from 2 populations to 3 occurrences; *Diellia erecta* changed from 3 populations to occurrences; *Flueggea neowawraea* changed from 4

populations to 12 occurrences; *Gouania vitifolia* changed from 1 population to 4 occurrences; *Hedyotis coriacea* changed from 11 populations to 41 occurrences; *Ischaemum byrone* changed from 5 populations to 6 occurrences; *Melicope zahlbruckneri* changed from 2 populations to 3 occurrences; *Neraudia ovata* changed from 3 populations to 9 occurrences; *Nothocestrum breviflorum* changed from 10 populations to 66 occurrences; *Phyllostegia racemosa* changed from 7 populations to 6 occurrences; *Phyllostegia velutina* changed from 5 populations to 8 occurrences; *Plantago hawaiensis* changed from 8 populations to 6 occurrences; *Pleomele hawaiiensis* changed from 8 populations to 22 occurrences; *Portulaca sclerocarpa* changed from 19 populations to 20 occurrences; *Sesbania tomentosa* changed from 11 populations to 31 occurrences; *Sicyos alba* changed from 4 populations to 5 occurrences; *Silene hawaiiensis* changed from 23 populations to 156 occurrences; *Silene lanceolata* changed from 10 populations to 69 occurrences; *Spermolepis hawaiiensis* changed from 4 populations to 30 occurrences; *Tetramolopium arenarium* changed from 2 populations to 8 occurrences; *Zanthoxylum dipetalum* var. *tomentosum* changed from 1 population to 14 occurrences; and *Zanthoxylum hawaiiense* changed from 4 populations to 186 occurrences.

(5) We revised the list of excluded, manmade features in the ''*Criteria Used to Identify Critical Habitat*'' and § 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. In addition, areas were excluded based other impacts pursuant to section 4(b)(2) of the Act (*see* ''Other Impacts'').

(7) In accordance with the revisions described in (1) through (6), we revised § 17.12 ''*Endangered and threatened plants*'' and § 17.99 ''*Critical Habitat; plants on the islands of Kauai, Niihau, Molokai, Maui, Kahoolawe, Oahu, and Hawaii, Hawaii, and the Northwestern Hawaiian Islands*'', as appropriate.

A brief summary of the modifications made to each unit is given below (*see also* Figure 1).

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Figure 1
Summary of Changes from Proposed Rule to Final Rule

Final Big Island Critical Habitat Unit
Proposed Big Island Critical Habitat Unit
Major Roads
Coastline
Elevation (1000-ft. contours)

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Hawaii A1

This unit was proposed as critical habitat for one species, *Pleomele hawaiiensis.* Modifications were made to this unit to exclude areas that do not contain the primary constituent elements for this species. The area designated as critical habitat for this endemic species provides habitat within its historical range for one population of *Pleomele hawaiiensis.* Three other

critical habitat units for this species are designated on the island of Hawaii for a total of nine populations, and excluded Kamehameha Schools lands provide habitat for one additional population (*see* ''*Analysis of Impacts Under Section 4(b)(2)*'').

These modifications resulted in the reduction from 719 ha (1,777 ac) to 677 ha (1,673 ac). This unit was renamed Hawaii 7—*Pleomele hawaiiensis*—a.

Hawaii A2

This unit was proposed as critical habitat for *Nothocestrum breviflorum.* Modifications were made to this unit to exclude areas that do not contain the primary constituent elements for this species. The area designated as critical habitat for this endemic species provides habitat within its historical range for four populations of *Nothocestrum breviflorum.* There is habitat designated elsewhere on the island of Hawaii for this species providing habitat for nine populations.

These modifications resulted in the reduction from 2,685 ha (6,635 ac) to 1,516 ha (3,744 ac). This unit was renamed Hawaii 5—*Nothocestrum breviflorum*—a and Hawaii 6—*Nothocestrum breviflorum*—b.

Hawaii B

This unit was proposed as critical habitat for three species: *Achyranthes mutica, Clermontia drepanomorpha,* and *Phyllostegia warshaueri.* Modifications were made to this unit to exclude areas that do not contain the primary constituent elements for these species.

The area designated as critical habitat for the two species endemic to the island of Hawaii provides habitat for six populations of *Clermontia drepanomorpha* and three populations of *Phyllostegia warshaueri* within their historical ranges. One other critical habitat unit for *Phyllostegia warshaueri* is designated on the island of Hawaii for a total of 10 populations. The area designated as critical habitat for the multi-island *Achyranthes mutica* species provides habitat for 10 populations within its historical range. Nine other critical habitat units for this species are designated on the island of Hawaii. This species is historically known from Kauai, but no critical habitat was designated for it on that island (68 FR 9116, February 27, 2003).

These modifications resulted in the reduction from 8,200 ha (20,263 ac) to 3,360 ha (8,304 ac). This unit was renamed Hawaii 9—*Achyranthes mutica*—a, Hawaii 9—*Achyranthes mutica*—b, Hawaii 9—*Achyranthes mutica*—c, Hawaii 9—*Achyranthes mutica*—d, Hawaii 9—*Achyranthes mutica*—e, Hawaii 9—*Achyranthes mutica*—f, Hawaii 9—*Achyranthes mutica*—g, Hawaii 9—*Achyranthes mutica*—h, Hawaii 9—*Achyranthes mutica*—i, Hawaii 9—*Achyranthes mutica*—j, Hawaii 8—*Clermontia drepanomorpha*—a, and Hawaii 8—*Phyllostegia warshaueri*—b.

Hawaii C

This unit was proposed as critical habitat for one multi-island species, *Sesbania tomentosa.* The entire area proposed for this species is eliminated from this final rule. This area is not essential to the conservation of this species because it has a lower proportion of associated native species than other areas we consider to be essential to the conservation of this species, and there are 12 other locations that have been designated to meet the recovery goal of 8 to 10 populations throughout its historical range on this and other islands. We designated critical habitat for this species on Nihoa (habitat for one population), Necker (habitat for one population), Kauai (habitat for two populations), Oahu (habitat for two populations), Molokai (habitat for two populations), and Maui (habitat for two population)(68 FR 28054, May 22, 2003; 68 FR 9116, February 27, 2003; 68 FR 35949, June 17, 2003; 68 FR 12982, March 19, 2003; 68 FR 25934, May 14, 2003). There is habitat designated elsewhere on the island of Hawaii for this species, providing habitat for two populations. Exclusion of this unit from critical habitat for *Sesbania tomentosa* resulted in the overall reduction of 38 ha (94 ac) from critical habitat on the island of Hawaii.

Hawaii D1

This unit was proposed as critical habitat for three species: *Isodendrion hosakae, Portulaca sclerocarpa,* and *Vigna o-wahuensis.* Modifications were made to this unit to exclude areas that do not contain the primary constituent elements for these species.

In addition, we eliminated the proposed critical habitat in Hawaii D1 for *Portulaca sclerocarpa.* The area proposed for this species is eliminated from this final rule because it is not essential to the conservation of this species due to its lower proportion of associated native species than other areas we consider to be essential to the conservation of *Portulaca sclerocarpa.* This species is currently found on the islands of Lanai and Hawaii, and critical habitat for one population was designated on Lanai (68 FR 1220, January 9, 2003). This rule designates critical habitat for a total of five populations. There is habitat for four other populations on lands excluded from this final rule in PTA (*see* ''*Analysis of Impacts Under Section 4(b)(2)*'').

The area designated as critical habitat for the island-endemic species, *Isodendrion hosakae,* provides habitat for one population within its historical range. There is habitat designated elsewhere on the island of Hawaii for eight populations of Isodendrion hosakae. The area designated as critical habitat for the multi-island species, *Vigna o-wahuensis,* provides habitat for one population within its historical range. Critical habitat was designated within its historical range on Oahu (habitat for three populations) and Maui (habitat for one population) (68 FR 35949, June 17, 2003; 68 FR 25934, May 14, 2003). Habitat is designated elsewhere on the island of Hawaii for four populations.

These modifications resulted in the reduction from 55 ha (136 ac) to 49 ha (121 ac). This unit was renamed Hawaii 4—*Isodendrion hosakae*—a and Hawaii 4—*Vigna o-wahuensis*—a.

Hawaii D2

This unit was proposed as critical habitat for three species: *Isodendrion hosakae, Portulaca sclerocarpa,* and *Vigna o-wahuensis.* Modifications were made to this unit to exclude areas that do not contain the primary constituent elements for these species.

We eliminated the proposed critical habitat in Hawaii D2 for *Portulaca sclerocarpa.* The area proposed for this species is eliminated from this final rule because it is not essential to the conservation of this species because it has a lower proportion of associated native species than other areas we consider to be essential to the conservation of *Portulaca sclerocarpa.* This species is currently found on the islands of Lanai and Hawaii, and critical habitat for one population was designated on Lanai (68 FR 1220, January 9, 2003). This rule designates critical habitat for a total of five populations. There is habitat for four other populations on lands excluded from this final rule in PTA (see ''*Analysis of Impacts Under Section 4(b)(2)*'').

The area designated as critical habitat for the island-endemic species, *Isodendrion hosakae,* provides habitat for one population within its historical range. There is habitat designated elsewhere on the island of Hawaii for eight populations of *Isodendrion hosakae.* The area designated as critical habitat for the multi-island species,

Vigna o-wahuensis, provides habitat for one population within its historical range. Critical habitat was designated within its historical range on Oahu (habitat for three populations) and Maui (habitat for one population) (68 FR 35949, June 17, 2003; 68 FR 25934, May 14, 2003). Habitat is designated elsewhere on the island of Hawaii for four populations.

These modifications resulted in the reduction from 43 ha (107 ac) to 35 ha (87 ac). This unit was renamed Hawaii 4—*Isodendrion hosakae*—b and Hawaii 4—*Vigna o-wahuensis*—b.

Hawaii D3

This unit was proposed as critical habitat for *Isodendrion hosakae.* Modifications were made to this unit to exclude areas that do not contain the primary constituent elements for this species. The area designated as critical habitat for this island-endemic species provides habitat within its historical range for one population of *Isodendrion hosakae.* There is habitat designated elsewhere on the island of Hawaii for eight populations of *Isodendrion hosakae.*

These modifications resulted in the reduction from 257 ha (636 ac) to 49 ha (121 ac). This unit was renamed Hawaii 4—*Isodendrion hosakae*—c and Hawaii 4—*Isodendrion hosakae*—d.

Hawaii D4

This unit was proposed as critical habitat for three species: *Isodendrion hosakae,* Portulaca sclerocarpa, and *Vigna o-wahuensis.* Modifications were made to this unit to exclude areas that do not contain the primary constituent elements for these species.

We eliminated the proposed critical habitat in Hawaii D4 for *Portulaca sclerocarpa* and *Vigna o-wahuensis.* The area proposed for these species is eliminated from this final rule because it is not essential to the conservation of these species because it has a lower proportion of associated native species than other areas we consider to be essential to the conservation of *Portulaca sclerocarpa* and *Vigna o-wahuensis.* This rule designates critical habitat for a total of five populations of *Portulaca sclerocarpa.* There is habitat for four other populations of *Portulaca sclerocarpa* on lands excluded from this final rule in PTA (*see* ''*Analysis of Impacts Under Section 4(b)(2)*''). Critical habitat for *Vigna o-wahuensis* was designated within its historical range on Oahu (habitat for three populations) and Maui (habitat for one population) (68 FR 35949, June 17, 2003; 68 FR 25934, May 14, 2003). Habitat is designated elsewhere on the island of Hawaii for four populations. The area designated as critical habitat for the island-endemic species, *Isodendrion hosakae,* provides habitat for one population within its historical range. There is habitat designated elsewhere on the island of Hawaii for *Isodendrion hosakae* (for eight populations).

These modifications resulted in the reduction from 14 ha (34 ac) to 11 ha (26 ac). This unit was renamed Hawaii 4—*Isodendrion hosakae*—e.

Hawaii D5

This unit was proposed as critical habitat for three species: *Isodendrion hosakae*, *Portulaca sclerocarpa*, and *Vigna o-wahuensis.* The entire area proposed for these species was eliminated. This area is eliminated from this final rule because it is not essential to the conservation of these species because it has a lower proportion of associated native species than other areas we consider to be essential to the conservation of these species, and there are 10 other locations that have been designated on this and other islands to meet the recovery goal of 8 to 10 populations throughout the historical ranges of *Portulaca sclerocarpa* and *Vigna o-wahuensis. Portulaca sclerocarpa* is currently found on the islands of Lanai and Hawaii, and critical habitat for one population was designated on Lanai (68 FR 1220, January 9, 2003). This rule designates critical habitat for a total of five populations. There is habitat for four other populations on lands excluded from this final rule in PTA (*see* ''*Analysis of Impacts Under Section 4(b)(2)*''). Critical habitat for *Vigna o-wahuensis* was designated on Oahu (habitat for three populations) and Maui (habitat for one population) (68 FR 35949, June 17, 2003; 68 FR 25934, May 14, 2003). Habitat is designated elsewhere on the island of Hawaii for four populations. There is habitat designated elsewhere on the island of Hawaii for *Isodendrion hosakae* (for eight populations). Exclusion of this unit from critical habitat for these three species resulted in the overall reduction of 1 ha (2.5 ac) of critical habitat on the island of Hawaii.

Hawaii D6

This unit was proposed as critical habitat for three species: *Isodendrion hosakae*, *Portulaca sclerocarpa*, and *Vigna o-wahuensis.* The entire unit was excluded from final critical habitat. We excluded the proposed critical habitat on PTA lands for reasons described in ''*Analysis of Impacts Under Section 4(b)(2)*'' for *Isodendrion hosakae* and *Vigna o-wahuensis.* We also eliminated the proposed critical habitat in Hawaii D6 for *Portulaca sclerocarpa.* The area proposed for this species is eliminated from this final rule because it is not essential to the conservation of this species because it has a lower proportion of associated native plant species that other areas we consider to be essential to the conservation of *Portulaca sclerocarpa.* This species is currently found on the island of Lanai and Hawaii, and critical habitat for one population was designated on Lanai (68 FR 1220, January 9, 2003). This rule designates habitat for a total of five populations. There is habitat for four other populations on other lands excluded from this final rule in PTA (*see* ''*Analysis of Impacts Under Section 4(b)(2)*''). The area excluded for the island-endemic species, *Isodendrion hosakae*, provides habitat for one population within its historical range. There is habitat designated for six populations elsewhere on the island of Hawaii in this rule. The area excluded for the multi-island species, *Vigna o-wahuensis*, provides habitat for one population within its historical range. Critical habitat was designated on Oahu (habitat for three populations) and Maui (habitat for one population) (68 FR 35949, June 17, 2003; 68 FR 25934, May 14, 2003). Habitat is designated elsewhere on the island of Hawaii for three populations in this rule. Exclusion of this unit from critical habitat for these three species resulted in the overall reduction of 36 ha (89 ac) of critical habitat on the island of Hawaii.

Hawaii D7

This unit was proposed as critical habitat for three species: *Isodendrion hosakae*, *Portulaca sclerocarpa*, and *Vigna o-wahuensis.* Modifications were made to this unit to exclude areas that do not contain the primary constituent elements for these species.

We eliminated the proposed critical habitat in Hawaii D7 for *Portulaca sclerocarpa.* The area proposed for this species is eliminated from this final rule because it is not essential to the conservation of this species because it has a lower proportion of associated native species than other areas we consider to be essential to the conservation of *Portulaca sclerocarpa.* This species is currently found on the islands of Lanai and Hawaii and critical habitat for one population was designated on Lanai (68 FR 1220, January 9, 2003). This rule designates critical habitat for a total of five populations. There is habitat for four other populations on lands excluded from this final rule in PTA (*see*

''*Analysis of Impacts Under Section 4(b)(2)*'').

The area designated as critical habitat for the island-endemic species, *Isodendrion hosakae*, provides habitat for one population within its historical range. There is habitat designated elsewhere on the island of Hawaii for *Isodendrion hosakae* (for eight populations). The area designated as critical habitat for the multi-island species, *Vigna o-wahuensis*, provides habitat for one population within its historical range. Critical habitat was designated on Oahu (habitat for three populations) and Maui (habitat for one population) (68 FR 35949, June 17, 2003; 68 FR 25934, May 14, 2003). Habitat is designated elsewhere on the island of Hawaii for four populations.

These modifications resulted in the reduction from 112 ha (278 ac) to 51 ha (127 ac). This unit was renamed Hawaii 4—*Isodendrion hosakae*—f and Hawaii 4—*Vigna o-wahuensis*—c.

Hawaii D8

This unit was proposed as critical habitat for three species: *Isodendrion hosakae, Portulaca sclerocarpa,* and *Vigna o-wahuensis.* The entire area proposed for these species was eliminated from final critical habitat. We eliminated the proposed critical habitat in Hawaii D6 for *Portulaca sclerocarpa* and *Vigna o-wahuensis.* The area proposed for these species was determined to be not essential to the conservation of this species because it has a lower proportion of associated native plant species than other areas we consider to be essential to the conservation of *Portulaca sclerocarpa* and *Vigna o-wahuensis. Portulaca sclerocarpa* is currently found on the island of Lanai and Hawaii, and critical habitat for one population was designated on Lanai (68 FR 1220, January 9, 2003). This rule designates habitat for a total of five populations. There is habitat for four other populations on other lands excluded from this final rule in PTA (*see* ''*Analysis of Impacts Under Section 4(b)(2)*''). Critical habitat for *Vigna o-wahuensis* was designated within its historical range on Oahu (habitat for three populations) and Maui (habitat for one population) (68 FR 35949, June 17, 2003; 68 FR 25934, May 14, 2003). Habitat is designated elsewhere on the island of Hawaii for three populations in this rule.

We also excluded the proposed critical habitat on PTA lands (*see* ''*Analysis of Impacts Under Section 4(b)(2)*'') for *Isodendrion hosakae.* The area excluded for the island-endemic species, *Isodendrion hosakae,* provides habitat for one population within its historical range. There is habitat designated for six populations elsewhere on the island of Hawaii in this rule. Exclusion of this unit from critical habitat for these three species resulted in the overall reduction of 8 ha (21 ac) of critical habitat on the island of Hawaii.

Hawaii E

This unit was proposed as critical habitat for three species: *Clermontia lindseyana, Clermontia pyrularia,* and *Phyllostegia racemosa.* Modifications were made to this unit to exclude areas that do not contain the primary constituent elements for these species.

The area designated as critical habitat for the two island-endemic species provides habitat for three populations of *Clermontia pyrularia* and three populations of *Phyllostegia racemosa* within their historical ranges. The area designated as critical habitat for the multi-island species provides habitat for two populations of *Clermontia lindseyana* within its historical range. Critical habitat for two additional populations was designated for this species on Maui (68 FR 25934, May 14, 2003) and habitat is designated for a total of eight populations on the island of Hawaii in this rule.

These modifications resulted in the reduction from 2,992 ha (7,393 ac) to 2,189 ha (5,409 ac). This unit was renamed Hawaii 2—*Clermontia lindseyana*—b, Hawaii 2—*Clermontia pyrularia*—b, and Hawaii 2—*Phyllostegia racemosa*—b.

Hawaii F

This unit was proposed as critical habitat for seven species: *Clermontia peleana, Cyanea platyphylla, Cyanea shipmanii, Cyrtandra giffardii, Cyrtandra tintinnabula, Phyllostegia racemosa,* and *Phyllostegia warshaueri.* Modifications were made to this unit to eliminate areas that do not contain the primary constituent elements for these species or were considered not essential to the conservation of these species because they have a lower proportion of associated native species than other areas we consider to be essential to the conservation of these species, and there are at least 8 other locations that have been designated or are designated in this rule to meet the recovery goal of 8 to 10 populations throughout their historical ranges on this and other islands.

The area designated as critical habitat for the six island-endemic species provides habitat within their historical ranges for three populations each of *Cyanea platyphylla, Cyanea shipmanii,* and *Cyrtandra giffardii;* seven populations of *Cyrtandra tintinnabula* and *Phyllostegia warshaueri;* and five populations of *Phyllostegia racemosa.* The area designated as critical habitat for the multi-island species *Clermontia peleana* provides habitat for six populations within its historical range. Habitat for four additional populations of *Clermontia peleana* is designated in this rule.

These modifications resulted in the reduction from 13,906 ha (34,363 ac) to 11,539 ha (28,513 ac). This unit was renamed Hawaii 1—*Clermontia lindseyana*—a, Hawaii 1—*Clermontia peleana*—a, Hawaii 1—*Clermontia pyrularia*—a, Hawaii 1—*Cyanea shipmanii*—a, Hawaii 1—*Phyllostegia racemosa*—a, Hawaii 3—*Clermontia peleana*—b, Hawaii 3—*Cyanea platyphylla*—a, Hawaii 3—*Cyrtandra giffardii*—a, Hawaii 3—*Cyrtandra tintinnabula*—a, and Hawaii 3—*Phyllostegia warshaueri*—a.

Hawaii G

This unit was proposed as critical habitat for 12 species: *Argyroxiphium kauense, Asplenium fragile* var *insulare, Clermontia lindseyana, Clermontia peleana, Cyanea platyphylla, Cyanea shipmanii, Cyanea stictophylla, Cyrtandra giffardii, Phyllostegia racemosa, Phyllostegia velutina, Plantago hawaiensis,* and *Sicyos alba.* Modifications were made to this unit to eliminate areas that do not contain the primary constituent elements for these species or were considered not essential to the conservation of these species. Some portions eliminated from this final rule were not essential to the conservation of these species because they have a lower proportion of associated native species than other areas we consider to be essential to the conservation of these species, and there are at least 8 other locations that have been designated or are designated in this rule to meet the recovery goal of 8 to 10 populations throughout their historical ranges on this and other islands.

We eliminated the proposed critical habitat for the multi-island species, *Asplenium fragile* var. *insulare,* in Hawaii G because it is not essential to the conservation of this species. *Asplenium fragile* var. *insulare* is historically known from Maui and we have designated critical habitat for two populations for this species on that island (68 FR 25934, May 14, 2003). There is also habitat for seven populations on lands excluded from this final rule on the island of Hawaii in PTA (*see ''Analysis of Impacts Under Section 4(b)(2)''*), and this rule

designates critical habitat for one additional population. We excluded the proposed critical habitat on Kamehameha Schools lands in Hawaii G because the benefits of excluding these lands outweighed the benefits of including them in critical habitat (*see* ''*Analysis of Impacts Under Section 4(b)(2)*''). Those excluded lands provide habitat for recovery populations of *Phyllostegia racemosa* and *Phyllostegia velutina,* as detailed below.

The area designated as critical habitat for the nine island-endemic species provides habitat for 2 populations of *Argyroxiphium kauense,* 6 populations of *Cyanea platyphylla,* 4 populations of *Cyanea shipmanii,* 6 populations of *Cyanea stictophylla,* 7 populations of *Cyrtandra giffardii,* 5 populations (in combination with Kamehameha Schools lands) of *Phyllostegia racemosa,* 6 populations (in combination with Kamehameha Schools lands) of *Phyllostegia velutina,* 3 populations of *Plantago hawaiensis,* and 10 populations of *Sicyos alba* within their historical ranges. The area designated as critical habitat for the two multi-island species provides habitat for four populations each of *Clermontia lindseyana* and *Clermontia peleana* within their historical ranges. Critical habitat for two populations of *Clermontia lindseyana* was designated on Maui (68 FR 25934, May 14, 2003) and is designated for a total of eight populations in this rule. Clermontia peleana has critical habitat designated for a total of 10 populations in this rule.

These modifications resulted in the reduction from 32,286 ha (79,781 ac) to 20,261 ha (50,066 ac). This unit was renamed Hawaii 29—*Clermontia peleana*—c, Hawaii 29—*Cyanea platyphylla*—b, Hawaii 29—*Cyrtandra giffardii*—b, Hawaii 29—*Cyrtandra tintinnabula*—b, Hawaii 30—*Argyroxiphium kauense*—d, Hawaii 30—*Clermontia lindseyana*—c, Hawaii 30—*Cyanea shipmanii*—b, Hawaii 30—*Cyanea shipmanii*—c, Hawaii 30—*Cyanea stictophylla*—d, Hawaii 30—*Cyrtandra giffardii*—c, Hawaii 30—*Phyllostegia hawaiiensis*—c, Hawaii 30—*Phyllostegia racemosa*—c, Hawaii 30—*Phyllostegia velutina*—b, and Hawaii 30—*Sicyos alba*—a.

Hawaii H

This unit was proposed as critical habitat for four island endemic species: *Argyroxiphium kauense, Phyllostegia racemosa, Plantago hawaiensis,* and *Silene hawaiiensis.* Modifications were made to this unit to exclude areas that do not contain the primary constituent elements for these species or were considered not essential to the conservation of these species. Some portions eliminated from this final rule were not essential to the conservation of these species because they have a lower proportion of associated native species than other areas we consider to be essential to the conservation of these species, and there are at least 8 other locations that have been designated or are designated in this rule to meet the recovery goal of 8 to 10 populations throughout their historical ranges on the island of Hawaii.

We eliminated the proposed critical habitat for the endemic species *Phyllostegia racemosa* in Hawaii H. The area proposed for this species was eliminated from this final rule because it is not essential to the conservation of this species. We have designated habitat within this species' historical range in three other units, providing habitat for 10 populations on the island of Hawaii. The area designated as critical habitat for the other three island-endemic species provides habitat for one population of *Argyroxiphium kauense,* four populations of *Plantago hawaiensis,* and one population of *Silene hawaiiensis* within their historical ranges.

These modifications resulted in the reduction from 5,322 ha (13,151 ac) to 2,433 ha (6,011 ac). This unit was renamed Hawaii 25—*Argyroxiphium kauense*—c, Hawaii 25—*Plantago hawaiensis*—b, and Hawaii 25—*Silene hawaiiensis*—a.

Hawaii I

This unit was proposed as critical habitat for two island-endemic species: *Hibiscadelphus giffardianus* and *Melicope zahlbruckneri.* Modifications were made to this unit to exclude areas that do not contain the primary constituent elements for these species. The area designated as critical habitat for these endemic species provides habitat for one population of *Hibiscadelphus giffardianus* and two populations of *Melicope zahlbruckneri* within their historical ranges.

These modifications resulted in the reduction from 522 ha (1,290 ac) to 497 ha (1,228 ac). This unit was renamed Hawaii 26—*Hibiscadelphus giffardianus*—a and Hawaii 26—*Melicope zahlbruckneri*—b.

Hawaii J

This unit was proposed as critical habitat for *Adenophorus periens.* Modifications were made to this unit to exclude areas that do not contain the primary constituent elements for this species. The area designated as critical habitat for this multi-island species provides habitat within its historical range for one population of *Adenophorus periens.* We have designated critical habitat for this species for four populations on Kauai, one population on Oahu, and four populations on Molokai, in addition to the habitat for one population designated in this rule (68 FR 9116, February 27, 2003; 68 FR 35949, June 17, 2003; 68 FR 12982, March 19, 2003).

These modifications resulted in the reduction from 5,065 ha (12,516 ac) to 2,733 ha (6,754 ac). This unit was renamed Hawaii 28—*Adenophorus periens*—a.

Hawaii K

This unit was proposed as critical habitat for seven species: *Argyroxiphium kauense, Asplenium fragile* var. *insulare, Clermontia lindseyana, Cyanea stictophylla, Melicope zahlbruckneri, Plantago hawaiensis,* and *Phyllostegia velutina.* Modifications were made to this unit to exclude areas that do not contain the primary constituent elements for these species. Some portions eliminated from this final rule were not essential to the conservation of these species because they have a lower proportion of associated native species than other areas we consider to be essential to the conservation of these species.

We eliminated the proposed critical habitat in Hawaii K for *Clermontia lindseyana.* The area proposed for this species was eliminated from this final rule because it is not essential to the conservation of this species because it has a lower proportion of associated native species than other areas we consider to be essential to the conservation of *Clermontia lindseyana,* and there are at least 10 other locations for this species designated elsewhere on the islands of Hawaii and Maui within its historical range. Critical habitat for two populations was designated on Maui (68 FR 25934, May 14, 2003) and habitat for eight populations is designated in this rule.

The area designated as critical habitat for the five island-endemic species provides habitat for four populations of *Argyroxiphium kauense,* two populations of *Cyanea stictophylla,* one population of *Melicope zahlbruckneri,* four populations of *Phyllostegia velutina,* and three populations of *Plantago hawaiensis* within their historical ranges. The area designated as critical habitat for the multi-island species provides habitat for one population of *Asplenium fragile* var. *insulare* within its historical range.

These modifications resulted in the reduction from 15,294 ha (37,792 ac) to 10,961 ha (27,085 ac). This unit was

renamed Hawaii 24—*Argyroxiphium kauense*—b, Hawaii 24—*Asplenium fragile* var. *insulare*—a, Hawaii 24—*Cyanea stictophylla*—c, Hawaii 24—*Melicope zahlbruckneri*—a, Hawaii 24—*Phyllostegia velutina*—a, and Hawaii 24—*Plantago hawaiensis*—a.

Hawaii L

This unit was proposed as critical habitat for five species: *Ischaemum byrone, Pleomele hawaiiensis, Portulaca sclerocarpa, Sesbania tomentosa,* and *Silene hawaiiensis.* Modifications were made to this unit to exclude areas that do not contain the primary constituent elements for these species. In addition, some portions eliminated were not essential to the conservation of these species because they have a lower proportion of associated native species than other areas we consider to be essential to the conservation of these species, and there are at least 8 other locations that have been designated or are designated in this rule to meet the recovery goal of 8 to 10 populations throughout their historical ranges.

The area designated as critical habitat for the two island-endemic species provides habitat for five populations of *Pleomele hawaiiensis* and one population of *Silene hawaiiensis* within their historical ranges. The area designated as critical habitat for the three multi-island species provides habitat for two populations each of *Ischaemum byrone* and *Sesbania tomentosa* and five populations of *Portulaca sclerocarpa* within their historical ranges. We designated critical habitat for *Ischaemum byrone* on Kauai (habitat for three populations), Molokai (habitat for two populations), and Maui (habitat for two populations) (68 FR 9116, February 27, 2003; 68 FR12982, March 19, 2003; 68 FR 25934, May 14, 2003). We are designating habitat for a total of three populations on the island of Hawaii in this rule. *Portulaca sclerocarpa* is currently found on the islands of Lanai and Hawaii, and critical habitat for one population was designated on Lanai (68 FR 1220, January 9, 2003). This rule designates critical habitat for a total of five populations. There is habitat for four other populations on lands excluded from this final rule in PTA (see ''*Analysis of Impacts Under Section 4(b)(2)*''). We have designated critical habitat for *Sesbania tomentosa* on Nihoa (habitat for one population), Necker (habitat for one population), Kauai (habitat for two populations), Oahu (habitat for two populations), Molokai (habitat for two populations), and Maui (habitat for two populations) (68 FR 28054, May 22, 2003; 68 FR 9116, February 27, 2003; 68 FR 35949, June 17, 2003; 68 FR 12982, March 19, 2003; 68 FR 25934, May 14, 2003). In this rule, we are designating habitat for two populations of *Sesbania tomentosa*.

These modifications resulted in the reduction from 15,294 ha (37,792 ac) to 14,841 ha (36,674 ac). This unit was renamed Hawaii 20—*Sesbania tomentosa*—a, Hawaii 21—*Ischaemum byrone*—a, Hawaii 23—*Pleomele hawaiiensis*—d, Hawaii 23—*Sesbania tomentosa*—b, Hawaii 27—*Portulaca sclerocarpa*—a, and Hawaii 27—*Silene hawaiiensis*—b.

Hawaii M1

This unit was proposed as critical habitat for one multi-island species, *Ischaemum byrone.* The entire area proposed for this species was eliminated. This area is not essential to the conservation of this species because it has a lower proportion of associated native species than other areas we consider to be essential to the conservation of this species, and there are 10 other locations that have been designated to meet the recovery goal of 8 to 10 populations throughout its historical range on this and other islands. We have designated critical habitat for this species on Kauai (for three populations), and Maui (for two populations) (68 FR 35949, June 17, 2003; 68 FR 9116, February 27, 2003; 68 FR 12982, March 19, 2003; 68 FR 25934, May 14, 2003). In this rule we are designating habitat for three populations. Exclusion of this unit from critical habitat for *Ischaemum byrone* resulted in the overall reduction of 19 ha (46 ac) of critical habitat on the island of Hawaii.

Hawaii M2

This unit was proposed as critical habitat for one multi-island species, *Ischaemum byrone*. The entire area proposed for this species was eliminated. This area is not essential to the conservation of this species because it has a lower proportion of associated native species than other areas we consider to be essential to the conservation of this species, and there are 10 other locations that have been designated to meet the recovery goal of 8 to 10 populations throughout its historical range on this and other islands. We have designated critical habitat for this species on Kauai (for three populations) and Maui (for two populations) (68 FR 35949, June 17, 2003; 68 FR 9116, February 27, 2003; 68 FR 12982, March 19, 2003; 68 FR 25934, May 14, 2003). In this rule, we are designating habitat for three populations. Exclusion of this unit from critical habitat for *Ischaemum byrone* resulted in the overall reduction of 133 ha (328 ac) of critical habitat on the island of Hawaii.

Hawaii M3

This unit was proposed as critical habitat for one multi-island species, *Ischaemum byrone*. The entire area proposed for this species was eliminated. This area is not essential to the conservation of this species because it has a lower proportion of associated native species than other areas we consider to be essential to the conservation of this species, and there are 10 other locations that have been designated to meet the recovery goal of 8 to 10 populations throughout its historical range on this and other islands. We have designated critical habitat for this species on Kauai (for three populations) and Maui (for two populations) (68 FR 35949, June 17, 2003; 68 FR 9116, February 27, 2003; 69 FR 12982, March 19, 2003; 68 FR 25934, May 14, 2003). In this rule, we are designating habitat for three populations. Exclusion of this unit from critical habitat for *Ischaemum byrone* resulted in the overall reduction of 141 ha (349 ac) of critical habitat on the island of Hawaii.

Hawaii M4

This unit was proposed as critical habitat for one multi-island species, *Ischaemum byrone*. The entire area proposed for this species was eliminated. This area is not essential to the conservation of this species because it has a lower proportion of associated native species than other areas we consider to be essential to the conservation of this species, and there are 10 other locations that have been designated to meet the recovery goal of 8 to 10 populations throughout its' historical range on this and other islands. We have designated critical habitat for this species on Kauai (for three populations) and Maui (for two populations) (68 FR 35949, June 17, 2003; 68 FR 9116, February 27, 2003; 68 FR 12982, March 19, 2003; 68 FR 25934, May 14, 2003). In this rule we are designating habitat for three populations. Exclusion of this unit from critical habitat for *Ischaemum byrone* resulted in the overall reduction of 141 ha (348 ac) of critical habitat on the island of Hawaii.

Hawaii M5

This unit was proposed as critical habitat for one species, *Ischaemum byrone*. Modifications were made to this unit to exclude areas that do not contain the primary constituent elements for

this species. The area designated as critical habitat for this multi-island species provides habitat within its historical range for one population of *Ischaemum byrone*. We have designated critical habitat for this species on Kauai (habitat for three populations), Molokai (habitat for two populations), and Maui (habitat for two populations) (68 FR 9116, February 27, 2003; 68 FR 12982, March 19, 2003; 68 FR 25934, May 14, 2003). In this rule, we are designating habitat for three populations on the island of Hawaii.

These modifications resulted in the reduction from 533 ha (1,316 ac) to 159 ha (393 ac). This unit was renamed Hawaii 22—*Ischaemum byrone*—b.

Hawaii N1

This unit was proposed as critical habitat for one multi-island species, *Sesbania tomentosa.* The entire area proposed for this species was eliminated. This area is not essential to the conservation of this species because it has a lower proportion of associated native species than other areas we consider to be essential to the conservation of this species, and there are 12 other locations that have been designated to meet the recovery goal of 8 to 10 populations throughout its historical range on this and other islands. We designated critical habitat for this species on Nihoa (habitat for one population), Necker (habitat for one population), Kauai (habitat for two populations), Oahu (habitat for two populations), Molokai (habitat for two populations), and Maui (habitat for two populations) (68 FR 28054, May 22, 2003; May 22, 2003; 68 FR 9116, February 27, 2003; 68 FR 35949, June 17, 2003; 68 FR 12982, March 19, 2003; 68 FR 25934, May 14, 2003). In this rule, we are designating habitat elsewhere on the island of Hawaii for two populations. Exclusion of this unit from critical habitat for *Sesbania tomentosa* resulted in the overall reduction of 35 ha (88 ac) of critical habitat on the island of Hawaii.

Hawaii N2

This unit was proposed as critical habitat for one multi-island species, *Sesbania tomentosa*. The entire area proposed for this species was eliminated. This area is not essential to the conservation of this species because it has a lower proportion of associated native species than other areas we consider to be essential to the conservation of this species, and there are 12 other locations that have been designated to meet the recovery goal of 8 to 10 populations throughout its historical range on this and other islands. We designated critical habitat for this species on Nihoa (habitat for one population), Necker (habitat for one population), Kauai (habitat for two populations), Oahu (habitat for two populations), Molokai (habitat for two populations), and Maui (habitat for two populations) (68 FR 28054, May 22, 2003; May 22, 2003; 68 FR 9116, February 27, 2003; 68 FR 35949, June 17, 2003; 68 FR 12982, March 19, 2003; 68 FR 25934, May 14, 2003). In this rule, we are designating habitat elsewhere on the island of Hawaii for two populations. Exclusion of this unit from critical habitat for *Sesbania tomentosa* resulted in the overall reduction of 441 ha (1,091 ac) of critical habitat on the island of Hawaii.

Hawaii O

This unit was proposed as critical habitat for one species, *Mariscus fauriei*. Modifications were made to this unit to exclude areas that do not contain the primary constituent elements for this species.

The area designated as critical habitat for this multi-island species provides habitat within its historical range for one population of *Mariscus fauriei*. We designated critical habitat for this species on Molokai (habitat for seven populations) (68 FR 12982, March 18, 2003).

These modifications resulted in the reduction from 215 ha (531 ac) to 127 ha (313 ac). This unit was renamed Hawaii 19—*Mariscus fauriei*—b.

Hawaii P

This unit was proposed as critical habitat for one species, *Pleomele hawaiiensis.* The entire area proposed for this species was eliminated. This area is not essential to the conservation of this species because it has a lower proportion of associated native species than other areas we consider to be essential to the conservation of this species, and there are 10 other locations that have been designated to meet the recovery goal of 8 to 10 populations throughout its historical range on this island. Three other critical habitat units for this species are designated on the island of Hawaii for a total of nine populations, and the excluded Kamehameha Schools lands provide habitat for one population (*see* ''*Analysis of Impacts Under Section 4(b)(2)*''). Exclusion of this unit from critical habitat for *Pleomele hawaiiensis* resulted in the overall reduction of 547 ha (1,351 ac) of critical habitat on the island of Hawaii.

Hawaii Q

This unit was proposed as critical habitat for six species: *Colubrina oppositifolia, Diellia erecta, Flueggea neowawraea, Gouania vitifolia, Neraudia ovata,* and *Pleomele hawaiiensis.* Modifications were made to this unit to exclude areas that do not contain the primary constituent elements for these species. The portions eliminated from this final rule were not essential to the conservation of these species because they have a lower proportion of associated native species than other areas we consider to be essential to the conservation of these species, and there are at least eight other locations that have been designated or are being designated in this rule to meet the recovery goal of 8 to 10 populations throughout their historical ranges.

The area designated as critical habitat for the two island-endemic species provides habitat for two populations each of *Neraudia ovata* and *Pleomele hawaiiensis* within their historical ranges. The area designated as critical habitat for the four multi-island species provides habitat for two populations each of *Colubrina oppositifolia* and *Gouania vitifolia,* and one population each of *Diellia erecta* and *Flueggea neowawraea,* within their historical ranges. We designated critical habitat for *Colubrina oppositifolia* on Oahu (habitat for three populations) and Maui (habitat for three populations) (68 FR 35949, June 17, 2003; 68 FR 25934, May 14, 2003), and we are designating habitat for a total of four populations on the island of Hawaii in this rule. Critical habitat for one population each of *Diellia erecta* was designated on Kauai, Oahu, and Molokai, and four populations on Maui (68 FR 9116, February 27, 2003; 68 FR 35949, June 17, 2003; 68 FR 12982, March 19, 2003; 68 FR 25934, May 14, 2003). In this rule, habitat is designated for two populations on the island of Hawaii. We designated critical habitat for *Flueggea neowawraea* on Kauai (habitat for four populations), Molokai (habitat for one population), and Maui (habitat for one population) (68 FR 9116, February 27, 2003; 68 FR 12982, March 19, 2003; 68 FR 25934, May 14, 2003). In this rule we are designating habitat for two populations. In addition, there is habitat on Oahu for one population of *Flueggea neowawraea* on excluded lands (68 FR 35949, June 17, 2003). We designated critical habitat for *Gouania vitifolia* on Oahu (habitat for seven populations) and Maui (habitat for one population), as well as habitat for two populations in this rule (68 FR 35949, June 17, 2003; 68 FR 25934, May 14, 2003).

These modifications resulted in the reduction from 15,294 ha (37,792 ac) to 2,997 ha (7,406 ac). This unit was renamed Hawaii 18—*Colubrina oppositifolia*—b, Hawaii 18—*Diellia erecta*—b, Hawaii 18—*Flueggea neowawraea*—b, Hawaii 18—*Gouania vitifolia*—a, Hawaii 18—*Neraudia ovata*—d, and Hawaii 18—*Pleomele hawaiiensis*—c.

Hawaii R

This unit was proposed as critical habitat for two species: *Diellia erecta* and *Flueggea neowawraea.* Modifications were made to this unit to eliminate areas that do not contain the primary constituent elements for these species. The portions eliminated were not essential to the conservation of these species because they have a lower proportion of associated native species than other areas we consider to be essential to the conservation of these species, and there are at least 8 other locations that have been designated or are designated in this rule to meet the recovery goal of 8 to 10 populations throughout their historical ranges.

The area designated as critical habitat for these two multi-island species provides habitat for one population each of *Diellia erecta* and *Flueggea neowawraea* within their historical ranges. Critical habitat for one population each of *Diellia erecta* was designated on Kauai, Oahu, and Molokai, and four populations on Maui (68 FR 9116, February 27, 2003; 68 FR 35949, June 17, 2003; 68 FR 12982, March 19, 2003; 68 FR 25934, May 14, 2003). We are designating habitat for two populations of *Diellia erecta* on the island of Hawaii in this rule. We designated critical habitat for *Flueggea neowawraea* on Kauai (habitat for four populations), Molokai (habitat for one population), and Maui (habitat for one population) (68 FR 9116, February 27, 2003; 68 FR 12982, March 19, 2003; 68 FR 25934, May 14, 2003). In this rule, we are designating habitat for two populations. In addition, there is habitat for on Oahu for one population of *Flueggea neowawraea* on excluded lands (68 FR 35949, June 17, 2003).

These modifications resulted in the reduction from 387 ha (955 ac) to 332 ha (819 ac). This unit was renamed Hawaii 17—*Diellia erecta*—a and Hawaii 17—*Flueggea neowawraea*—a.

Hawaii S

This unit was proposed as critical habitat for two species: *Cyanea hamatiflora* ssp. *carlsonii* and *Cyanea stictophylla.* Modifications were made to this unit to eliminate areas that do not contain the primary constituent elements for these species. Some portions eliminated were not essential to the conservation of these species because they have a lower proportion of associated native species than other areas we consider to be essential to the conservation of these species, and there are at least 8 other locations that are being designated in this rule to meet the recovery goal of 8 to 10 populations throughout their historical ranges. The area designated as critical habitat for these two island-endemic species provides habitat for one population each of *Cyanea hamatiflora* ssp. *carlsonii* and *Cyanea stictophylla* within their historical ranges.

These modifications resulted in the reduction from 383 ha (947 ac) to 331 ha (819 ac). This unit was renamed Hawaii 16—*Cyanea hamatiflora* ssp. *carlsonii*—d and Hawaii 16—*Cyanea stictophylla*—b.

Hawaii T

This unit was proposed as critical habitat for two species: *Cyanea hamatiflora* ssp. *carlsonii* and *Cyanea stictophylla.* Modifications were made to this unit to eliminate areas that do not contain the primary constituent elements for these species. Some portions eliminated were not essential to the conservation of these species because they have a lower proportion of associated native species than other areas we consider to be essential to the conservation of these species, and there are at least 8 other locations that are being designated in this rule to meet the recovery goal of 8 to 10 populations throughout their historical ranges. The area designated as critical habitat for these two island-endemic species provides habitat for one population each of *Cyanea hamatiflora* ssp. *carlsonii* and *Cyanea stictophylla* within their historical ranges.

These modifications resulted in the reduction from 1,489 ha (3,681 ac) to 1,264 ha (3,123 ac). This unit was renamed Hawaii 15—*Cyanea hamatiflora* ssp. *carlsonii*—c and Hawaii 15—*Cyanea stictophylla*—a.

Hawaii U

This unit was proposed as critical habitat for one species, *Cyanea hamatiflora* ssp. *carlsonii.* Modifications were made to this unit to eliminate areas that do not contain the primary constituent elements for this species. Some portions eliminated were not essential to the conservation of this species because they have a lower proportion of associated native species than other areas we consider to be essential to the conservation of this species, and there are at least 5 other locations with habitat for a total of 7 populations that are designated in this rule to meet the recovery goal of 8 to 10 populations throughout the species' historical range. The area designated as critical habitat for this island-endemic species provides habitat for one population of *Cyanea hamatiflora* ssp. *carlsonii* within its historical range.

These modifications resulted in the reduction from 615 ha (1,520 ac) to 597 ha (1,475 ac). This unit was renamed Hawaii 14—*Cyanea hamatiflora* ssp. *carlsonii*—b.

Hawaii V

This unit was proposed as critical habitat for one species endemic to the island of Hawaii, *Nothocestrum breviflorum.* The entire area proposed for this species was eliminated. This area is not essential to the conservation of this species because it has a lower proportion of associated native species than other areas we consider to be essential to the conservation of this species, and there are 3 other locations that have been designated to meet the recovery goal of 8 to 10 populations throughout its historical range on this island. Habitat designated elsewhere on the island of Hawaii for this species provides habitat for nine populations. Exclusion of this unit from critical habitat for *Nothocestrum breviflorum* resulted in the overall reduction of 951 ha (2,351 ac) of critical habitat on the island of Hawaii.

Hawaii W

This unit was proposed as critical habitat for one multi-island species, *Delissea undulata.* The entire area proposed for this species was excluded. Some of it was excluded because it is not essential to the conservation of this species. We also excluded the proposed critical habitat on Kamehameha Schools lands in Hawaii W because the benefits of excluding these lands outweighed the benefits of including them in critical habitat (*see ''Analysis of Impacts Under Section 4(b)(2)''*). These excluded lands provide habitat for three recovery populations of *Delissea undulata.* There is habitat designated elsewhere on the island of Hawaii for this species providing habitat for two populations. In addition, we have designated habitat on Kauai for three populations (68 FR 9116, February 27, 2003). Exclusion of this unit from critical habitat for *Delissea undulata* resulted in the overall reduction of 1,479 ha (3,654 ac) of critical habitat on the island of Hawaii.

Hawaii X

This unit was proposed as critical habitat for two species: *Cyanea*

hamatiflora ssp. *carlsonii* and *Solanum incompletum.* Modifications were made to this unit to eliminate areas that do not contain the primary constituent elements for these species. Some portions eliminated were not essential to the conservation of these species because they have a lower proportion of associated native species than other areas we consider to be essential to the conservation of these species, and there are at least 8 other locations that have been designated or are designated in this rule to meet the recovery goal of 8 to 10 populations throughout their historical ranges.

The area designated as critical habitat for the island-endemic species provides habitat for one population of *Cyanea hamatiflora* ssp. *carlsonii* within its historical range. The area designated as critical habitat for the multi-island species provides habitat for one population of *Solanum incompletum* within its historical range. This rule designates critical habitat for four populations on the island of Hawaii. There is also habitat for five populations on lands excluded from this final rule in PTA (see ''*Analysis of Impacts Under Section 4(b)(2)*''). Habitat for one population is in the area excluded from critical habitat on Lanai (68 FR 1220, January 9, 2003).

These modifications resulted in the reduction from 138 ha (340 ac) to 92 ha (227 ac). This unit was renamed Hawaii 11—*Cyanea hamatiflora* ssp. *carlsonii*—a and Hawaii 11—*Solanum incompletum*—b.

Hawaii Y1

This unit was proposed as critical habitat for two species: *Isodendrion pyrifolium* and *Neraudia ovata.* We excluded the proposed critical habitat on these lands because the benefits of excluding these lands outweighed the benefits of including them in critical habitat (*see ''Analysis of Impacts Under Section 4(b)(2)''*). Habitat for nine populations of *Neraudia ovata* are designated in this rule. We designated critical habitat for *Isodendrion pyrifolium* on Oahu (habitat for three populations), Molokai (habitat for one population), and Maui (habitat for two populations) (68 FR 35949, June 17, 2003; 68 FR 12982, March 19, 2003; 68 FR 25934, May 14, 2003). Habitat for two additional populations is in the land excluded from critical habitat on Lanai (68 FR 1220, January 9, 2003). Exclusion of this unit from critical habitat for *Isodendrion pyrifolium* and *Neraudia ovata* resulted in the overall reduction of 212 ha (524 ac) of critical habitat on the island of Hawaii.

Hawaii Y2

This unit was proposed as critical habitat for two species: *Isodendrion pyrifolium* and *Neraudia ovata.* We excluded the proposed critical habitat on these lands because the benefits of excluding these lands outweighed the benefits of including them in critical habitat (see ''*Analysis of Impacts Under Section 4(b)(2)*''). Habitat for nine populations of *Neraudia ovata* are designated in this rule. We designated critical habitat for *Isodendrion pyrifolium* on Oahu (habitat for three populations), Molokai (habitat for one population), and Maui (habitat for two populations) (68 FR 35949, June 17, 2003; 68 FR 12982, March 19, 2003; 68 FR 25934, May 14, 2003). Habitat for two additional populations is in the land excluded from critical habitat on Lanai (68 FR 1220, January 9, 2003). Exclusion of this unit from critical habitat for *Isodendrion pyrifolium* and *Neraudia ovata* resulted in the overall reduction of 334 ha (826 ac) of critical habitat on the island of Hawaii.

Hawaii Z

This unit was proposed as critical habitat for 12 species: *Bonamia menziesii, Colubrina oppositifolia, Cyanea stictophylla, Delissea undulata, Flueggea neowawraea, Hibiscadelphus hualalaiensis, Hibiscus brackenridgei, Nothocestrum breviflorum, Phyllostegia velutina, Plantago hawaiensis, Pleomele hawaiiensis,* and *Zanthoxylum dipetalum* var. *tomentosum.* Modifications were made to this unit to exclude areas that do not contain the primary constituent elements for these species. We also eliminated the proposed critical habitat in Hawaii Z for *Cyanea stictophylla, Flueggea neowawraea, Phyllostegia velutina,* and *Plantago hawaiensis.* Areas proposed for these four species were eliminated because they are not essential to the conservation of these species because they had a lower proportion of associated native species than other areas we consider to be essential to the conservation of these species, and there are at least nine other locations for each of these species designated elsewhere within their historical ranges. We are designating critical habitat elsewhere on the island of Hawaii for 10 populations each of *Cyanea stictophylla, Phyllostegia velutina,* and *Plantago hawaiensis,* all island-endemic species. For the multi-island species *Flueggea neowawraea,* we are designating critical habitat for two populations elsewhere on the island of Hawaii, and we have designated habitat for four populations on Kauai and one population on Molokai and Maui (68 FR 9116, February 27, 2003; 68 FR 12982, March 19, 2003; 68 FR 25934, May 14, 2003). Habitat for one additional population of *Flueggea neowawraea* is on lands excluded from critical habitat on Oahu (68 FR 35949, June 17, 2003).

In addition, we excluded the proposed critical habitat on Kamehameha Schools and National Tropical Botanical Garden lands in Hawaii Z because the benefits of excluding these lands outweighed the benefits of including them in critical habitat (see ''*Analysis of Impacts Under Section 4(b)(2)*''). These excluded lands provide habitat for one population of *Pleomele hawaiiensis* and, in combination with land designated in this unit, one population of *Bonamia menziesii.*

The area designated as critical habitat for the four island-endemic species in this unit provides habitat for eight populations of *Hibiscadelphus hualalaiensis,* five populations of *Nothocestrum breviflorum,* one population of *Pleomele hawaiiensis,* and seven populations of *Zanthoxylum dipetalum* var. *tomentosum* within their historical ranges. Elsewhere in this rule, we are designating habitat for four populations of *Nothocestrum breviflorum* and eight populations of *Pleomele hawaiiensis.* The area designated as critical habitat for the four multi-island species in this unit provides habitat for one population (in combination with excluded lands) of *Bonamia menziesii,* two populations each of *Colubrina oppositifolia* and *Delissea undulata,* and one population of *Hibiscus brackenridgei* within their historical ranges. We have designated critical habitat for *Bonamia menziesii* on Kauai (habitat for two populations), Oahu (habitat for four populations), and Maui (habitat for one population), and elsewhere in this rule are designating habitat for one population. Habitat for one additional population of this species is in the land excluded from critical habitat on Lanai. We have designated critical habitat for *Colubrina oppositifolia* on Oahu (habitat for three populations) and Maui (habitat for three populations), and elsewhere in this rule, we are designating habitat for four populations on the island of Hawaii. We have designated critical habitat for *Delissea undulata* on Kauai (habitat for three populations). We have designated critical habitat for *Hibiscus brackenridgei* on Oahu (habitat for three populations), Molokai (habitat for one population), Maui (habitat for three populations) and habitat for one additional population is in land excluded from critical habitat on Lanai

(68 FR 1220, January 9, 2003; 68 FR 9116, February 27, 2003; 68 FR 35949, June 17, 2003; 68 FR 12982, March 19, 2003; 68 FR 25934, May 14, 2003).

These modifications resulted in the reduction from 10,738 ha (26,535 ac) to 6,564 ha (16,221 ac). This unit was renamed Hawaii 10—*Bonamia menziesii*—a, Hawaii 10—*Colubrina oppositifolia*—a, Hawaii 10—*Delissea undulata*—a, Hawaii 10—*Delissea undulata*—b, Hawaii 10—*Hibiscadelphus hualalaiensis*—a, Hawaii 10—*Hibiscus brackenridgei*—a, Hawaii 10—*Nothocestrum breviflorum*—c, Hawaii 10—*Pleomele hawaiiensis*—b, and Hawaii 10—*Zanthoxylum dipetalum* ssp. *tomentosum*—a.

Hawaii AA

This unit was proposed as critical habitat for 10 species: *Asplenium fragile* var. *insulare, Hedyotis coriacea, Neraudia ovata, Portulaca sclerocarpa, Silene hawaiiensis, Silene lanceolata, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium arenarium,* and *Zanthoxylum hawaiiense.* The entire area proposed for these species, which is located on PTA lands, was excluded for the reasons described in ''*Analysis of Impacts Under Section 4(b)(2)*''. As a result, no critical habitat was designated for the five multi-island species *Hedyotis coriacea, Silene lanceolata, Spermolepis hawaiiensis, Tetramolopium arenarium,* and *Zanthoxylum hawaiiense* on the island of Hawaii because all of the habitat proposed for these species is within these lands. These excluded lands provide habitat for six populations of *Hedyotis coriacea,* six populations of *Silene lanceolata,* two populations of *Spermolepis hawaiiensis,* seven populations of *Tetramolopium arenarium,* and six populations of *Zanthoxylum hawaiiense.* We have designated critical habitat for *Hedyotis coriacea* on Oahu (habitat for two populations) and Maui (habitat for two populations) (68 FR 25934, May 14, 2003). We designated critical habitat for *Silene lanceolata* on Oahu (habitat for one population) and Molokai (habitat for two populations) (68 FR 12982, March 19, 2003). We have designated critical habitat for *Spermolepis hawaiiensis* on Kauai (habitat for two populations), Oahu (habitat for two populations), Molokai (habitat for one population), and Maui (habitat for two populations) (68 FR 25934, May 14, 2003). Habitat for one additional population of *Spermolepis hawaiiensis* is in the area excluded from critical habitat on Lanai (68 FR 1220, January 9, 2003). *Tetramolopium arenarium* is known historically from Maui, but is currently only found on the island of Hawaii. We have designated no critical habitat for this species. We have designated critical habitat for *Zanthoxylum hawaiiense* on Kauai (habitat for two populations), Molokai (habitat for one population), and Maui (habitat for one population) (68 FR 9116, February 27, 2003; 68 FR 35949, June 17, 2003; 68 FR 12982, March 19, 2003; 68 FR 25934, May 14, 2003).

These excluded lands also provide habitat for seven populations of *Asplenium fragile* var. *insulare,* four populations of *Neraudia ovata,* four populations of *Portulaca sclerocarpa,* seven populations of *Silene hawaiiensis,* and four populations of *Solanum incompletum. Asplenium fragile* var. *insulare* is historically known from Maui and we have designated critical habitat for two populations for this species on that island (68 FR 25934, May 14, 2003) and habitat for one population is designated in this rule. *Neraudia ovata* is endemic to the island of Hawaii and habitat for six populations are designated in this rule. We have designated critical habitat for one population of *Portulaca sclerocarpa* on Lanai (68 FR 1220, January 9, 2003) and are designating habitat for five populations in this rule. *Silene hawaiiensis* is endemic to the island of Hawaii, and habitat for three populations is designated in this rule. Habitat for one population of the multi-island species *Solanum incompletum* is in the area excluded from critical habitat on Lanai (68 FR 1220, January 9, 2003) and we are designating habitat for four populations in this rule.

Exclusion of this unit from critical habitat for *Asplenium fragile* var. *insulare, Hedyotis coriacea, Neraudia ovata, Portulaca sclerocarpa, Silene hawaiiensis, Silene lanceolata, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium arenarium,* and *Zanthoxylum hawaiiense* resulted in the overall reduction of 28,384 ha (70,138 ac) of critical habitat on the island of Hawaii.

Hawaii BB

This unit was proposed as critical habitat for one multi-island species, *Sesbania tomentosa.* The entire area proposed for this species was eliminated. This area is not essential to the conservation of this species because it has a lower proportion of associated native species than other areas we consider to be essential to the conservation of this species, and there are 12 other locations that have been designated to meet the recovery goal of 8 to 10 populations throughout its historical range on this and other islands. We designated critical habitat for this species on Nihoa (habitat for one population), Necker (habitat for one population), Kauai (habitat for two populations), Oahu (habitat for two populations), Molokai (habitat for two populations), and Maui (habitat for two populations) (68 FR 28054, May 22, 2003; 68 FR 9116, February 27, 2003; 68 FR 35949, June 17, 2003; 68 FR 12982, March 19, 2003; 68 FR 25934, May 14, 2003). There is habitat designated elsewhere on the island of Hawaii for this species, providing habitat for two populations. Exclusion of this unit from critical habitat for *Sesbania tomentosa* resulted in the overall reduction of 43 ha (106 ac) of critical habitat on the island of Hawaii.

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 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 the 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) 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.

In order to be included in a critical habitat designation, areas within the geographical range of the species at the time of listing must contain physical or biological features essential to the conservation of the species or for an area outside the geographical area occupied by the species at the time of listing, the area itself must be essential to the conservation of the species, 16 U.S.C. 1532(5)(A).

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.

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 essential for the conservation of the species, or we may inadvertently include areas that later will be shown to be nonessential. Nevertheless, we are required to complete the designation process, using the best information available to us. If new information becomes available subsequent to the designation, we have authority to revise the critical habitat at that time (16 U.S.C. 1533(a)(3)(B)).

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34270), 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.

It is important to clearly 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) and to the regulatory protections afforded by the Act's section 7(a)(2) jeopardy standard and section 9 prohibitions, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome. 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.

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)).

To determine whether critical habitat would be prudent for each species, we analyzed the potential threats and benefits for each species in accordance with the court's order. Two species, *Cyanea copelandii* ssp. *copelandii* and *Ochrosia kilaueaensis,* endemic to the island of Hawaii, are no longer extant in the wild. *Cyanea copelandii* ssp. *copelandii* was last seen in the wild in 1957, in the Glenwood area. *Ochrosia kilaueaensis* was last observed in the wild in 1927, in an area that is now part of Hawaii Volcanoes National Park. Neither of these two species is known to be in storage or under propagation. Under these circumstances, designation of critical habitat for *Cyanea copelandii* ssp. *copelandii* and *Ochrosia kilaueaensis* is not prudent because such designation would be of no benefit to these species. If these species are rediscovered, we may revise these final prudency determinations to incorporate or address new information as new data become available (See 16 U.S.C. 1532 (5)(B); 50 CFR 424.13(f)).

Due to low numbers of individuals and populations and their inherent immobility, the other 56 plant species may be vulnerable to unrestricted collection, vandalism, or disturbance. However, we examined the evidence currently available for each of these species and found specific evidence of vandalism, disturbance, and the threat of unrestricted collection only for two species of *Pritchardia,* the native palm. At the time of listing, we determined that designation of critical habitat was not prudent for *Pritchardia affinis* and *Pritchardia schattaueri* because it would increase the degree of threat from vandalism or collecting, and would provide no benefit (59 FR 10305, March 4, 1994; 61 FR 53137, October 10, 1996). Since publication of the listing rule, we learned of specific instances of vandalism, collection, and commercial trade involving these two species of *Pritchardia.* In the 1990s, seeds of *Pritchardia schattaueri* were removed from plants in two of the three locations where this species was known at that time (L. Perry and Nick Agorastos, DOFAW pers. comm. 2000). We received information on the commercial trade in palms conducted through the Internet (Grant Canterbury, Service *in litt.* 2000). Several nurseries advertise and sell seedlings and young plants, including 13 species of Hawaiian *Pritchardia.* Seven of these species are federally protected, including *Pritchardia affinis* and *Pritchardia schattaueri.* In light of this information, we believe that designation of critical habitat would likely increase the threat from vandalism to or collection of to these two species of *Pritchardia* on the island of Hawaii. First, these plants are easy to identify, and second, they may be attractive to collectors of rare palms either for their personal use or to trade or sell for personal gain (Johnson 1996). Although the final listing rules for these two species of palm do not list vandalism or overcollection as threats, in light of documented vandalism and overcollection events on these species and on species in the same genus on Kauai, we believe that *Pritchardia affinis* and *P. schattaueri* are vulnerable to these threats (59 FR 10305; 61 FR 53137).

In addition, we believe that designation would not provide significant benefits that would outweigh

these increased risks. First, *Pritchardia affinis* and *Pritchardia schattaueri* do not occur on Federal lands. *Pritchardia schattaueri* is reported on privately owned land that is zoned for agriculture, and 10 of the approximately 12 individuals have been fenced (Mick Castillo, USFWS, pers. comm. 2003). In addition, the privately owned land is currently farmed, with 10 of the plants located in pasture and 2 located in macadamia nut orchards, and this land is unlikely to be developed. *Pritchardia affinis* occurs on State and privately owned lands that are zoned for conservation and agriculture. Since there do not appear to be any actions in the future that would likely involve a Federal agency, designation of critical habitat would not provide any protection to these species that they do not already have through listing alone. If, however, in the future, any Federal involvement did occur, such as through the permitting process or funding by the U.S. Department of Agriculture, the U.S. Department of the Interior, the Corps through section 404 of the Clean Water Act, the U.S. Federal Department of Housing and Urban Development, or the Federal Highway Administration, the actions would be subject to consultation under section 7 of the Act. We acknowledge that critical habitat designation, in some situations, may provide some value to the species, for example, by identifying areas important for conservation and calling attention to those areas in need of special protection. However, for these two species, we believe that the benefits of designating critical habitat do not outweigh the potential increased threats from vandalism or collection. Given all of the above considerations, we determine that designation of critical habitat for *Pritchardia affinis* and *P. schattaueri* is not prudent.

In the final rule for Lanai plants (68 FR 1220, January 9, 2003), we found that critical habitat was prudent for the following 16 multi-island species that also occur on the island of Hawaii: *Adenophorus periens, Bonamia menziesii, Cenchrus agrimonioides, Ctenitis squamigera, Diellia erecta, Hedyotis cookiana, Hibiscus brackenridgei, Isodendrion pyrifolium, Mariscus fauriei, Portulaca sclerocarpa, Sesbania tomentosa, Silene lanceolata, Solanum incompletum, Spermolepis hawaiiensis, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense.* In the final rule for Kauai and Niihau plants (68 FR 9116, February 27, 2003), we found that critical habitat was prudent for the following seven multi-island species that are also found on the island of Hawaii: *Achyranthes mutica, Delissea undulata, Flueggea neowawraea, Ischaemum byrone, Mariscus pennatiformis, Phlegmariurus mannii,* and *Plantago princeps.* In the final rule for Maui and Kahoolawe plants (68 FR 25934, May 14, 2003), we found that critical habitat was prudent for the following eight multi-island species that also occur on the island of Hawaii: *Asplenium fragile* var. *insulare, Clermontia lindseyana, Clermontia peleana, Colubrina oppositifolia, Gouania vitifolia, Hedyotis coriacea, Phyllostegia parviflora,* and *Tetramolopium arenarium.*

We examined the evidence available for the other 23 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 these 23 plant species in the future, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and the court's discussion of these regulations, we do not find that any of these species are currently threatened by taking or other human activity, which would be exacerbated by the designation of critical habitat.

In the absence of finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. The potential benefits include: (1) Triggering section 7 consultation in new areas where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species.

In the case of these 23 species, there would be some benefits to critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely affects critical habitat. Thirteen of these species are reported on or near Federal lands (see Table 1 above), where actions are subject to section 7 consultation. Although many 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, since an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat were designated. There may also be some educational or informational benefits to the designation of critical habitat. Educational benefits include the notification of landowner(s), land managers, and the general public of the importance of protecting the habitat of these species and dissemination of information regarding their essential habitat requirements. Therefore, we find that critical habitat is prudent for these 23 plant species: *Argyroxiphium kauense, Clermontia drepanomorpha, Clermontia pyrularia, Cyanea hamatiflora* ssp. *carlsonii, Cyanea platyphylla, Cyanea shipmanii, Cyanea stictophylla, Cyrtandra giffardii, Cyrtandra tintinnabula, Hibiscadelphus giffardianus, Hibiscadelphus hualalaiensis, Isodendrion hosakae, Melicope zahlbruckneri, Neraudia ovata, Nothocestrum breviflorum, Phyllostegia racemosa, Phyllostegia velutina, Phyllostegia warshaueri, Plantago hawaiiensis, Pleomele hawaiiensis, Sicyos alba, Silene hawaiiensis,* and *Zanthoxylum dipetalum* var. *tomentosum.*

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 *Achyranthes mutica, Adenophorus periens, Argyroxiphium kauense, Asplenium fragile* var. *insulare, Bonamia menziesii, Cenchrus agrimonioides, Clermontia drepanomorpha, Clermontia lindseyana, Clermontia peleana, Clermontia pyrularia, Colubrina oppositifolia, Ctenitis squamigera, Cyanea hamatiflora* ssp. *carlsonii, Cyanea platyphylla, Cyanea shipmanii, Cyanea stictophylla, Cyrtandra giffardii, Cyrtandra tintinnabula, Delissea undulata, Diellia erecta, Flueggea neowawraea, Gouania vitifolia, Hedyotis cookiana, Hedyotis coriacea, Hibiscadelphus giffardianus, Hibiscadelphus hualalaiensis, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion hosakae, Isodendrion pyrifolium, Mariscus fauriei, Mariscus pennatiformis, Melicope zahlbruckneri, Neraudia ovata, Nothocestrum breviflorum, Phlegmariurus mannii, Phyllostegia parviflora, Phyllostegia racemosa, Phyllostegia velutina, Phyllostegia warshaueri, Plantago*

hawaiensis, Plantago princeps, Pleomele hawaiiensis, Portulaca sclerocarpa, Sesbania tomentosa, Sicyos alba, Silene hawaiiensis, Silene lanceolata, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium arenarium, Vigna o-wahuensis, Zanthoxylum dipetalum var. *tomentosum,* and *Zanthoxylum hawaiiense.* 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 54 species; the May 28, 2002 proposal; information received during the public comment periods and the public hearings; recent biological surveys and reports; our recovery plans for these species; information from landowners, land managers, and interested parties on the island of Hawaii; discussions with botanical experts; and recommendations from the Hawaii and Pacific Plant Recovery Coordinating Committee (HPPRCC) (*see also* the discussion below) (GDSI 2000; HINHP Database 2000; Service 1994, 1995a, 1996a, 1996b, 1996c, 1997a, 1998a, 1998b, 1998c, 1999; 67 FR 36968; CPC, *in litt.* 1999; R. Hobdy and S. Perlman, pers. comms. 2000; L. Pratt *et al.*, pers. comm. 2001).

In 1994, the HPPRCC initiated an effort to identify and map habitat it believed to be important for the recovery of 282 endangered and threatened Hawaiian plant species. The HPPRCC identified these areas on most of the islands in the Hawaiian chain, and in 1999, we published them in our *Recovery Plan for the Multi-Island Plants* (Service 1999). The HPPRCC expects there will be subsequent efforts to further refine the locations of important habitat areas and that new survey information or research may also lead to additional refinement of identifying and mapping of habitat important for the recovery of these species.

The HPPRCC identified essential habitat areas for all listed, proposed, and candidate plants and evaluated species of concern to determine if essential habitat areas would provide for their habitat needs. However, the HPPRCC's mapping of habitat is distinct from the regulatory designation of critical habitat as defined by the Act. More data 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.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. 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, or rearing of offspring, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

Much of what is known about the specific physical and biological requirements of the 54 species (*Achyranthes mutica, Adenophorus periens, Argyroxiphium kauense, Asplenium fragile* var. *insulare, Bonamia menziesii, Cenchrus agrimonioides, Clermontia drepanomorpha, Clermontia lindseyana, Clermontia peleana, Clermontia pyrularia, Colubrina oppositifolia, Ctenitis squamigera, Cyanea hamatiflora* ssp. *carlsonii, Cyanea platyphylla, Cyanea shipmanii, Cyanea stictophylla, Cyrtandra giffardii, Cyrtandra tintinnabula, Delissea undulata, Diellia erecta, Flueggea neowawraea, Gouania vitifolia, Hedyotis cookiana, Hedyotis coriacea, Hibiscadelphus giffardianus, Hibiscadelphus hualalaiensis, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion hosakae, Isodendrion pyrifolium, Mariscus fauriei, Mariscus pennatiformis, Melicope zahlbruckneri, Neraudia ovata, Nothocestrum breviflorum, Phlegmariurus mannii, Phyllostegia parviflora, Phyllostegia racemosa, Phyllostegia velutina, Phyllostegia warshaueri, Plantago hawaiensis, Plantago princeps, Pleomele hawaiiensis, Portulaca sclerocarpa, Sesbania tomentosa, Sicyos alba, Silene hawaiiensis, Silene lanceolata, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium arenarium, Vigna o-wahuensis, Zanthoxylum dipetalum* var. *tomentosum,* and *Zanthoxylum hawaiiense*) is described in the ''*Background*'' section of this final rule. We are unable to identify these features for *Cenchrus agrimonioides, Ctenitis squamigera, Hedyotis cookiana, Mariscus pennatiformis, Phlegmariurus mannii, Phyllostegia parviflora,* and *Plantago princeps,* which no longer occur on the island of Hawaii, because information on the physical and biological features (*i.e.*, the primary constituent elements) that are considered essential to the conservation of these seven species on the island of Hawaii is not known. Only scanty information based on old collection records (mostly from the 1800s) exists. We are able to identify these features for *Hedyotis coriacea, Silene lanceolata, Spermolepis hawaiiensis, Tetramolopium arenarium,* and *Zanthoxylum hawaiiense,* but we are not designating critical habitat for these species on the island of Hawaii for the reasons given in the ''*Analysis of Impacts Under Section 4(b)(2)*'' section. Sufficient habitat to meet the recovery goal of 8 to 10 populations for these 12 multi-island species has either been designated on other islands within their historical ranges or has been specifically identified in lands on this or other islands (68 FR 1220, January 9, 2003; 68 FR 9116, February 27, 2003; 68 FR 28054, May 22, 2003; 68 FR 35949, June 17, 2003; 68 FR 12982, March 19, 2003; 68 FR 25934, May 14, 2003).

All areas designated as critical habitat are either within the geographical range of the species at the time of listing and contain one or more of the physical or biological features (primary constituent elements) essential for the conservation of the species, or are essential to 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, stream banks), and elevation. The habitat features provide the ecological components required by the plant. The type of plant community and associated native plant species 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 Hawaii.

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, 1997, 1998a, 1998b, 1999, 2001). Thus, the long-term recovery of these species is dependent upon the protection of existing population sites and potentially suitable unoccupied habitat within the species' 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 (*e.g.*, the recovery goal for *Argyroxiphium kauense* is 10 populations of more than 2,000 individuals), and the critical habitat designations reflect this exception for these species. To be considered recovered, the populations of a multi-island species should be distributed among the islands of its known historic range (Service 1994, 1995a, 1996a, 1996b, 1996c, 1997a, 1998a, 1998b, 1998c, 1999). A population, for the purposes of this discussion and as defined in the recovery plans for these species, is a unit in which the individuals could be regularly cross-pollinated and influenced by the 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, which 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 (1996) 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 viability 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, a basic conservation principle is that 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 1996; 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 is essential 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).

Our approach to delineating critical habitat units was applied in the following manner:

(1) Critical habitat was designated 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 the 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 potential, 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 in recovery plans for each of the species, to determine if the number of populations and population size requirements needed for conservation would be available within the 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 proposed as critical habitat. A population for this purpose is defined as a discrete aggregation of individuals located a sufficient distance from a neighboring aggregation such that the two are not affected by the same small-scale events and are not believed to be consistently cross-pollinated. In the absence of more specific information indicating the appropriate distance to assure limited cross-pollination, we are using a distance of 1,000 m (3,280 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 47 plant species for which critical habitat was proposed on May 28, 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 also published in revised form, for 255 Hawaiian plants (67 FR 3940, January 28, 2002; 67 FR 9806, March 4, 2002; 67 FR 15856, April 3, 2002; 67 FR 16492, April 5, 2002; 67 FR 34522, May 14, 2002; 67 FR 36968, May 28, 2002; 67 FR 37108, May 28, 2002), we reevaluated proposed critical habitat, Statewide, 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, had the highest likelihood of species conservation, and were geographically distributed within the species' historical range and distributed such that all populations of a single species are unlikely to be impacted by a single catastrophic event. 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 (*e.g.*, whether the land is zoned for conservation; 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 those 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 essential areas, we selected adequate area to provide for 8 to 10 populations distributed among the islands of each species' historical range. Of the proposed critical habitat for a species, areas that provide habitat for populations above the recovery goal of 8 to 10 populations were determined not essential for the conservation of the species and were eliminated 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. Nevertheless, since manmade features and structures within the boundaries of the mapped unit do not contain the primary constituent elements, they are excluded by the terms of the final regulation such areas include: 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; existing trails; campgrounds and their immediate surrounding landscaped area; scenic lookouts; remote helicopter landing sites; existing fences; 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. 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 the island of Hawaii to provide for the conservation 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 from the island of Hawaii and 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 accrues, we may consider reevaluating the boundaries of areas that warrant critical habitat designation.

The approximate areas of designated critical habitat by landownership or jurisdiction are shown in Table 3. The approximate final critical habitat area (ha (ac)), essential area, and excluded area are shown in Table 4.

TABLE 3.—APPROXIMATE CRITICAL HABITAT DESIGNATED AREA BY UNIT AND LANDOWNERSHIP OR JURISDICTION, HAWAII COUNTY, HAWAII [1]

Unit name	State/local	Private	Federal	Total
Hawaii 9—*Achyranthes mutica*—a	63 ha (157 ac)			63 ha (157 ac)
Hawaii 9—*Achyranthes mutica*—b	83 ha (205 ac)	41 ha (101 ac)		125 ha (306 ac)
Hawaii 9—*Achyranthes mutica*—c	67 ha (166 ac)			67 ha (166 ac)
Hawaii 9—*Achyranthes mutica*—d	58 ha (143 ac)			58 ha (143 ac)
Hawaii 9—*Achyranthes mutica*—e	74 ha (182 ac)	23 ha (56 ac)		96 ha (238 ac)
Hawaii 9—*Achyranthes mutica*—f	43 ha (105 ac)			43 ha (105 ac)
Hawaii 9—*Achyranthes mutica*—g	37 ha (92 ac)			37 ha (92 ac)

TABLE 3.—APPROXIMATE CRITICAL HABITAT DESIGNATED AREA BY UNIT AND LANDOWNERSHIP OR JURISDICTION, HAWAII COUNTY, HAWAII [1]—Continued

Unit name	State/local	Private	Federal	Total
Hawaii 9—*Achyranthes mutica*—h	46 ha (115 ac)	5 ha (12 ac)		51 ha (127 ac)
Hawaii 9—*Achyranthes mutica*—i	<1 ha (1 ac)	30 ha (75 ac)		31 ha (76 ac)
Hawaii 9—*Achyranthes mutica*—j	21 ha (52 ac)	12 ha (29 ac)		33 ha (81 ac)
Hawaii 28—*Adenophorus periens*—a		2,733 ha (6,754 ac)		2,733 ha (6, 754 ac)
Hawaii 10—*Argyroxiphium kauense*—a	349 ha (861 ac)			349 ha (861 ac)
Hawaii 24—*Argyroxiphium kauense*—b	3,149 ha (7,780 ac)	4,646 ha (11,481 ac)		7,795 ha (19,261, ac)
Hawaii 25—*Argyroxiphium kauense*—c			2,006 ha (4,957 ac)	2,006 ha (4,957 ac)
Hawaii 30—*Argyroxiphium kauense*—d	4,281 ha (10,578 ac)			4,281 ha (10,578 ac)
Hawaii 24—*Asplenium fragile* var. *insulate*—a.	907 ha (2,241 ac)			907 ha (2,241 ac)
Hawaii 10—*Bonamia menziesii*—a	163 ha (402 ac)			163 ha (402 ac)
Hawaii 8—*Clermontia drepanomorpha*—a	1,906 ha (4,709 ac)			1,906 ha (4,709 ac)
Hawaii 1—*Clermontia lindseyana*—a			1,377 ha (3,303 ac)	1,377 ha (3,303 ac)
Hawaii 2—*Clermontia lindseyana*—b	371 ha (918 ac)		891 ha (2,201 ac)	1,262 ha (3,119 ac)
Hawaii 30—*Clermontia lindseyana*—c	1,634 ha (4,037 ac)			1,634 ha (4,037 ac)
Hawaii 1—*Clermontia peleana*—a	114 ha (281 ac)		4,590 ha (11,343 ac)	4,704 ha (11,624 ac)
Hawaii 3—*Clermontia peleana*—b	2,630 ha (6,498 ac)		1,468 ha (3,627 ac)	4,128 ha (10,126 ac)
Hawaii 29—*Clermontia peleana*—c	6,830 ha (16,914 ac)			6,830 ha (16,914 ac)
Hawaii 1—*Clermontia pyrularia*—a			1,378 ha (3,405 ac)	1,378 ha (3,405 ac)
Hawaii 2—*Clermontia pyrularia*—b	608 ha (1,502 ac)		775 ha (1,916 ac)	1,383 ha (3,418 ac)
Hawaii 10—*Colubrina oppositifolia*—a	1,918 ha (4,740 ac)			1,918 ha (4,740 ac)
Hawaii 18—*Colubrina oppositifolia*—b	2,703 ha (6,712 ac)	<1 ha (1 ac)		2,703 ha (6,713 ac)
Hawaii 11—*Cyanea hamatiflora* ssp. *carlsonii*—a.	92 ha (227 ac)			92 ha (227 ac)
Hawaii 14—*Cyanea hamatiflora* ssp. *carlsonii*—b.			597 ha (1,475 ac)	597 ha (1,475 ac)
Hawaii 15—*Cyanea hamatiflora* ssp. *carlsonii*—c.	741 ha (1,832 ac)	304 ha (751 ac)		1,045 ha (2,583 ac)
Hawaii 16—*Cyanea hamatiflora* ssp. *carlsonii*—d.	186 ha (459 ac)			186 ha (459 ac)
Hawaii 3—*Cyanea platyphylia*—a	1,403 ha (3,467 ac)			1,403 ha (3,467 ac)
Hawaii 29—*Cyanea platyphylia*—b	1,122 ha (2,773 ac)	402 ha (994 ac)		1,524 ha (3,767 ac)
Hawaii 1—*Cyanea shipmanii*—a			1,557 ha (3,898 ac)	1,557 ha (3,898 ac)
Hawaii 30—*Cyanea shipmanii*—b	62 ha (152 ac)			62 ha (152 ac)
Hawaii 30—*Cyanea shipmanii*—c	825 ha (2,038 ac)			825 ha (2,038 ac)
Hawaii 15—*Cyanea stictophylla*—a	500 ha (1,235 ac)	185 ha (457 ac)		685 ha (1,693 ac)
Hawaii 16—*Cyanea stictophylla*—b	327 ha (809 ac)			327 ha (809 ac)
Hawaii 24—*Cyanea stictophylla*—c	584 ha (1,443 ac)			584 ha (1,443 ac)
Hawaii 30—*Cyanea stictophylla*—d	632 ha (91,539 ac)			632 ha (91,539 ac)
Hawaii 3—*Cytandra giffardii*—a	1,510 ha (3,731 ac)			1,510 ha (3,731 ac)

TABLE 3.—APPROXIMATE CRITICAL HABITAT DESIGNATED AREA BY UNIT AND LANDOWNERSHIP OR JURISDICTION, HAWAII COUNTY, HAWAII [1]—Continued

Unit name	State/local	Private	Federal	Total
Hawaii 29—*Cytandra giffardii*—b	938 ha (2,319 ac)			938 ha (2,319 ac)
Hawaii 30—*Cytandra giffardii*—c	2,673 ha (6,606 ac)		1,198 ha (2,961 ac)	3,872 ha (9,567 ac)
Hawaii 3—*Cytandra tintinnabula*—a	2,322 ha (5,738 ac)			2,322 ha (5.738 ac)
Hawaii 29—*Cytandra tintinnabula*—b	378 ha (934 ac)			378 ha (934 ac)
Hawaii 10—*Delissea undulata*—a	93 ha (227 ac)			93 ha (227 ac)
Hawaii 10—*Delissea undulata*—b	379 ha (938 ac)			379 ha (938 ac)
Hawaii 17—*Diellia erecta*—a	327 ha (808 ac)	2 ha (6 ac)		329 ha (814 ac)
Hawaii 18—*Diellia erecta*—b	1,615 ha (3,992 ac)			1,615 ha (3,992 ac)
Hawaii 17—*Flueggea neowawraea*—a	324 ha (801 ac)	2 ha (6 ac)		327 ha (807 ac)
Hawaii 18—*Flueggea neowawraea*—b	1,148 ha (2,837 ac)	<1 ha (1 ac)		1,148 ha (2,838 ac)
Hawaii 18—*Gouania vitifolia*—a	1,785 ha (4,412 ac)			1,785 ha (4,412 ac)
Hawaii 26—*Hibiscadelphus giffardianus*—a			149 ha (367 ac)	149 ha (367 ac)
Hawaii 10—*Hibiscadelphus hualalaiensis*—a	3,979 ha (9,832 ac)			3,979 ha (9,832 ac)
Hawaii 10—*Hibiscus brackenridgei*—a	196 ha (485 ac)			196 ha (485 ac)
Hawaii 21—*Ischaemum byrone*—a			206 ha (510 ac)	206 ha (510 ac)
Hawaii 22—*Ischaemum byrone*—b			159 ha (393 ac)	159 ha (393 ac)
Hawaii 4—*Isodendrion hosakae*—a		49 ha (121 ac)		49 ha (121 ac)
Hawaii 4—*Isodendrion hosakae*—b		35 ha (87 ac)		35 ha (87 ac)
Hawaii 4—*Isodendrion hosakae*—c		49 ha (121 ac)		49 ha (121 ac)
Hawaii 4—*Isodendrion hosakae*—d		49 ha (121 ac)		49 ha (121 ac)
Hawaii 4—*Isodendrion hosakae*—e		11 ha (26 ac)		11 ha (26 ac)
Hawaii 4—*Isodendrion hosakae*—f		51 ha (127 ac)		51 ha (127 ac)
Hawaii 19—*Mariscus fauriei*—a	127 ha (313 ac)			127 ha (313 ac)
Hawaii 24—*Melicope zahlbruckneri*—a	434 ha (1,072 ac)			434 ha (1,072 ac)
Hawaii 26—*Melicope zahlbruckneri*—b			495 ha (1,224 ac)	495 ha (1,224 ac)
Hawaii 10—*Neraudia ovata*—a	1,859 ha (4,493 ac)			1,859 ha (4,493 ac)
Hawaii 18—*Neraudia ovata*—d	1,134 ha (2,801 ac)			1,134 ha (2,801 ac)
Hawaii 5—*Nothocestrum breviflorum*—a	382 ha (944 ac)	21 ha (51 ac)		403 ha (995 ac)
Hawaii 6—*Nothocestrum breviflorum*—b	1,113 ha (2,749 ac)			1,113 ha (2,749 ac)
Hawaii 10—*Nothocestrum breviflorum*—c	3,627 ha (8,964 ac)			3,627 ha (8,964 ac)
Hawaii 1—*Phyllostegia racemosa*—a			938 ha (2,317 ac)	938 ha (2,317 ac)
Hawaii 2—*Phyllostegia racemosa*—b	465 ha (1,148 ac)		1,218 ha (3,010 ac)	1,683 ha (4,158 ac)
Hawaii 30—*Phyllostegia racemosa*—c	267 ha (659 ac)			267 ha (659 ac)
Hawaii 24—*Phyllostegia velutina*—a	2,466 ha (6,093 ac)			2,466 ha (6,093 ac)
Hawaii 30—*Phyllostegia velutina*—b	1,180 ha (2,916 ac)			1,180 ha (2,916 ac)

TABLE 3.—APPROXIMATE CRITICAL HABITAT DESIGNATED AREA BY UNIT AND LANDOWNERSHIP OR JURISDICTION, HAWAII COUNTY, HAWAII [1]—Continued

Unit name	State/local	Private	Federal	Total
Hawaii 3—*Phyllostegia warshaueri*—a	2,248 ha (5,555 ac)	223 ha (550 ac)		2,471 ha (6,105 ac)
Hawaii 8—*Phyllostegia warshaueri*—b	1,177 ha (2,908 ac)			1,177 ha (2,908 ac)
Hawaii 24—*Plantago hawaiensis*—a	1,348 ha (3,330 ac)			1,348 ha (3,330 ac)
Hawaii 25—*Plantago hawaiensis*—b			1,522 ha (3,761 ac)	1,522 ha (3,761 ac)
Hawaii 30—*Plantago hawaiensis*—c	1,219 ha (3,012 ac)			1,219 ha (3,012 ac)
Hawaii 7—*Pleomele hawaiiensis*—a	499 ha (1,233 ac)	178 ha (440 ac)		677 ha (1,673 ac)
Hawaii 10—*Pleomele hawaiiensis*—b	1,339 ha (3,306 ac)	<1 ha (<1 ac)		1,339 ha (3,306 ac)
Hawaii 18—*Pleomele hawaiiensis*—c	1,997 ha (4,933 ac)	<1 ha (1 ac)		1,997 ha (4,934)
Hawaii 23—*Pleomele hawaiensis—d*			8,943 ha (22,097 ac)	8,943 ha (22,097 ac)
Hawaii 27—*Portulaca sclerocarpa*—a			4,390 ha (10,848 ac)	4,390 ha (10,848 ac)
Hawaii 20—*Sesbania tomentosa*—a			486 ha (1,201 ac)	486 ha (1,201 ac)
Hawaii 23—*Sesbania tomentosa*—b			803 ha (1,984 ac)	803 ha (1,984 ac)
Hawaii 30—*Sicyos alba*—a	2,776 ha (6,860 ac)		3,490 ha (8,623 ac)	6,266 ha (15,483 ac)
Hawaii 25—*Silene hawaiiensis*—a			854 ha (2,110 ac)	854 ha (2,110 ac)
Hawaii 27—*Silene hawaiiensis*—b			1,942 ha (4,798 ac)	1,942 ha (4,798 ac)
Hawaii 10—*Solanum incompletum*—a	704 ha (1,738 ac)	1 ha (3 ac)		705 ha (1,741 ac)
Hawaii 11—*Solanum incompletum—b*	57 ha (141 ac)			57 ha (141 ac)
Hawaii 4—*Vigna o-wahuensis*—a		49 ha (121 ac)		49 ha (121 ac)
Hawaii 4—*Vigna o-wahuensis*—b		35 ha (87 ac)		35 ha (87 ac)
Hawaii 4—*Vigna o-wahuensis*—c		51 ha (127 ac)		51 ha (127 ac)
Hawaii 10—*Zanthoxylum dipetalum* ssp. *tomentosum*—a.	1,685 ha (4,164 ac)			1,685 ha (4,164 ac)
Total *	46,109 ha (114,356 ac)	6,482 ha (16,025 ac)	31,600 ha (78,085 ac)	84,200 ha [1] (208,063 ac)

[1] Area differences due to digital mapping discrepancies between TMK data (GDSI 2000) and USGS coastline, or differences due to rounding.
* Total take into consideration overlapping individual species units.

TABLE 4.—APPROXIMATE FINAL CRITICAL HABITAT AREA (HA (AC)), ESSENTIAL AREA, AND EXCLUDED AREA

Area considered essential	118,444 ha (292,679 ac)
Area not included because of special management or protection (Pohakuloa Training Area).	19,239 ha (47,540 ac)
Area excluded under 4(b)(2) (Kamehameha Schools, Queen Liliuokalani Trust, TSA/MID, State).	5,860 ha (14,478 ac)
Final Critical Habitat	109,299 ha (270,083 ac)

Lands designated as critical habitat for the 41 species on the island of Hawaii have been divided into a total of 105 units. A brief description of each unit is presented below.

Descriptions of Critical Habitat Units

Hawaii 9—*Achyranthes mutica*—a through Hawaii 9—*Achyranthes mutica*—j

We are designating 10 critical habitat units for *Achyranthes mutica,* a short-lived perennial. Only unit ''Hawaii 9—*Achyranthes mutica*—b'' currently supports an extant colony of this species. This unit contains the physical and biological features essential to the conservation of the species. It supports an extant colony and includes habitat that is important for the expansion of the present population. The remaining nine unoccupied units are essential to the conservation of the species because they support habitat that is necessary for the establishment of additional populations in order to reach established conservation goals. Each of the 10 units provides habitat for 1 population of 300 mature, reproducing individuals of *A. mutica.* The habitat features contained in these units that are essential for this species include, but are not limited to, lowland dry forest, primarily in gulches but also in remnant stands of forest. Each unit is geographically separated from other critical habitat for this multi-island species in order to reduce the likelihood of all recovery populations on the island being destroyed by one naturally occurring catastrophic event. Although this species is historically known from

Kauai, critical habitat was not designated for *A. mutica* on that island. Ten critical habitat units for this species are designated on the island of Hawaii, providing habitat for a total of 10 populations.

Hawaii 9—*Achyranthes mutica*—a: This unit contains a portion of Waipahoehoe Gulch in the Kawaihae watershed.

Hawaii 9—*Achyranthes mutica*—b: This unit contains a portion of Keauewai Stream and Kilohana Gulch in the Kawaihae watershed, and is currently occupied by 25 to 50 individuals.

Hawaii 9—*Achyranthes mutica*—c: This unit contains a portion of an unnamed gulch adjacent to Puu Loa in the Kawaihae watershed.

Hawaii 9—*Achyranthes mutica*—d: This unit contains a portion of an unnamed gulch between Hawaii 9—*Achyranthes mutica*—c and Lauhine Gulch in the Kawaihae watershed.

Hawaii 9—*Achyranthes mutica*—e: This unit contains a portion of Lauhine Gulch and a gulch just east of Lauhine Gulch and west of Puu Kawaiwai in the Kawaihae watershed.

Hawaii 9—*Achyranthes mutica*—f: This unit contains a portion of Umipoho Gulch in the Kawaihae watershed.

Hawaii 9—*Achyranthes mutica*—g: This unit contains a portion of Pauahi Gulch, straddling the Kawaihae and the Waikoloa/Waiulaula watersheds.

Hawaii 9—*Achyranthes mutica*—h: This unit contains a portion of Momoualoa Gulch in the Waikoloa/Waiulaula watershed.

Hawaii 9—*Achyranthes mutica*—i: This unit contains a portion of an unnamed gulch between Puu Kamoa and Puu Lanikepu in the Waikoloa/Waiulaula watershed.

Hawaii 9—*Achyranthes mutica*—j: This unit contains a portion of Waiaka Gulch in the Waikoloa/Waiulaula watershed. This unit provides the easternmost critical habitat within the species' historical range.

Hawaii 28—*Adenophorus periens*—a

We are designating one critical habitat unit for *Adenophorus periens,* short-lived perennial. This unit straddles the Kaahakini and Kilauea watersheds, and lies completely within the Kahaulea NAR. The unit provides habitat for 1 population of 300 mature, reproducing individuals of *A. periens,* and is currently occupied by an unknown number of individuals. It contains habitat features essential for the conservation of the species including, but not limited to, *Metrosideros polymorpha* or *Ilex anomala*, or possibly other native trees large enough to support epiphytic growth of this species, in *Metrosideros polymorpha-Cibotium glaucum* lowland wet forest. This unit is essential to the conservation of *A. periens* because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. This unit is geographically separated from other critical habitat for this multi-island species in order to reduce the likelihood of all recovery populations being destroyed by one naturally occurring catastrophic event. In addition to this unit, critical habitat was designated for four populations *A. periens* within its historical range on Kauai (68 FR 9116, February 27, 2003), for one population on Oahu (68 FR 35949, June 17, 2003), and four populations on Molokai (68 FR 12982, March 19, 2003).

Hawaii 10—*Argyroxiphium kauense*—a through Hawaii 30—*Argyroxiphium kauense*—d

We are designating four critical habitat units for *Argyroxiphium kauense,* a long-lived perennial. Of the four units, only ''Hawaii 10—*Argyroxiphium kauense*—a'' is currently unoccupied by the species. The habitat features contained in these four units that are essential for this species include, but are not limited to, subalpine forests, bogs, and mountain parkland. The three occupied units contain the habitat features essential to the conservation of *A. kauense* and each supports at least one extant colony of the species and includes habitat that is important for the expansion of present populations, which are currently considered nonviable. The unoccupied unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations in order to reach recovery goals. Each unit is geographically separated from other critical habitat for this island-endemic species in order to reduce the likelihood of all recovery populations on the island being destroyed by one naturally occurring catastrophic event. The four units being designated in this rule for *A. kauense* provide habitat to support a total of eight populations.

Hawaii 10—*Argyroxiphium kauense*—a: This unit, which contains no named natural features, lies in the Kiholo watershed and is completely within the Puuwaawaa Wildlife Sanctuary. This unoccupied unit, in combination with adjacent Kamehameha Schools land, provides habitat for one population of 2,000 individuals. This unit provides the northwesternmost critical habitat within the species' historical range.

Hawaii 24—*Argyroxiphium kauense*—b: This unit contains the upper portions of Hionamoa, Kauhuula, Moaula, Pikea, and Waihaka gulches, Makaka Ravine, Puu Kinikini summit, and Maunaanu Waterhole. The southern portion lies in the Hilea watershed, the northern portion in Kapapala watershed, and the central portion in the Pahala watershed. The northeast portion is in the Kapapala Forest Reserve. This unit provides habitat for four populations of 2,000 individuals and is currently occupied by about 1,130 individuals of *A. kauense* in three locations. This unit provides the southernmost critical habitat within the species' historical range.

Hawaii 25—*Argyroxiphium kauense*—c: This unit contains a portion of Kipuka Kulalio and Kipuka Maunaiu in the Kapapala watershed. This unit provides habitat for one population of 2,000 individuals and currently is occupied by about 1,000 outplanted individuals of *A. kauense.*

Hawaii 30—*Argyroxiphium kauense*—d: This unit contains portions of the lava flows of 1852 and 1942 and lies mostly in the Wailoa watershed, with the southern tip in the Kaahakini watershed. The upper area of the unit lies in portions of Upper Waiakea Forest Reserve and Mauna Loa Forest Reserve. The southern portion is part of the Olaa-Kilauea Partnership. This unit provides habitat for two populations of 2,000 individuals of *A. kauense* and is currently occupied by fewer than 500 individuals. This unit provides the easternmost critical habitat within the species' historical range.

Hawaii 24—*Asplenium fragile* var. *insulare*—a

We are designating one critical habitat unit for *Asplenium fragile* var. *insulare,* a short-lived perennial, The unit contains no named natural features and lies in the Pahala watershed, mostly in Kapapala Forest Reserve, with the southern point in Kau Forest Reserve. This unit provides habitat for 1 population of 300 mature, reproducing individuals of *A. fragile* var. *insulare* and is currently occupied by 11 individuals. It contains habitat features essential for this species including, but not limited to, *Metrosideros polymorpha* dry montane forest, *Dodonaea viscosa* dry montane shrubland, *Myoporum sandwicense-Sophora chrysophylla* dry montane forest, and *Metrosideros polymorpha-Acacia koa* forest, as well as subalpine dry forest and shrubland. This species grows almost exclusively in large, moist lava tubes (from 3 to 4.5

m (10 to 15 ft) in diameter), pits, deep cracks, and lava tree molds, with at least a moderate soil or ash accumulation, associated with mosses and liverworts. This unit is essential to the conservation of *A. fragile* var. *insulare* because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered nonviable. This unit provides the southernmost critical habitat within the species' historical range. This unit is geographically separated from other critical habitat for this multi-island species in order to reduce the likelihood of all recovery populations being destroyed by one naturally occurring catastrophic event. Habitat for another 7 populations is in the PTA on this island that we are excluding from designation (see ''*Analysis of Impacts Under 4(b)(2)*''). We previously designated critical habitat for this species within its historical range for two populations on Maui (68 FR 25934, May 14. 2003).

Hawaii 10—*Bonamia menziesii*—a

We are designating one critical habitat unit for *B. menziesii,* a short-lived perennial. This unit contains no named natural features and lies completely within the Kiholo watershed just above the highway. This unit, in combination with Kamehameha Schools land adjacent to the unit, provides habitat for 1 population of 300 mature, reproducing individuals of *B. menziesii* and is currently unoccupied (although the adjacent, excluded Kamehameha Schools land is occupied by 6 to 8 individuals) (see ''*Analysis of Impacts Under 4(b)(2)*''). This unit is essential to the conservation of *B. menziesii* because it is adjacent to excluded land that supports an extant colony of this species and includes habitat that is important for the expansion of that population. The habitat features contained in this unit that are essential for this species include, but are not limited to, dry forest. It unit provides the southeasternmost critical habitat within the species' historical range and is geographically separated from other critical habitat for this multi-island species in order to reduce the likelihood of all recovery populations being destroyed by one naturally occurring catastrophic event. We previously designated critical habitat for two populations of *B. menziesii* within its historical range on Kauai (68 FR 9116, February 27, 2003), for four populations on Oahu (68 FR 35949, June 17, 2003), and for one population on Maui (68 FR 25934, May 14, 2003). Habitat for one population is in the lands we excluded from designation as critical habitat on Lanai (68 FR 1220, January 9, 2003).

Hawaii 8—*Clermontia drepanomorpha*—a

We are designating one critical habitat unit for *Clermontia drepanomorpha,* a short-lived perennial. This unit contains part of the Kohala Mountains, Opaeloa summit, Puu O Umi, and Puu Pohoulaula. The western portion of the unit is in the Honokane Nui watershed, the eastern portion is in the Wailoa/Waipio watershed, and the southern portion in the Waikoloa/Waiulaula watershed. The northern portion contains the upper reaches of the Honopue, Nakooko, Ohiahuea, Waikaloa, and Waimanu watersheds. The unit lies completely within the Kohala Forest Reserve. This unit provides habitat for 6 populations of 300 mature, reproducing individuals of *C. drepanomorpha;* and is currently occupied by about 200 individuals. It contains habitat features that are essential for this species including, but not limited to, montane wet forests dominated by *Metrosideros polymorpha, Cheirodendron trigynum,* and *Cibotium glaucum.* This unit is essential to the conservation of *C. drepanomorpha* because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered nonviable. Although we do not believe enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, this unit is of an appropriate size such that each of the 6 potential recovery populations within the unit is geographically separated to a sufficient extent to be likely to avoid destruction of all of the populations by one naturally occurring catastrophic event.

Hawaii 1—*Clermontia lindseyana*—a through Hawaii 30—*Clermontia lindseyana*—c

We are designating three units of critical habitat for *Clermontia lindseyana,* a short-lived perennial. All three units currently are occupied. They contain habitat features that are essential for this species including, but not limited to, slightly open forest cover in wet and mesic *Metrosideros polymorpha-Acacia koa* forest, *M. polymorpha* forest, and mixed montane mesic *M. polymorpha-Acacia koa* forest. Each unit is essential to the conservation of *C. lindseyana* because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered nonviable. Each unit is geographically separated from other critical habitat for this multi-island species in order to reduce the likelihood of all recovery populations on this and other islands being destroyed by one naturally occurring catastrophic event. We previously designated critical habitat to support two populations of *C. lindseyana* within its historical range on Maui (67 FR 25934, May 14, 2003). In this rule, we are designating habitat for a total of eight populations, each with 300 mature, reproducing individuals of *C. lindseyana.*

Hawaii 1—*Clermontia lindseyana*—a: This unit contains the upper portions of the Awehi, Hakalau, Honolili, and Kapue streams, and is in the Honolii, Kapue, Kolekole, and Wailuku watersheds. The unit, which lies completely within the Hakalau Unit of Hakalau Forest NWR; and provides habitat for 2 populations of 300 individuals of *C. lindseyana;* and is currently occupied by about 8 individuals. This unit provides the easternmost critical habitat within the species' historical range.

Hawaii 2—*Clermontia lindseyana*—b: This unit contains a portion of Nauhi Gulch, and the northern portion is in the Haakoa watershed, the southern portion in Umauma watershed, and the central portion in Waikaumalo watershed. The northern and southern portions of this unit lie partly in the Hakalau Forest NWR, and the central portion lies in the Hilo Forest Reserve. The unit provides habitat for 2 populations of 300 individuals of *C. lindseyana* and is currently occupied by 5 individuals.

Hawaii 30—*Clermontia lindseyana*—c: This unit, which contains no named natural features, lies just northeast of Puu Kipu. The northern portion of this unit lies in the Wailoa watershed and the southern portion is in the Kaahakini watershed. This unit is mostly within Olaa-Kilauea Partnership lands with a small portion of the northeast section lying in the upper Waiakea Forest Reserve. The unit provides habitat for 4 populations of 300 individuals of *C. lindseyana* and is currently occupied by 9 individuals. This unit provides the southernmost critical habitat within the species' historical range.

Hawaii 1—*Clermontia peleana*—a through Hawaii 29—*Clermontia peleana*—c

We are designating three units of critical habitat for *Clermontia peleana,* a short-lived perennial. One unit, ''Hawaii 1—*Clermontia peleana*—a,'' that currently is unoccupied is essential to the conservation of the species

because it supports habitat that is necessary for the establishment of additional populations in order to reach recovery goals. Each of the two occupied units is essential to the conservation of *C. peleana* because each supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered nonviable. They contain habitat features that are essential for this species including, but not limited to, montane wet *Metrosideros-Cibotium* forest. Each unit is geographically separated from other critical habitat for this multi-island species in order to reduce the likelihood of all recovery populations on the island being destroyed by one naturally occurring catastrophic event. *C. peleana* is historically known from Maui, but no critical habitat was designated for it on that island (68 FR 25934, May 14, 2003). The critical habitat we are designating in this rule provides for a total of 10 populations, each with 300 mature, reproducing individuals.

Hawaii 1—*Clermontia peleana*—a: This unit contains a portion of Honohina and Nauhi gulches, and Hakalau, Kapue, and Kolekole streams. The unit is bordered on the north by the Nanue watershed and on the south by the Honolii and Pahoehoe watersheds. It also contains portions of the Kapue, Kolekole, and Umauma watersheds. This unit lies mostly within Hakalau Forest NWR and is intersected by a small section of the Hilo Forest Reserve. This unit provides habitat for 3 populations of 300 individuals of *C. peleana* and is currently unoccupied.

Hawaii 3—*Clermontia peleana*—b: This unit contains a portion of Kaiwilalilahi, Haakoa, and Waikaumalo streams and is bordered on the northwest by the Kaawalii and Laupahoehoe watersheds, in the south by the Waikaumalo watershed, and contains portions of the Haakoa, Kaiwilahilahi, Kilau, Manowaiopae, Maulua, Ninole, Pahale, and Pohakupuka watersheds. This unit lies partly, in the northwest portion, in the Hilo Forest Reserve; in the central portion in Laupahoehoe NAR; and in the southern portion in the Hakalau Forest NWR. The unit provides habitat for 3 populations of 300 individuals of *C. peleana* and is currently occupied by 1 individual.

Hawaii 29—*Clermontia peleana*—c: This unit contains a portion of Waipahoehoe Gulch and a portion of the lava flows of 1881 and 1852, and the northern portion is in the Wailuku watershed, while the southern portion in the Wailoa watershed. The unit contains about half of the Waiakea 1942 Lava Flow NAR, the main part of the unit lying, in the south, in the Upper Waiakea Forest Reserve and in the north in the Hilo Forest Reserve. This unit provides habitat for 4 populations of 300 individuals of *C. lindseyana* and is currently occupied by 3 individuals.

Hawaii 1—*Clermontia pyrularia*—a and Hawaii 2—*Clermontia pyrularia*—b

We are designating two units of critical habitat for *Clermontia pyrularia,* a short-lived perennial. One of the units, ''Hawaii 2—*Clermontia pyrularia*—b,'' is currently occupied. The two units provide habitat for combined total of six populations, each with 300 mature, reproducing individuals. The units are geographically separated. Although we do not believe enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, the two units are of an appropriate size so that each potential recovery population within the unit is geographically separated enough to be likely to avoid both units being destroyed by one naturally occurring catastrophic event.

Hawaii 1—*Clermontia pyrularia*—a: This unit contains Kaloaloa summit and portions of Hakalau, Honolii, and Kapue streams. It is bordered in the north by Kolekole watershed and in the south by Wailuku watershed, and it contains portions of the Kapue and Honolii watersheds. The unit lies completely within Hakalau Forest NWR; provides habitat for 3 populations of 300 individuals; and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations in order to reach recovery goals. It contains habitat features that are essential for this species including, but not limited to, wet and mesic montane forest dominated by *Acacia koa* or *Metrosideros polymorpha,* and subalpine dry forest dominated by *Metrosideros polymorpha.*

Hawaii 2—*Clermontia pyrularia*—b: This unit contains a portion of Nauhi Gulch and is bordered in the north by Kaawalii watershed; and in the south by Umauma watershed. It also contains portions of Haakoa, Kaiwilahilahi, and Waikaumalo watersheds. The unit lies partly in the Hilo Forest Reserve in the north and south-central portion of the unit and in Hakalau Forest NWR in the south and north-central portion of the unit. This unit provides habitat for 3 populations of 300 individuals of *C. pyrularia* and is currently occupied by 4 individuals. It contains habitat features that are essential for this species include, but not limited to, montane wet *Metrosideros-Cibotium* forest. This unit is essential to the conservation of *C. pyrularia* because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered nonviable.

Hawaii 10—*Colubrina oppositifolia*—a and Hawaii 18—*Colubrina oppositifolia*—b

We are designating two units of critical habitat for *Colubrina oppositifolia,* a long-lived perennial. Each unit is currently occupied, and each provides habitat to support two populations with 100 mature, reproducing individuals of *C. oppositifolia.* They contain habitat features that are essential for this species include, but not limited to, lowland dry and mesic forests dominated by *Diospyros sandwicensis* or *Metrosideros polymorpha.* Each units is essential to the conservation of *C. oppositifolia* because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population (the present population within ''Hawaii 18—*Colubrina oppositifolia*—b'' is currently considered nonviable). The units are geographically separated from other critical habitat for this multi-island species in order to reduce the likelihood of all recovery populations being destroyed by one naturally occurring catastrophic event. We have designated critical habitat for for three populations of *C. oppositifolia* within its historical range on Oahu (68 FR 35949, June 17, 2003) and for three populations on Maui (67 FR 25934, May 14, 2003), and in this rule the units we are designating provide habitat for a total of four populations on the island of Hawaii.

Hawaii 10—*Colubrina oppositifolia*—a: This unit contains no named natural features and lies completely within the Kiholo watershed. It is currently occupied by several hundred individuals of *C. oppositifolia.*

Hawaii 18—*Colubrina oppositifolia*—b: This unit contains no named natural features and lies almost completely within the Kauna watershed, with a small portion lying in the Kiilae watershed on the southwestern side of the unit. This unit is currently occupied by 10 to 50 individuals, and is currently considered nonviable. This unit provides the southernmost critical habitat within the species' historical range.

Hawaii 11—*Cyanea hamatiflora* ssp. *carlsonii*—a through Hawaii 16—*Cyanea hamatiflora* ssp. *carlsonii*—d

We are designating four units of critical habitat for *Cyanea hamatiflora* ssp. *carlsonii,* a short-lived perennial. They contain habitat features that are essential for this species including, but not limited to, mesic montane forest dominated by *Metrosideros polymorpha* or *Acacia koa.* Two of the units, ''Hawaii 11—*Cyanea hamatiflora* ssp. *carlsonii*—a'' and ''Hawaii 16—*Cyanea hamatiflora* ssp. *carlsonii*—d'' currently are occupied. These two units are each essential to the conservation of *C. hamatiflora* ssp. *carlsonii* because each supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered nonviable. Each of the two currently unoccupied units is essential to the conservation of the species because each supports habitat that is necessary for the establishment of additional populations in order to reach recovery goals. The four critical habitat units are geographically separated in order to avoid destruction of habitat for all populations by one naturally occurring catastrophic event. The designation of these four units provides habitat for a total of eight populations of *C. hamatiflora* ssp. *carlsonii,* each with 300 mature, reproducing individuals.

Hawaii 11—*Cyanea hamatiflora* ssp. *carlsonii*—a: This unit contains no named natural features and lies completely within the Waiaha watershed. The unit, which is completely within the Honuaula Forest Reserve, provides habitat for 1 population of 300 individuals and is currently occupied by about 14 individuals. This unit provides the northernmost critical habitat within the species' historical range.

Hawaii 14—*Cyanea hamatiflora* ssp. *carlsonii*—b: This unit contains no named natural features and lies completely within the Kiilae watershed. The unit, which is completely within the Kona Unit of Hakalau Forest NWR, provides habitat for 2 populations of 300 individuals and is currently unoccupied.

Hawaii 15—*Cyanea hamatiflora* ssp. *carlsonii*—c: This unit contains no named natural features, lies completely within the Kiilae watershed, and contains portions of the South Kona Forest Reserve. The unit provides habitat for 4 populations of 300 individuals and is currently unoccupied.

Hawaii 16—*Cyanea hamatiflora* ssp. *carlsonii*—d: This unit contains no named natural features, it lies completely within the Kiilae watershed, and is completely within Kipahoehoe NAR. The unit provides habitat for 1 population of 300 individuals is currently occupied by 1 individual. This unit provides the southernmost critical habitat within the species' historical range.

Hawaii 3—*Cyanea platyphylla*—a and Hawaii 29—*Cyanea platyphylla*—b

We are designating two critical habitat units for *Cyanea platyphylla,* a short-lived perennial. Both units are currently occupied. They contain habitat features that are essential for this species including, but not limited to, open *Metrosideros polymorpha-Acacia koa* lowland and montane wet forests. Each unit is essential to the conservation of *C. platyphylla* because it supports an extant colony of this island-endemic species and includes habitat that is important for the expansion of the present population, which is currently considered nonviable. This units are geographically separated to avoid their destruction by one naturally occurring catastrophic event. This rule designates critical habitat for a total of nine populations of this species, each with 300 mature, reproducing individuals.

Hawaii 3—*Cyanea platyphylla*—a: This unit contains a portion of Haakoa, Kaiwilahilahi, and Kilau streams and is bordered in the northwest by Laupahoehoe watershed and in the southeast by Maulua watershed. It also contains portions of Haakoa, Kaiwilahilahi, Kilau, Manowaiopae, and Pahale watersheds. The unit lies almost completely within Laupahoehoe NAR with a small portion in the northwest in the Hilo Forest Reserve. This unit provides habitat for three populations of 300 individuals of *C. platyphylla* and is currently occupied by 57 individuals.

Hawaii 29—*Cyanea platyphylla*—b: This unit contains Waterhole Spring, a portion of the Wailuku River, and a branch of the Kalohewahewa Stream. It lies completely within the Wailuku watershed. The unit also lies almost completely within the Hilo Forest Reserve. This unit provides habitat for 6 populations of 300 individuals of *C. platyphylla;* and is currently occupied by 1 individual.

Hawaii 1—*Cyanea shipmanii*—a through Hawaii 30—*Cyanea shipmanii*—c

We are designating three critical habitat units for *Cyanea shipmanii,* a short-lived perennial. Two of the units, ''Hawaii 1—*Cyanea shipmanii*—a'' and ''Hawaii 30—*Cyanea shipmanii*—b,'' are currently occupied. Each of these two units is essential to the conservation of *C. shipmanii* because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered nonviable. The unoccupied unit, ''Hawaii 30—*Cyanea shipmanii*—c,'' is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations in order to reach recovery goals. They contain habitat features that are essential for this species including, but not limited to, mesic forest dominated by *Acacia koa-Metrosideros polymorpha.* Although we do not believe enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, the three units are geographically separated to reduce the likelihood of their destruction by one naturally occurring catastrophic event. Within the three units, habitat is provided for a total of seven populations, each with 300 mature, reproducing individuals of *C. shipmanii.*

Hawaii 1—*Cyanea shipmanii*—a: This unit contains Puu Akala and portions of Awehi, Honoliii, and Kapue streams. It is bordered by Kolekole watershed in the north and Wailuku in the south, with Honolii and Kapue watersheds in the central portion. The unit is completely within Hakalau Forest NWR; provides habitat for 3 populations of 300 individuals of *C. shipmanii;* and is currently occupied by 1 individual.

Hawaii 30—*Cyanea shipmanii*—b: This unit contains no named natural features, lies completely within the Wailoa watershed, and is completely within the Mauna Loa Forest Reserve. The unit provides habitat for 1 population of 300 individuals of *C. shipmanii;* and is currently occupied by 1 individual.

Hawaii 30—*Cyanea shipmanii*—c: This unit, which contains no named natural features, lies almost completely within the Wailoa watershed with a small segment of the southern portion lying in the Kaahakini watershed. The unit is completely within the Olaa-Kilauea Partnership. This unit provides habitat for 3 populations of 300 individuals of *C. shipmanii;* and is currently unoccupied.

Hawaii 15—*Cyanea stictophylla*—a through Hawaii 30—*Cyanea stictophylla*—d

We are designating four units of critical habitat for *Cyanea stictophylla,* a short-lived perennial. Two of the units, ''Hawaii 15—*Cyanea stictophylla*—a'' and ''Hawaii 16—

Cyanea stictophylla—b'' currently are occupied by individuals of this species. These two units are each essential to the conservation of *C. stictophylla* because each supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered nonviable. Each of the two unoccupied units are essential to the conservation of the species because each supports habitat that is necessary for the establishment of additional populations in order to reach recovery goals. The four units contain habitat features that are essential for this species including, but not limited to, *Acacia koa* or wet *Metrosideros polymorpha* forests. Each unit is geographically separated from others on this island to reduce the likelihood of the destruction of all the units by one naturally occurring catastrophic event. Within the 4 units we are designating for *C. stictophylla* in this rule, habitat is provided for a total of 10 populations, each with 300 mature, reproducing individuals.

Hawaii 15—*Cyanea stictophylla*—a: This unit contains no named natural features and lies completely within the Kiilae watershed. The unit is almost completely within the South Kona Forest Reserve. This unit provides habitat for 1 population of 300 individuals of *C. stictophylla* and is currently occupied by 1 individual.

Hawaii 16—*Cyanea stictophylla*—b: This contains no named natural features and lies completely within the Kiilae watershed. The unit also lies completely within Kipahoehoe NAR. This unit provides habitat for 1 population of 300 individuals of *C. stictophylla* and is currently occupied by 1 individual. This unit provides the southernmost critical habitat within the species' historical range.

Hawaii 24—*Cyanea stictophylla*—c: This unit is just north of, but does not include, Uwewale Gulch, it lies completely within the Pahala watershed, and also lies completely within Kau Forest Reserve; provides habitat for 2 populations of 300 individuals of *C. stictophylla;* and is currently unoccupied.

Hawaii 30—*Cyanea stictophylla*—d: This unit straddles the Kulani summit but otherwise has no named natural features, and it lies completely within the Kaahakini watershed. The unit also is completely within the Olaa-Kilauea Partnership lands; provides habitat for 6 populations of 300 individuals of *C. stictophylla;* and is currently unoccupied.

Hawaii 3—*Cyrtandra giffardii*—a through Hawaii 30—*Cyrtandra giffardii*—c

We are designating three critical habitat units for *Cyrtandra giffardii,* a short-lived perennial. Two of the units, ''Hawaii 3—*Cyrtandra giffardii*—a'' and ''Hawaii 30—*Cyrtandra giffardii*—c,'' currently are occupied by this species. They contain habitat features that are essential for this species including, but not limited to, wet montane forest dominated by *Cibotium* sp. or *Metrosideros polymorpha* and *M. polymorpha-Acacia koa* lowland wet forests. Each unit is geographically separated from other units on this island to avoid their destruction by one naturally occurring catastrophic event. Within the 3 units we are designating for *Cyrtandra giffardii* in this rule, habitat is provided for a total of 10 populations, each with 300 mature, reproducing individuals.

Hawaii 3—*Cyrtandra giffardii*—a: This unit contains a portion of Haakoa, Kawilahilahi, and Kilau streams and is bordered in the northwest by Laupahoehoe watershed with a small overlap into Kaawali watershed, in the southeast by Haakoa and Pahala watersheds, and with the Kaiwilahilahi, Kilau, and Manowaiopae watersheds in the central portion. The unit is almost completely within Laupahohoe NAR with a small overlap into the Hilo Forest Reserve. This unit provides habitat for 3 populations of 300 individuals of *C. giffardii* and is currently occupied by more than 245 individuals. This unit is essential to the conservation of this species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population.

Hawaii 29—*Cyrtandra giffardii*—b: This unit contains portions of two forks of the Wailuku River and two forks of Kalohewahewa Stream and lies completely within the Wailuku watershed. The unit also is completely within the Hilo Forest Reserve; provides habitat for 2 populations of 300 individuals of *C. giffardii;* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations in order to reach recovery goals.

Hawaii 30—*Cyrtandra giffardii*—c: This unit contains Puu Makaala and lies completely within the Kaahakini watershed. It also lies completely within the Olaa-Kilauea Partnership lands. This unit provides habitat for 5 populations of 300 individuals of *C. giffardii* and is currently occupied by one individual. This unit is essential to the conservation of *C. giffardii* because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered nonviable.

Hawaii 3—*Cyrtandra tintinnabula*—a and Hawaii 29—*Cyrtandra tintinnabula*—b

We are designating two critical habitat units for *Cyrtandra tintinnabula,* a short-lived perennial. One of the units, ''Hawaii 3—*Cyrtandra tintinnabula*—a,'' currently is occupied by individuals of this species. They contain habitat features that are essential for this species including, but not limited to, lowland wet forest dominated by dense *Acacia koa, Metrosideros polymorpha,* and *Cibotium* spp. The units are geographically separated to avoid their destruction by one naturally occurring catastrophic event. Within the two units, habitat is provided for a total of nine populations, each with 300 mature, reproducing individuals of *C. tintinnabula.*

Hawaii 3—*Cyrtandra tintinnabula*—a: This unit contains a portion of Haakoa, Kilau, and Kawilahilahi streams and is bordered on the northwest by Kaawali and Laupahoehoe watersheds, and on the southeast by Maulua and Pahala watersheds. It also contains portions of the Haakoa, Kaiwilahilahi, Kilau and Manowaiopae watersheds in the central portion. The unit is almost completely within Laupahohoe NAR with a very small overlap into the Hilo Forest Reserve. This unit provides habitat for 7 populations, each with 300 individuals of *C. tintinnabula,* and the unit is currently occupied by 18 individuals. This unit is essential to the conservation of *C. tintinnabula* because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered nonviable.

Hawaii 29—*Cyrtandra tintinnabula*—b: This unit contains portions of two forks of the Wailuku River, it lies completely within the Wailuku watershed, and also lies completely within the Hilo Forest Reserve; provides habitat for 2 populations of 300 individuals of *C. tintinnabula;* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations in order to reach recovery goals.

Hawaii 10—*Delissea undulata*—a and Hawaii 10—*Delissea undulata*—b

We are designating two critical habitat units for *Delissea undulata,* a short-lived perennial. They contain habitat features that are essential for this species including, but not limited to, dry cinder cones and open *Sophora chrysophylla* and *Metrosideros polymorpha* forest. The units are geographically separated from other critical habitat for this multi-island species in order to reduce the likelihood of all recovery populations being destroyed by one naturally occurring catastrophic event. We previously designated critical habitat for three populations on Kauai (68 FR 9116). The units we are designating in this rule provide habitat for two populations on Hawaii, each with 300 mature, reproducing individuals of *D. undulata*. In addition, Kamehameha Schools land excluded from designation in this rule provides habitat for another three populations of *D. undulata* (*see* ''*Analysis of Impacts Under 4(b)(2)*'').

Hawaii 10—*Delissea undulata*—a: This unit lies on the northwest slopes of Puuwaawaa and is completely within the Kiholo watershed. The unit provides habitat for 1 population of 300 individuals of *D. undulata* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations in order to reach recovery goals.

Hawaii 10—*Delissea undulata*—b: This unit lies on the northwest slopes of Puuwaawaa between the Poohohoo summit and Potato Hill and is completely within the Kiholo watershed. The southern portion of this unit lies in Puuwaawaa Wildlife Sanctuary. The unit provides habitat for 1 population of 300 individuals of *D. undulata* and is currently occupied by one individual. This unit is essential to the conservation of *D. undulata* because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered nonviable.

Hawaii 17—*Diellia erecta*—a and Hawaii 18—*Diellia erecta*—b

We are designating two critical habitat units for *Diellia erecta,* a short-lived perennial. Both units currently are occupied. They contain habitat features that are essential for this species including, but not limited to, *Metrosideros polymorpha-Nestegis sandwicensis* lowland mesic forest. Each unit is essential to the conservation of *D. erecta* because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered nonviable. The units are geographically separated from other critical habitat for this multi-island species in order to reduce the likelihood of all recovery populations being destroyed by one naturally occurring catastrophic event. We designated critical habitat for one population each on Kauai (68 FR 9116, February 27, 2003), Oahu (68 FR 35949, June 17, 2003), and Molokai (67 FR 16492, March 19, 2003), and four populations on Maui (68 FR 25934, May 14, 2003). The two critical habitat units we are designating for *D. erecta* in this rule provide babitat for a total of two populations, each with 300 mature, reproducing individuals.

Hawaii 17—*Diellia erecta*—a: This unit contains no named natural features, it lies completely within the Kiilae watershed, and is also completely within the South Kona Forest Reserve; provides habitat for one population of 300 individuals of *D. erecta;* and is currently occupied by 22 individuals.

Hawaii 18—*Diellia erecta*—b: This unit contains no named natural features, it lies completely within the Kauna watershed, and is also completely within the Manuka NAR; provides habitat for 1 population of 300 individuals of *D. erecta;* and is currently occupied by 2 individuals. This unit provides the southernmost critical habitat within the species' historical range.

Hawaii 17—*Flueggea neowawraea*—a and Hawaii 18—*Flueggea neowawraea*—b

We are designating two critical habitat units for *Flueggea neowawraea,* a long-lived perennial. Both units are occupied by individuals of this species. They contain habitat features that are essential for this species including, but not limited to, mesic *Metrosideros polymorpha* forest. Each unit is essential to the conservation of *F. neowawraea* because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered nonviable. The units are geographically separated from other critical habitat for this multi-island species within its historical range in order to reduce the likelihood of all recovery populations being destroyed by one naturally occurring catastrophic event. We previously designated critical habitat for four populations of this species on Kauai (68 FR 9116), for one poulation on Molokai (67 FR 16492), and for one population on Maui (68 FR 25934, May 14, 2003). There is habitat for one additional population on lands excluded from critical habitat on Oahu (68 FR 35949, June 17, 2003). The two units we are designating for *F. neowawraea* in this rule provide habitat for a total of 2 populations, each with 100 mature, reproducing individuals.

Hawaii 17—*Flueggea neowawraea*—a: This unit contains no named natural features, it lies completely within the Kiilae watershed, and is completely within the South Kona Forest Reserve. The unit provides habitat for 1 population of 100 individuals of *F. neowawraea,* and is currently occupied by 10 individuals.

Hawaii 18—*Flueggea neowawraea*—b: This unit contains no named natural features and lies completely within the Kauna watershed. The unit also lies almost completely within Manuka NAR except for one State-owned inholding that is nonmanaged land within the conservation district. This unit provides habitat for 1 population of 100 individuals of *F. neowawraea* and is currently occupied by 5 to 11 individuals. This unit provides the southernmost critical habitat within the species' historical range.

Hawaii 18—*Gouania vitifolia*—a

We are designating one critical habitat unit for *Gouania vitifolia,* a short-lived perennial. This unit contains no named natural features, it lies completely within the Kauna watershed, and is completely within Manuka NAR; provides habitat for 2 populations of 300 mature, reproducing individuals of *G. vitifolia;* and is currently occupied by 4 individuals. It contains habitat features that are essential for this species including, but not limited to, dry, rocky ridges and slopes in dry shrubland or dry to mesic *Nestegis-Metrosideros* forests on old substrate kipuka. This unit is essential to the conservation of *G. vitifolia* because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered nonviable. This unit provides the southeasternmost critical habitat within the species' historical range. This unit is geographically separated from other critical habitat for this multi-island species within its historical range in order to reduce the likelihood of all recovery populations being destroyed by one naturally occurring catastrophic event. We previously designated critical habitat for seven populations of this species on

Oahu (68 FR 35949, June 17, 2003) and for one population on Maui (68 FR 25934, May 14, 2003).

Hawaii 26—*Hibiscadelphus giffardianus*—a

We are designating one critical habitat unit for *Hibiscadelphus giffardianus,* a long-lived perennial. The unit contains portions of Kipuka Puaulu and Kipuka Ki, and also lies completely within the Kapapala watershed, and is completely within HVNP; provides habitat for 1 population of 100 mature, reproducing individuals of the *H. giffardianus;* and is currently occupied by 100 individuals. It contains habitat features that are essential for this species including, but not limited to, mixed montane mesic forest. This unit is essential to the conservation of *H. giffardianus* because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered nonviable. Although we do not believe enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, we could not identify any other areas as suitable for *H. giffardianus* based upon what currently is known about this species. Only one tree has ever been known in the wild, and the species is a very narrow endemic that probably never naturally occurred in more than a single or a few populations.

Hawaii 10—*Hibiscadelphus hualalaiensis*—a

We are designating one critical habitat unit for *Hibiscadelphus hualalaiensis,* a long-lived perennial. This unit contains Puu Iki and Puuwaawaa summits and is completely within the Kiholo watershed. The unit provides habitat for 8 populations, each with 100 mature, reproducing individuals of *H. hualalaiensis,* and is currently occupied by 12 individuals. It contains habitat features that are essential for this species including, but not limited to, dry mesic to dry *Metrosideros* forest on rocky substrate in deep soils. This unit is essential to the conservation of *H. hualalaiensis* because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered nonviable. This unit provides enough space within the historical range of this island-endemic species for the geographic separation of the eight populations to reduce the likelihood of all recovery populations being destroyed by one naturally occurring catastrophic event. No other critical habitat has designated previously for this species. It has a limited known historical range, and there is little information available about this species.

Hawaii 10—*Hibiscus brackenridgei*—a

We are designating one critical habitat unit for *Hibiscus brackenridgei,* a short-lived perennial. This unit contains Puu Huluhulu and lies completely within the Kiholo watershed. The unit provides habitat for 1 population of 300 mature, reproducing individuals of *H. brackenridgei* and is currently occupied by 5 individuals. It contains habitat features that are essential for this species including, but not limited to, *Acacia koa* lowland mesic forest. This unit is essential to the conservation of *H. brackenridgei* because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered nonviable. This unit provides the easternmost critical habitat within the species' historical range. The unit is geographically separated from other critical habitat for this multi-island species in order to reduce the likelihood of all recovery populations being destroyed by one naturally occurring catastrophic event. We previously designated critical habitat for three populations of *H. brackenridgei* on Oahu (68 FR 35949, June 17, 2003), for one population on Molokai (67 FR 16492, March 19, 2003), and for three populations on Maui (68 FR 25934, May 14, 2003).

Hawaii 21—*Ischaemum byrone*—a and Hawaii 22—*Ischaemum byrone*—b

We are designating two critical habitat units for *Ischaemum byrone,* a short-lived perennial. They contain habitat features that are essential for this species including, but not limited to, coastal wet to dry shrubland, near the ocean, among rocks or on pahoehoe lava in cracks and holes. Each unit is geographically separated from other critical habitat for this multi-island species in order to reduce the likelihood of all recovery populations on the island being destroyed by one naturally occurring catastrophic event. We previously designated critical habitat for three populations of this species on Kauai (68 FR 9116, February 27, 2003), for two populations on Molokai (67 FR 16492, March 19, 2003), and for two populations on Maui (68 FR 25934, May 14, 2003). Within the two units we are designating for *I. byrone* on the island of Hawaii in this rule, habitat is provided for a total of three populations, each with 300 mature, reproducing individuals.

Hawaii 21—*Ischaemum byrone*—a: This unit lies along the coast from just east of Keauhou Point, running west. The unit is bordered by the Kapapala watershed in the east and the Kilauea watershed in the west and lies completely within the HVNP. This unit provides habitat for 2 populations of 300 individuals of *I. byrone* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations in order to reach recovery goals. This unit provides the southernmost critical habitat within the species' historical range.

Hawaii 22—*Ischaemum byrone*—b: This unit lies along the coast from just east of Ka Lae Apuki to just east of Puu Manawalea and is completely within the HVNP. The unit provides habitat for 1 population of 300 individuals of *I. byrone* and is currently occupied by 200 individuals. This unit is essential to the conservation of *I. byrone* because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered nonviable.

Hawaii 4—*Isodendrion hosakae*—a through Hawaii 4—*Isodendrion hosakae*—f

We are designating six critical habitat units for *Isodendrion hosakae,* a short-lived perennial. One of the six units, ''Hawaii 4—*Isodendrion hosakae*—f,'' currently is occupied. This unit is essential to the conservation of *I. hosakae* because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered nonviable. The five unoccupied units are essential to the conservation of the species because they support habitat that is necessary for the establishment of additional populations in order to reach recovery goals. They contain habitat features that are essential for this species including, but not limited to, cinder cones with montane dry shrubland. Each unit is geographically separated from other critical habitat for this island-endemic species in order to reduce the likelihood of all recovery populations being destroyed by one naturally occurring catastrophic event. Within the six units, habitat is provided on the island of Hawaii for a total of six populations of *I. hosakae,* each with 300 mature, reproducing individuals. There also is habitat for two other populations on lands in PTA that we excluded from designation in this final rule (*see*

''*Analysis of Impacts Under Section 4(b)(2)*'').

Hawaii 4—*Isodendrion hosakae*—a: This unit contains most of Puu Pa cinder cone and lies in the Pohakuloa watershed in the southwest and in the Waikoloa/Waiulaula watershed in the northeast.

Hawaii 4—*Isodendrion hosakae*—b: This unit contains most of the Holoholoku cinder cone and lies completely within the Pohakuloa watershed.

Hawaii 4—*Isodendrion hosakae*—c: This unit contains most of the Puu Makahalau cinder cone and lies completely within the Waipunahoe watershed.

Hawaii 4—*Isodendrion hosakae*—d: This unit contains most of the Puu Io and Puu Kekuakahea cinder cones and lies completely in the Waipunahoe watershed.

Hawaii 4—*Isodendrion hosakae*—e: This unit contains most of the Heihei cinder cone and lies completely within the Pohakuloa watershed.

Hawaii 4—*Isodendrion hosakae*—f: This unit contains upper portions of an unnamed cinder cone in the Pohakuloa watershed. The unit is currently occupied by 8 individuals of *I. hosakae.*

Hawaii 19—*Mariscus fauriei*—a

We are designating one critical habitat unit for *Mariscus fauriei,* a short-lived perennial. This unit contains a portion of Kipuka Puu Kou and lies completely within the South Point watershed. The unit provides habitat for 1 population of 300 mature, reproducing individuals of *M. fauriei* and is currently occupied by 12 individuals. It contains habitat features that are essential for this species including, but not limited to, *Diospyros sandwicensis-Metrosideros polymorpha-Sapindus saponaria* dominated lowland dry forests, often on a lava substrate. This unit is essential to the conservation of *M. fauriei* because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered nonviable. This unit provides the southeasternmost critical habitat within the species' historical range. This unit is geographically separated from other critical habitat for this multi-island species within its historical range in order to reduce the likelihood of all recovery populations being destroyed by one naturally occurring catastrophic event. We previously designated critical habitat for seven populations of *M. fauriei* on Molokai (67 FR 16492, March 19, 2003).

Hawaii 24—*Melicope zahlbruckneri*—a and Hawaii 26—*Melicope zahlbruckneri*—b

We are designating two critical habitat units for *M. zahlbruckneri,* a long-lived perennial. They contain habitat features that are essential for this species including, but not limited to, *Acacia koa-Metrosideros polymorpha* dominated montane mesic forest. Although we do not believe enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, the two designated units identify habitat for recovery populations that is geographically separated to reduce the likelihood of all recovery populations being destroyed by one naturally occurring catastrophic event. The two critical habitat units designated for this species provide habitat for a total of three populations, each with 100 mature, reproducing individuals of *M. zahlbruckneri.*

Hawaii 24—*Melicope zahlbruckneri*—a: This unit is just north of Uwewale gulch, it is completely within the Pahala watershed, and is within the Kau Forest Reserve; provides habitat for 1 population of 100 individuals of *M. zahlbruckneri;* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations in order to reach recovery goals.

Hawaii 26—*Melicope zahlbruckneri*—b

This unit contains portions of Kipuka Puaulu and Kipuka Ki and lies completely within the Kapapala watershed and within HVNP. The unit provides habitat for 2 populations of 100 individuals of *M. zahlbruckneri* and is currently occupied by 31 to 36 individuals. This unit is essential to the conservation of *M. zahlbruckneri* because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered nonviable.

Hawaii 10—*Neraudia ovata*—a through Hawaii 18—*Neraudia ovata*—d

We are designating two critical habitat units for *Neraudia ovata,* a short-lived perennial. One of the units, ''Hawaii 18—*Neraudia ovata*—d,'' currently is occupied. This unit is essential to the conservation of *N. ovata* because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered nonviable. The remaining unoccupied unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations in order to reach recovery goals. It contains habitat features that are essential for this species including, but not limited to, open *Metrosideros polymorpha-Sophora chrysophylla* dominated lowlands, montane dry forests, and *Metrosideros*-shrub woodland. Each unit is geographically separated from other critical habitat for this island-endemic species within its historical range in order to reduce the likelihood of all recovery populations being destroyed by one naturally occurring catastrophic event. The two units for this species that we are designating on the island of Hawaii provide for habitat for a total of four populations, each with 300 mature, reproducing individuals of the *N. ovata.* Habitat is also provided for four populations on lands at the PTA that we are excluding from designation (*see* ''*Analysis of Impacts Under 4(b)(2)*'').

Hawaii 10—*Neraudia ovata*—a: This unit contains no named natural features and lies completely within the Kiholo watershed. This unit, plus the excluded Kamehameha Schools land (*see* ''*Analysis of Impacts Under 4(b)(2)*''), provides habitat for 2 populations of 300 mature, reproducing individuals of the *N. ovata* and is currently unoccupied. This unit provides the northernmost critical habitat within the species' historical range.

Hawaii 18—*Neraudia ovata*—d: This unit contains no named natural features and is completely within the Kauna watershed. This unit provides habitat for 2 populations of 300 individuals of *N. ovata* and is currently occupied by one individual. The unit provides the southernmost critical habitat within the species' historical range.

Hawaii 5—*Nothocestrum breviflorum*—a through Hawaii 10—*Nothocestrum breviflorum*—c

We are designating three critical habitat units for *Nothocestrum breviflorum,* a long-lived perennial. Two of the units are currently occupied. They contain habitat features that are essential for this species including, but not limited to, lowland and montane dry forest, and montane mesic forest dominated by *Metrosideros polymorpha, Acacia koa,* and/or *Diospyros sandwicensis* on aa lava substrates. Each unit is geographically separated from other critical habitat for this island-endemic species within its historical range in order to reduce the likelihood of all recovery populations being destroyed by one naturally occurring catastrophic event. The three

units we are designating for this species on the island of Hawaii provide habitat to support a total of nine populations of *N. breviflorum,* each with 100 mature, reproducing individuals.

Hawaii 5—*Nothocestrum breviflorum*—a: This unit is the ridge adjacent to Laupahoehoe Iki Cape between Waimanu Valley and Kaimu Stream, bordered on the west by Kamu watershed, on the east by Waimanu watershed, with the Pae watershed in between. The unit lies in the Kohala Forest Reserve in the west and the Waimanu Estuarine Research Reserve in the east. This unit provides habitat for 3 populations of 100 individuals of *N. breviflorum* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations in order to reach recovery goals. This unit provides the easternmost critical habitat within the species' historical range.

Hawaii 6—*Nothocestrum breviflorum*—b: This unit contains portions of Kalaikaula, Kamoloumi, Kolealiilii, Nakooko, Ohiahuea, Oniu, and Waiapuka streams, and Paohia Gulch. It is bordered by the Honokea watershed in the west, the Waikaloa watershed in the east. It contains portions of the Honopue, Kalikaula, Kolealiilii, Nakookoo, Ohiahuea, and Waiapuka watersheds. The unit lies completely within the Kohala Forest Reserve; provides habitat for 1 population of 100 individuals of *N. breviflorum;* and is currently occupied by 6 individuals. This unit is essential to the conservation of *N. breviflorum* because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered nonviable. This unit provides the northernmost critical habitat within the species' historical range.

Hawaii 10—*Nothocestrum breviflorum*—c: This unit contains Poohohoo summit and is completely within the Kiholo watershed. This unit provides habitat for 5 populations of 100 individuals of *N. breviflorum* and is currently occupied by more than 165 individuals. This unit is essential to the conservation of *N. breviflorum* because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. The unit provides the southwesternmost critical habitat within the species' historical range.

Hawaii 1—*Phyllostegia racemosa*—a through Hawaii 30—*Phyllostegia racemosa*—c

We are designating three critical habitat units for *Phyllostegia racemosa,* a short-lived perennial. Two of the units, ''Hawaii 1—*Phyllostegia racemosa*—a'' and Hawaii 2—*Phyllostegia racemosa*—b,'' are currently occupied. This unit is essential to the conservation of *P. racemosa* because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered nonviable. The unoccupied unit, ''Hawaii 30—*Phyllostegia racemosa*—c,'' is essential to the conservation of *P. racemosa* because it supports an extant colony of this species (12 individuals on the adjacent excluded Kamehameha Schools lands) and includes habitat that is important for the expansion of the present population, which is currently considered nonviable. These units contain habitat features that are essential for this species including, but not limited to, Acacia koa, Metrosideros polymorpha, and Cibotium dominated montane mesic or wet forests. Each unit is geographically separated from other critical habitat for this island-endemic species within its historical range in order to reduce the likelihood of all recovery populations being destroyed by one naturally occurring catastrophic event. The three units being designated for this species on the island of Hawaii provide for a total of 10 populations, each with 300 mature, reproducing individuals.

Hawaii 1—*Phyllostegia racemosa*—a: This unit contains Puu Akala and portions of Awehi, Honoliii, and Kapue streams. It is bordered by the Kolekole watershed in the north and Wailuku watershed in the south, with Honolii and Kapue watersheds in the central portion. The unit is completely within Hakalau Forest NWR; provides habitat for 3 populations, each with 300 individuals of *P. racemosa;* and is currently occupied by 2 individuals.

Hawaii 2—*Phyllostegia racemosa*—b: This unit contains a portion of Nauhi Gulch, and the northern portion is in the Haakoa watershed, the southern portion in the Umauma watershed, and the central portion in the Waikaumalo watershed. The northern and southern portions of this unit lie partly within Hakalau Forest NWR, and the central portion lies in the Hilo Forest Reserve. This unit provides habitat for 2 populations of 300 individuals of P. racemosa and is currently occupied by 31 to 41 individuals.

Hawaii 30—*Phyllostegia racemosa*—c: This unit contains no named natural features and is completely within the Kaahakini watershed. This unit also lies completely within Olaa-Kilauea Partnership lands. The unit provides, in combination with the adjacent excluded Kamehameha Schools lands (*see ''Analysis of Impacts Under 4(b)(2)*''), habitat for 5 populations of 300 mature, reproducing individuals of the short-lived perennial *P. racemosa* and is currently unoccupied.

Hawaii 24—*Phyllostegia velutina*—a and Hawaii 30—*Phyllostegia velutina*—b

We are designating two critical habitat units for *Phyllostegia velutina,* a short-lived perennial. Both units are currently occupied. They contain habitat features that are essential for this species including, but not limited to, *Metrosideros polymorpha-Acacia koa* dominated montane mesic and wet forests. Each unit is geographically separated from other critical habitat for this island-endemic species within its historical range in order to reduce the likelihood of all recovery populations being destroyed by one naturally occurring catastrophic event. The units we are designating for this species on the island of Hawaii provide habitat to support a total of 10 populations of P. velutina, each with 300 mature, reproducing individuals.

Hawaii 24—*Phyllostegia velutina*—a: This unit contains a portion of Uwewale and Waihaka gulches and is completely within the Pahala watershed. The unit also lies completely within the Kau Forest Reserve; provides habitat for 4 populations of 300 individuals of *P. velutina;* and is currently occupied by an unknown number of individuals. This unit is essential to the conservation of *P. velutina* because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population.

Hawaii 30—*Phyllostegia velutina*—b: This unit contains the northeastern portion of Kulani summit and lies completely within the Kaahakini watershed. The unit also lies completely within Olaa-Kilauea partnership lands. In combination with the adjacent excluded Kamehameha Schools lands (see ''*Analysis of Impacts Under 4(b)(2)*''), this unit provides habitat for 6 populations of 300 individuals of *P. racemosa* and is currently occupied by 6 individuals (there also is 1 individual in the excluded adjacent lands). This unit is essential to the conservation of *P. velutina* because it supports an extant colony of this species and includes habitat that is important for the

expansion of the present population, which is currently considered nonviable.

Hawaii 3—*Phyllostegia warshaueri*—a and Hawaii 8—*Phyllostegia warshaueri*—b

We are designating two critical habitat units for *Phyllostegia warshaueri,* a short-lived perennial. Both units are occupied. They contain habitat features that are essential for this species including, but not limited to, *Metrosideros polymorpha* and *Cibotium* montane and lowland wet forest in which *Acacia koa* or *Cheirodendron trigynum* may co-dominate. Each unit is essential to the conservation of *P. warshaueri* because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered nonviable. The units are geographically separated for this island-endemic species within its historical range in order to reduce the likelihood of all recovery populations being destroyed by one naturally occurring catastrophic event. The two unit being designated for this species on the island of Hawaii provide habitat for a total of 10 populations, each with 300 mature, reproducing individuals.

Hawaii 3—*Phyllostegia warshaueri*—a: This unit contains portions of Haakoa, Kilau, and Kawilahilahi streams and is bordered in the northwest by the Kaiwiki and Kaula watersheds, in the southeast by the Maulua watershed, and has portions of the Haakoa, Kaawali, Kaiwilahilahi, Kilau, Laupahoehoe, Manowaiopae, and Pahala watersheds in the central portion. This unit contains a portion of Hilo Forest Reserve, Manowaialee Forest Reserve, and Laupahoehoe NAR. The unit provides habitat for 7 populations of 300 individuals each of *P. warshaueri* and is currently occupied by 13 individuals.

Hawaii 8—*Phyllostegia warshaueri*—b: This unit contains Kaiholena summit and Puu Ohu, and the northern portion is in the Wailoa/Waipio watershed, with the southern portion in the Waikoloa/Waiulaula watershed. The unit is completely within the Kohala Forest Reserve; provides habitat for 3 populations of 300 individuals of *P. warshaueri*; and is currently occupied by 1 individual.

Hawaii 24—*Plantago hawaiensis*—a through Hawaii 30—*Plantago hawaiensis*—c

We are designating three critical habitat units for Plantago hawaiensis, a short-lived perennial. All three units are currently occupied by the species. They contain habitat features that are essential for this species including, but not limited to, montane wet sedge land with mixed sedges and grasses, montane mesic forest, dry subalpine woodland, or *Metrosideros* and native shrub. Each unit is geographically separated from other critical habitat for this island-endemic species within its historical range in order to reduce the likelihood of all recovery populations being destroyed by one naturally occurring catastrophic event. The three units we are designating for this species on the island of Hawaii provide habitat for a total of 10 populations, each with 300 mature, reproducing individuals.

Hawaii 24—*Plantago hawaiensis*—a: This unit contains no named natural features; the northern portion is in the Kapapala watershed, and the southern portion is in the Pahala watershed, and the unit is completely within the Kapapala Forest Reserve; provides habitat for 3 populations of 300 individuals of *P. hawaiensis;* and is currently occupied by 5,000 individuals. This unit is essential to the conservation of *P. hawaiensis* because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. This unit provides the southwesternmost critical habitat within the species' historical range.

Hawaii 25—*Plantago hawaiensis*—b: This unit contains a portion of Kipuka Kulalio, it is completely within the Kapapala watershed. This unit is completely within HVNP; provides habitat for 4 populations of 300 individuals of *P. hawaiensis;* and is currently occupied by more than 630 individuals. This unit is essential to the conservation of *P. hawaiensis* because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population.

Hawaii 30—*Plantago hawaiensis*—c: This unit contains no named natural features and is mostly in the Wailoa watershed, but it is bordered in the south by the Kaahakini watershed. This unit is completely within Olaa-Kilauea Partnership lands. The unit provides habitat for 3 populations of 300 individuals of *P. hawaiensis* and is currently occupied by 50 to 100 individuals. This unit is essential to the conservation of *P. hawaiensis* because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered nonviable.

Hawaii 7—*Pleomele hawaiiensis*—a through Hawaii 23—*Pleomele hawaiiensis*—d

We are designating 4 critical habitat units for *Pleomele hawaiiensis,* a long-lived perennial. All of the units are currently occupied by individuals of this species. They contain habitat features that are essential for this species including, but not limited to, open aa lava in diverse lowland dry forests and *Metrosideros-Diospyros* lowland dry forest. Each unit is essential to the conservation of *P. hawaiiensis* because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered nonviable. Each unit is geographically separated from other critical habitat for this island-endemic species within its historical range in order to reduce the likelihood of all recovery populations being destroyed by one naturally occurring catastrophic event. The four units we are designating for this species on the island of Hawaii provide habitat to support a total of nine populations, each with 100 mature, reproducing individuals. Kamehameha Schools land that we are excluding from this designation of critical habitat provides habitat for one additional population (see ''*Analysis of Impacts Under 4(b)(2)*'').

Hawaii 7—*Pleomele hawaiiensis*—a: This unit contains Kupenau summit and the ridges around Pololu Valley, and is in the Pololu watershed in the west and Honokane Nui watershed in the east. The west side of the unit is in the Kohala Forest Reserve. This unit provides habitat for 1 population of 100 individuals of *P. hawaiiensis* and is currently occupied by 21 to 31 individuals. This unit provides the northernmost critical habitat within the species' historical range.

Hawaii 10—*Pleomele hawaiiensis*—b: This unit contains no named natural features and is entirely in the Kiholo watershed. The unit provides habitat for 1 population of 100 individuals of *P. hawaiiensis* and is currently occupied by 50 to 100 individuals.

Hawaii 18—Pleomele hawaiiensis—c: This unit contains no named natural features and is mostly in the Kauna watershed with a small portion on the southwest side in the Kiilae watershed. The unit is completely within Manuka NAR; provides habitat for 2 populations of 100 individuals of *P. hawaiiensis;* and is currently occupied by 5 individuals. This unit provides the southernmost critical habitat within the species' historical range.

Hawaii 23—*Pleomele hawaiiensis*—d: This unit contains the Hilina Pali, Holei Pali, Makahanu Pali, Poliokeawe Pali, Puueo Pali, the Keana Bihopa summit, and portions of Kipuka Kaena Bihopa, Kipuka Papalinamoku, and Kipuka Pepeiau. It is in the Kapala watershed in the west and the Kilauea watershed in the east and lies completely within HVNP. This unit provides habitat for 5 populations of 100 individuals of *P. hawaiiensis* and currently is occupied by 9 to 10 individuals. This unit provides the easternmost critical habitat within the species' historical range.

Hawaii 27—*Portulaca sclerocarpa*—a

We are designating one critical habitat unit for *Portulaca sclerocarpa,* a short-lived perennial. This contains the Keanakakoi, Kokoolau, and Puhimau craters; Lele o Kalihipaa Pali; and a portion of the lava flow of 1921. The unit lies completely within HVNP; provides habitat for 5 populations of 300 individuals of the *P. sclerocarpa;* and is currently occupied by more than 900 individuals. It contains habitat features that are essential for this species including, but not limited to, weathered Mauna Kea soils, cinder cones, or geologically young lavas in montane dry shrubland, often on bare cinder, near steam vents, and in open *Metrosideros polymorpha* dominated woodlands. This unit is essential to the conservation of *P. sclerocarpa* because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. This unit provides the southeasternmost critical habitat within the species' historical range. This unit is geographically separated from other critical habitat for this multi-island species within its historical range in order to reduce the likelihood of all recovery populations being destroyed by one naturally occurring catastrophic event. We designated critical habitat for one population of *P. sclerocarpa* on Lanai (68 FR 1220, January 9, 2003). The inland habitat of populations on the island of Hawaii differs from the coastal habitat provided for on Lanai. Land on the PTA that was excluded from designation in this rule provides habitat for four additional populations (see ''Analysis of Impacts Under 4(b)(2)'').

Hawaii 20—*Sesbania tomentosa*—a and Hawaii 23—*Sesbania tomentosa*—b

We are designating two units of critical habitat for *Sesbania tomentosa,* a short-lived perennial. Both units are occupied by this species. Each unit is essential to the conservation of *S. tomentosa* because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered nonviable. They contain habitat features that are essential for this species including, but not limited to, dry Metrosideros polymorpha forest with mixed native grasses, Scaevola taccada coastal dry shrubland on windswept slopes, and weathered basaltic slopes. Each unit is geographically separated from other critical habitat for this multi-island species within its historical range in order to reduce the likelihood of all recovery populations being destroyed by one naturally occurring catastrophic event. We previously designated critical habitat for one population of *S. tomentosa* on Nihoa, one population on Necker (68 FR 28054, May 22, 2003), two populations on Kauai (68 FR 9116, February 27, 2003), two populations on Oahu (68 FR 35949, June 17, 2003), two populations on Molokai (68 FR 12982, March 19, 2003), and two populations on Maui (68 FR 25934, May 14, 2003).

Hawaii 20—*Sesbania tomentosa*—a: This unit contains the area inland of Waiwelawela Point, all of Halemaoli Point and it lies entirely in the Pahala watershed. The unit also lies completely within HVNP; provides habitat for 1 population of 300 individuals; and is currently occupied by 10 to 15 individuals. This unit provides the southernmost critical habitat within the species' historical range.

Hawaii 23—*Sesbania tomentosa*—b: This unit contains Kipuka Nene, is entirely in the Kapapala watershed, and lies completely within HVNP. The unit provides habitat for 1 population of 300 individuals of *S. tomentosa;* and is currently occupied by 50 to 65 individuals. This unit provides the easternmost critical habitat within the species' historical range.

Hawaii 30—*Sicyos alba*—a

We are designating one critical habitat unit for *Sicyos alba,* a short-lived perennial. This unit contains Puu Makaala and is entirely in the Kaahakini watershed. This unit lies within HVNP, Puu Makaala Natural Area Reserve, and Olaa-Kilauea Partnership lands. The unit provides habitat for 10 populations of 300 mature, reproducing individuals of the *S. alba* and is currently occupied by 4 individuals. This unit contains habitat features that are essential for this species including, but not limited to, *Metrosideros polymorpha-Cibotium glaucum* dominated montane wet forests. This unit is essential to the conservation of *S. alba* because it supports an extant colony of this island-endemic species and includes habitat that is important for the expansion of the present population, which is currently considered nonviable. This unit is of an appropriate size so that each potential recovery population within the unit is separated enough to avoid their destruction by one naturally occurring catastrophic event. Beyond the 10 populations provided for in this unit, no other critical habitat is designated for this species.

Hawaii 25—*Silene hawaiiensis*—a and Hawaii 27—*Silene hawaiiensis*—b

We are designating two critical habitat units for *Silene hawaiiensis,* a short-lived perennial. Both units are currently occupied by individuals of this species. These units contain habitat features that are essential for this species including, but not limited to, montane and subalpine dry shrubland on weathered lava, on variously aged lava flows, and cinder substrates. Each unit is essential to the conservation of *S. hawaiiensis* because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. Each unit provides habitat for a population that is geographically separated from other recovery populations of this island-endemic species within its historical range in order to reduce the likelihood of all recovery populations being destroyed by one naturally occurring catastrophic event. The two units we are designating for *S. hawaiiensis* in this rule provide habitat for a total of three populations, each with 300 mature, reproducing individuals. The excluded lands at PTA provide habitat for seven additional populations (see ''*Analysis of Impacts Under 4(b)(2)*'').

Hawaii 25—*Silene hawaiiensis*—a: This unit contains a portion of Kipuka Kulalio, it is completely within the Kapapala watershed, and it lies completely within HVNP. The unit provides habitat for 1 population of 300 individuals of *S. hawaiiensis,* and is currently occupied by about 1,800 individuals.

Hawaii 27—*Silene hawaiiensis*—b: This unit contains Uwekahuna Bluff; portions of the lava flows of 1919, 1921, and 1961; a portion of Kilauea Crater; and all of Halemaumau Crater. The unit is entirely in the Kapapala watershed and lies completely within HVNP. This unit provides habitat for 2 populations of 300 individuals of *S. hawaiiensis* and is currently occupied by 3,851 to 3,951 individuals. This unit provides the southeasternmost critical habitat within the species' historical range.

Hawaii 10—*Solanum incompletum*—a and Hawaii 11—*Solanum incompletum*—b

We are designating two critical habitat units for *Solanum incompletum,* a short-lived perennial. Both units currently are unoccupied by this species. Each unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations in order to reach recovery goals. These units contain habitat features that are essential for this species including, but not limited to, dry to mesic forest, diverse mesic forest, and subalpine forest. Each unit is geographically separated from other critical habitat for this multi-island species within its historical range in order to reduce the likelihood of all recovery populations being destroyed by one naturally occurring catastrophic event. The two units we are designating for *S. incompletum* in this rule provide habitat for a total of four populations, each with 300 mature, reproducing individuals. Lands at the PTA that we are excluding from designation in this rule provide habitat for five additional populations (see ''*Analysis of Impacts Under 4(b)(2)*''). In addition, habitat for one population of *S. incompletum* is in the area we excluded from critical habitat designations on Lanai (68 FR 1220, January 9, 2003).

Hawaii 10—*Solanum incompletum*—a: This unit contains no named natural features, it is entirely in the Kiholo watershed, and is completely within the Puuwaawaaa Wildlife Sanctuary; provides habitat for 3 populations of 300 individuals of *S. incompletum;* and is currently unoccupied.

Hawaii 11—*Solanum incompletum*—b: This unit contains no named natural features, it is entirely in the Waiaha watershed, and is completely within the Honuaulu Forest Reserve; provides habitat for 1 population of 300 individuals of *S. incompletum;* and is currently unoccupied. This unit provides the southernmost critical habitat within the species' historical range.

Hawaii 4—Vigna o-wahuensis—a through Hawaii 4—Vigna o-wahuensis—c

We are designating three critical habitat units for *Vigna o-wahuensis,* a short-lived perennial. None of the units is currently occupied. Each unit provides habitat for 1 population of 300 mature, reproducing individuals of *V. o-wahuensis.* Each unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations in order to reach recovery goals. These units contain habitat features that are essential for this species including, but not limited to, *Dodonaea viscosa* lowland dry shrubland. Each unit is geographically separated from other critical habitat for this multi-island species in order to reduce the likelihood of all recovery populations being destroyed by one naturally occurring catastrophic event. We previously designated critical habitat for three populations of *V. o-wahuensis* on Oahu (68 FR 35949, June 17, 2003), and for one population on Maui (68 FR 25934, May 14, 2003). The four units for *V. o-wahuensis* that we are designating in this rule provide habitat for a total of four populations.

Hawaii 4—*Vigna o-wahuensis*—a: This unit contains most of Puu Pa cinder cone and lies in the Pohakuloa watershed in the southwest and in the Waikoloa/Waiulaula watershed in the northeast.

Hawaii 4—*Vigna o-wahuensis*—b: This unit contains most of the Holoholoku cinder cone and lies completely within the Pohakuloa watershed. This unit provides the easternmost critical habitat within the species' historical range.

Hawaii 4—*Vigna o-wahuensis*—c: This unit contains the upper portions of an unnamed cinder cone in the Pohakuloa watershed. This unit provides the southernmost critical habitat within the species' historical range.

Hawaii 10—*Zanthoxylum dipetalum* ssp. *tomentosum*—a

We are designating one critical habitat unit for *Zanthoxylum dipetalum* ssp. *tomentosum,* a long-lived perennial. The unit contains Puu Ike, Puu Paha, and Puuwaawaa and is in the Kiholo watershed. This unit provides habitat for 7 populations of 100 mature, reproducing individuals of the *Z. dipetalum* ssp. *tomentosum* and is currently occupied by 8 to 10 individuals. It contains habitat features that are essential for this species including, but not limited to, *Metrosideros polymorpha* dominated montane mesic forest, often on aa lava. This unit is essential to the conservation of *Z. dipetalum* ssp. *tomentosum* because it supports an extant colony of this island-endemic species and includes habitat that is important for the expansion of the present population, which is currently considered nonviable. Although we do not believe enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, this unit is of an appropriate size so that each of the seven potential recovery populations within the unit is geographically separated enough to avoid their destruction by one naturally occurring catastrophic event. No other critical habitat for this species is designated on the island of Hawaii.

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. If a Federal action may affect a listed species or its critical habitat, the responsible Federal action agency must enter into consultation with us. 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. 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.

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 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 consultation that can be

implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project.

Activities on Federal lands that may affect critical habitat of one or more of the 41 plant species from the island of Hawaii 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) may also 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 would not require section 7 consultation as a result of this rule designating critical habitat.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. We note that such activities may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

(1) Activities that appreciably degrade or destroy the primary constituent elements including, but not limited to: Overgrazing; maintenance of feral ungulates; clearing or cutting of native live trees and shrubs, whether by burning or mechanical, chemical, or other means (*e.g.*, woodcutting, bulldozing, construction, road building, mining, herbicide application); introducing or enabling the spread of nonnative species; and taking actions that pose a risk of fire;

(2) Activities that alter watershed characteristics in ways that would appreciably reduce groundwater recharge or alter natural, dynamic wetland or other vegetative communities. Such activities may include water diversion or impoundment, excess groundwater pumping, manipulation of vegetation such as timber harvesting, residential and commercial development, and grazing of livestock 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 nonnative plant species into critical habitat units; and

(7) Importation of nonnative 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 habitats.

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 Managed Lands Under Section 3(5)(A)

The need for ''special management considerations or protections'' of the essential habitat features (primary constituent elements) included in a designation is required by the definition of critical habitat in section 3(5)(A) of the Act. If the primary constituent elements are being adequately managed, then they do not need ''special management considerations or protections.'' Adequate management or protection is provided by a legally operative plan that addresses the maintenance and improvement of the essential elements and provides for the long-term conservation of the species. We consider a plan adequate when it: (1) Provides a conservation benefit to the species (*i.e.*, the plan must maintain or provide for an increase in the species' population or the enhancement or restoration of its habitat within the area covered by the plan); (2) provides assurances that the management plan will be implemented (*i.e.*, those responsible for implementing the plan are capable of accomplishing the objectives, have an implementation schedule, and 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 lasts for a duration sufficient to implement the plan and achieve the plan's goals and objectives). If an area is covered by a plan that meets these criteria, it does not constitute critical habitat as defined by the Act because the primary constituent elements found there are not in need of special management or protection.

Currently occupied and historically known sites containing one or more of the primary constituent elements considered essential to the conservation of these 47 plant species were examined to determine the adequacy of special management considerations or protection and, consequently, whether such areas meet the definition of critical habitat under section 3(5)(A). We reviewed all available management information on these plants at these sites, including published reports and surveys, annual performance and progress reports, management plans, grants, memoranda of understanding and cooperative agreements, DOFAW planning documents, internal letters and memos, biological assessments and environmental impact statements, and section 7 consultations. We reviewed all biological information received during the public comment periods, public meeting, and public hearing. When clarification was required on the information provided to us, we followed up by telephone. We also met with staff from the Hawaii District DOFAW office to discuss management activities they are conducting on the island of Hawaii.

In determining whether a management plan or agreement provides adequate management or protection, we first consider whether that plan provides a conservation benefit to the species. We considered the following threats and associated recommended management actions:

(1) The factors that led to the listing of the species, as described in the final rules for listing each of the species. Effects of clearing and burning for agricultural purposes and of invasive

nonnative plant and animal species have contributed to the decline of nearly all endangered and threatened plants in Hawaii (Cuddihy and Stone 1990; Howarth 1985; Loope 1998; Scott *et al.* 1986; Service 1994, 1995a, 1995b, 1996a, 1996b, 1996c, 1996d, 1997, 1998a, 1998b, 1999; Smith 1985; Stone 1985; Vitousek 1992; Wagner *et al.* 1985).

Current threats to these species include nonnative grass- and shrub-carried wildfire; browsing, digging, rooting, and trampling from feral ungulates (including goats, cattle, and pigs); direct and indirect effects of nonnative plant invasions, including alteration of habitat structure and microclimate; and disruption of pollination and gene-flow processes by adverse effects of mosquito-borne avian disease on forest bird pollinators, direct competition between native and nonnative insect pollinators for food, and predation of native insect pollinators by nonnative hymenopteran insects (ants). In addition, physiological processes such as reproduction and establishment, continue to be negatively affected by fruit- and flower-eating pests such as nonnative arthropods, mollusks, and rats, and photosynthesis and water transport are affected by nonnative insects, pathogens, and diseases. Many of these factors interact with one another, thereby compounding effects. Such interactions include nonnative plant invasions altering wildfire regimes; feral ungulates carrying weeds and disturbing vegetation and soils, thereby facilitating dispersal and establishment of nonnative plants; and numerous nonnative insect species feeding on native plants, thereby increasing their vulnerability and exposure to pathogens and disease (Bruegmann *et al.* 2001; Cuddihy and Stone 1990; D'Antonio and Vitousek 1992; Howarth 1985; Mack 1992; Scott *et al.* 1986; Service 1994, 1995a, 1995b, 1996a, 1996b, 1996c, 1996d, 1997, 1998a, 1998b, 1999; Smith 1985; Tunison *et al.* 1992);

(2) The recommendations from the HPPRCC in its 1998 report to us (''Habitat Essential to the Recovery of Hawaiian Plants''). As summarized in this report, recovery goals for endangered Hawaiian plant species cannot be achieved without the effective control of nonnative species threats, wildfire, and land use changes; and

(3) The management actions needed for assurance of survival and ultimate recovery of these plants. These actions are described in our recovery plans for these 47 species (Service 1994, 1995a, 1996a, 1996b, 1996c, 1997a, 1998a, 1998b, 1998c, 1999), in the 1998 HPPRCC report to us, and in various other documents and publications relating to plant conservation in Hawaii (Cuddihy and Stone 1990; Mueller-Dombois 1985; Smith 1985; Stone 1985; Stone *et al.* 1992).

In general, taking all of the above recommended management actions into account, the following management actions are important in providing a conservation benefit to the species: feral ungulate control; wildfire management; nonnative plant control; rodent control; invertebrate pest control; maintenance of genetic material of the endangered and threatened plant species; propagation, reintroduction, and augmentation of existing populations into areas essential for the recovery of the species; ongoing management of the wild, outplanted, and augmented populations; maintenance of natural pollinators and pollinating systems, when known; habitat management and restoration in areas essential for the recovery of the species; monitoring of the wild, outplanted, and augmented populations; rare plant surveys; and control of human activities/access (Service 1994, 1995a, 1995b, 1996a, 1996b, 1996c, 1996d, 1997, 1998a, 1998b, 1999). On a case-by-case basis, these actions may rise to different levels of importance for a particular species or area, depending on the biological and physical requirements of the species and the location(s) of the individual plants.

As shown in Table 2, the 47 species of plants are found on Federal, State, and private lands on the island of Hawaii. Information received in response to our public notices; meetings with Hawaii District DOFAW staff; the May 28, 2002, proposal; public comment periods; and the October 29 and 30, 2002, public hearings; as well as information in our files, indicated that there is limited ongoing conservation management action for these plants, except as noted below. Without management plans and assurances that the plans will be implemented, we are unable to find that the lands in question do not require special management or protection.

Lands Under U.S. Army Jurisdiction

The Army has one installation under its jurisdiction on the island of Hawai: Pohakuloa Training Area (PTA). All of the PTA lands are administered by the Army Garrison, Hawaii, for various types of routine military training. The following discussion analyzes current management plans for lands under U.S. Army jurisdiction on the island of Hawaii and assesses whether they meet the Service's requirements for adequate management or protection.

(1) Plan Provides Conservation Benefit to the Species

The Sikes Act Improvements Act of 1997 (Sikes Act) requires each military installation that includes land and water suitable for the conservation and management of natural resources starting November 17, 2001 to complete an Integrated Natural Resources Management Plan (INRMP). An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found there. Each INRMP includes an assessment of the ecological needs on the installation, including needs to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. Bases that have completed and approved INRMPs that adequately address the needs of the species may not meet the definition of critical habitat discussed above, because they may not require special management or protection. We would not include these areas in critical habitat designations if they meet the following three criteria: (1) A current INRMP must be complete and provide a conservation benefit to the species, (2) there must be assurances that the conservation management strategies will be implemented, and (3) there must be assurances that the conservation management strategies will be effective, by providing for periodic monitoring and revisions as necessary. If all of these criteria are met, then the lands covered under the plan would not meet the definition of critical habitat because special management is not needed.

Critical habitat was proposed at PTA for 10 of the 47 species addressed in this rule (*Asplenium fragile* var. *insulare, Hedyotis coriacea, Neraudia ovata, Portulaca sclerocarpa, Silene hawaiiensis, Silene lanceolata, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium arenarium,* and *Zanthoxylum hawaiiense).* Critical habitat was proposed for two additional species (*Isodendrion hosakae* and *Vigna o-wahuensis*) on lands the Army is in the process of acquiring. The Army has completed an INRMP (Army 2001) and an Ecosystem Management Plan (Army 1998) for PTA. These plans encompass management actions that will benefit the 10 listed plant species for which critical habitat has been proposed on current Army lands and they have written a letter committing to amend

their INRMP to cover the 3 species on lands the Army is in the process of acquiring as part of the Transformation of the 2nd Brigade 25th Infantry Division (Transformation). They have a completed Wildland Fire Management Plan (WFMP) for MMR (Army 2000). The goal of the WFMP is to reduce the threat of wildfire which adversely affects threatened and endangered species on PTA. The Army also provides summary reports regarding the natural resources management projects performed under the Ecosystems Management Program for PTA (Evans 1998; Evans 1999; Schnell 1998; Schnell 1999; Sherry 1999; RCUH 1997; RCUH 1998; USAG–HI 2000). These reports provide information on management actions which have been implemented.

The INRMP describes specific actions for PTA, including anticipated implementation schedules. It includes many ongoing and proposed actions designed to address the variety of threats faced by these plant species at appropriate scales: species-specific, small areas, and installationwide. The list of ongoing and proposed actions detailed in the INRMP focuses management activities into the areas of wildfire management, nonmilitary human land use, feral ungulate control, invasive plant control, and other nonnative species control. As an example, some of the management actions that address feral ungulate control include: (1) The establishment and evaluation of permanent ungulate monitoring programs; (2) maintaining ungulate exclosure fencing; (3) using small-scale fencing to protect individuals and groupings of critically endangered plants; (4) removal of ungulates from fenced areas; (5) continuing semiannual aerial censuses of ungulates with support from the National Park Service; and (6) using hunter-generated ungulate harvest data to monitor ungulate population trends. In addition, management actions for control of nonnative plant species include: (1) development of a Targeted Alien Plant Taxa list used to prioritize control efforts; (2) control of *Pennisetum setaceum* near rare plant locations; (3) control of *Salsola kali* (Russian thistle) when infestations; (4) continuing to control of *Solanum pseudocapsicum* (Jerusalem cherry); and (5) updating the Target Alien Plant Taxa list as species and priorities change. The INRMP also includes propagating and outplanting threatened and endangered plant species back into areas that are managed for ungulates, weeds, and fire (Army 2001). Other important activities in the INRMP include: (1) Conducting field surveys to identify new populations of threatened and endangered plant species in previously unsurveyed areas and areas of suitable habitat; (2) maintaining a GIS database updated with results of field surveys; (3) determining effects of military actions on threatened and endangered plants species through monitoring known populations of threatened and endangered plant species; (4) evaluating and determining plant propagation needs and storage facilities; and (5) identifying research needs regarding pollination biology and establishment of a GIS database to store data to be used to monitor threatened and endangered plant species (Army 2001).

In 1998 PTA constructed a greenhouse with automatic climate controls affected by temperature and wind speed. Adjacent to the greenhouse is a plant holding compound used to provide an opportunity for plants scheduled for outplanting to adapt to conditions more similar to those they will encounter when they are moved to completely natural environments. All 12 of the listed species are being propagated at the facility. More common native species are propagated for revegetation projects. In addition to the propagation efforts, seeds are collected for storage at the National Seed Storage Laboratory at Colorado State University. These seeds will be critical to restoration of listed species in the event none remain in the wild. PTA staff periodically conduct germination tests on some of these seeds.

Currently there are several fenced areas on PTA that are managed for threatened and endangered plants. These include 755 ha (1,864 ac) of Kipuka Kalawamauna; 2,026 ha (5,004 ac) of Kipuka Alala; 202 ha (50 ac) of Puu Kapele; and 14 ha (33 ac) of *Silene hawaiiensis* habitat. Temporary emergency exclosures have been placed around individuals of *Hedyotis coriacea*, *Neraudia ovata*, *Portulaca sclerocarpa*, *Schiedea hawaiiensis*, *Silene lanceolata*, *Solanum incompletum*, *Tetramolopium arenarium* and *Zanthoxylum hawaiiense.*

The comprehensive list of ongoing and proposed management activities detailed in the INRMP addresses each of the management actions detailed above that the Service considers important in providing a conservation benefit to the species; therefore, the plan provides a conservation benefit to the species.

(2) Provides Assurance the Plan Will Be Implemented

In terms of providing assurances that the management plan will be implemented, the INRMP provides implementation schedules and identifies funding needs for each installation through the year 2006, when the 5-year update is due. Examples of those programs identified for funding include the Ecosystem Management Actions, Saddle Road Realignment Support, Biodiversity and Ecosystem Integrity, Pest Management, and Conservation Education and Outreach. The Army has committed to increased funding for their wildland fire program to ensure proactive fire management that will benefit threatened and endangered plant species through increased protection of habitat on their lands. They have also committed to continued funding of actions that benefit habitat restoration, species stabilization, and threat abatement (Anderson, *in litt.* 2003). Apart from these specific efforts, however, the Army has a statutory obligation to manage its lands in accordance with its INRMP, and we have no reason to believe that this will not happen.

(3) Plan Provides Assurances That the Conservation Plan Will Be Effective

The plan does provide assurances that the conservation effort will be effective. The Army will fund and engage in activities that have been demonstrated to benefit threatened and endangered species (*e.g.*, ungulate and invasive weed control). In addition to the extensive monitoring provisions contained in the INRMP and provided by the reporting procedures, the Army has agreed to amend its existing INRMP to include additional management actions for listed plants and their habitat at PTA. Based upon this information, activities will be revised to provide for the optimum conservation benefit to the listed plant species and their habitat (Col. David L. Anderson, Army, *in litt.* 2003). Thus, the Army will monitor the effectiveness of its management actions and modify them, as necessary, to ensure their effectiveness.

Thus, the Service has determined that lands on the island of Hawaii which fall under U.S. Army jurisdiction do not meet the definition of critical habitat in the Act. According to the Service's published recovery plans, the major extinction threats to island of Hawaii plants involve the persistent and expanding presence of alien species and their associated impacts. In general, for most of these species there is less relative concern associated with Federal activities or proposed development. Recovery of these listed species will require active management such as plant propagation and reintroduction, management of fire risk, alien species

removal, and ungulate and rat management. Failure to implement these management measures, all of which require active intervention and participation, virtually assures the extinction of these species. The Army is carrying out many of these actions on their lands, in some cases to a degree that surpasses that of other Federal, State, and private landowners in Hawaii. We are, therefore, not designating critical habitat on these lands. Should the status of these commitments change, the Service will reconsider whether these lands meet the definition of critical habitat. If the definition is met, we have the authority to propose to amend critical habitat to include identified areas at that time (16 U.S.C. 1533(a)(3)(B); 50 CFR 424.14(g)). Although these areas are removed from the final critical habitat designation, the number of populations for which habitat on PTA provides is applied toward the overall conservation goal of 8 to10 populations for each species because these lands will be managed under the INRMP consistent with recovery goals.

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 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.

Economic Impacts

Following the publication of the proposed critical habitat designation on May 28, 2002, a draft economic analysis was prepared to estimate the potential direct and indirect economic impacts associated with the designation, in accordance with the recent decision in *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 December 18, 2002 (67 FR 77464). We accepted comments on the draft analysis until the comment period closed on January 17, 2003.

Our draft economic analysis evaluated the potential direct and indirect economic impacts associated with the proposed critical habitat designation for the 41 plant species from the island of Hawaii over the next 10 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 operation of the Act. Examples of indirect impacts include potential effects to property values, 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, 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 effects on property values and 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).

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 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 periods.

The draft economic analysis and addendum addressed the impact of the proposed critical habitat designation that may be attributable coextensively to the listing of the species. Because of the uncertainty about the benefits and economic costs resulting solely from critical habitat designations, the Service believes that it is reasonable to estimate the economic impacts of a designation utilizing this single baseline. It is important to note that the inclusion of impacts attributable coextensively to the listing does not convert the economic analysis into a tool to be used in deciding whether or not a species should be added to the Federal list of threatened and endangered species.

Together, the draft economic analysis and the addendum 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 effects from implementation of section 7 ranging from approximately $46.6 million to $62.7 million in quantifiable costs. This decrease of approximately $6.6 million to $9.1 million from the draft economic analysis's estimated potential direct economic effects from implementation of section 7 results primarily from the exclusion of proposed units Hawaii C, D5, M1, M2, M3, M4, N1, N2, P, V, and BB from final designation and the significant reduction in size of the remaining proposed units because they lacked the primary constituent elements or were not essential to the conservation of the species. Overall, the largest portion of this estimate includes impacts on Army land that was proposed as critical habitat but has been removed from the final designation. Therefore, the direct cost of designating critical habitat for these 41 plant species will be far less than this estimate.

While our final economic analysis includes an evaluation of potential indirect costs associated with the designation of critical habitat for 41 plant species on the island of Hawaii, some types of costs are unquantifiable. The costs that are provided are speculative in the sense that there is no certainty as to their being incurred, but we believe the numbers represent a reasonable range of costs for the specific actions in question, should they occur in whole or in part. The final economic analysis concludes that efforts to redistrict land as a result of this designation are likely to occur, but that there is no way of determining in advance the outcome of this process with respect to specific parcels, or of possible related litigation. However, such landowners may have economic costs associated with voluntary agreements to restrict development, and contesting redistricting. For land not planned for development, the analysis concluded that it is reasonably foreseeable that some landowners would see lower property values, restrictions on agricultural activity and costs to contest redistricting. In total, the costs associated with redistricting or the threat of redistricting could range from $22 to 28 million. The final economic analysis also concludes there is an undetermined probability of costs ranging from $48.9 to $96.5 million associated with obtaining State and county development approvals, and includes costs associated with a loss or delay of these approvals. Some of these costs, however, may overlap with a portion of the redistricting costs (*i.e.*,

agreements to voluntarily restrict development to avoid redistricting). The final economic analysis estimates that landowners may spend between $50,000 and $181,000 to investigate the implications of critical habitat on their land. The economic analysis also estimates that the critical habitat designation could cost between $175,000 and $525,000 for State and county environmental review (conducting a State Environmental Impact Statement (EIS) instead of an Environmental Assessment), although some of these costs may be incurred in any case, as some projects might require an EIS without critical habitat designation.

The final economic analysis also discusses most 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. While the quantitative estimates provided in the analysis are speculative, the economic analysis estimates that federally funded section 7 related project modifications could generate an undetermined percentage of $83 million to $109 million over 10 years.

A more detailed discussion of our economic analysis is contained in the draft economic analysis and the addendum. Both documents 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 because of economic impacts because the cost of the designation is not expected to be significant. The likely direct cost impact of designating critical habitat on Hawaii for the 41 plant species is estimated to be between $4.7 and $6.3 million per year over the next 10 years. This estimate, however, includes areas that were proposed as critical habitat but have been excluded under section 4(b)(2) of the Act (see below). Therefore, the anticipated direct costs of designating critical habitat of these 41 species is less.

Approximately 337 ha (833 ac) of State and private lands within two proposed critical habitat units (proposed Units Y1 and Y2) are excluded because the economic impacts of their inclusion outweigh the benefits provided by a designation of critical habitat. The economic analysis indicates that activities already planned for these two proposed units, including the State VOLA master planned community with over 1,000 units of affordable housing, the Kaloko Properties projects and the Kealakahe 2020 environmental remediation project could incur direct costs of over $5 million and indirect costs ranging between $87 and $104 million. While there is no certainty that any or all of these indirect costs would be incurred, these figures are illustrative of the order of magnitude of the indirect impacts that could occur from the designation.

(1) Benefits of Inclusion

These areas proposed for development or other uses are within proposed units Y1 and Y2. Proposed unit Y1 absent this exclusion would consist of 426 acres of private land as critical habitat for *Isodendrion pyrifolium* and 405 largely identical acres of private land for *Neraudia ovata*. It is currently unoccupied by *Isodendrion pyrifolium*, and contains 2 *Neraudia ovata* plants. Proposed unit Y2 absent this exclusion would consist of 406 acres of State land for *Isodendrion pyrifolium* and 334 largely identical acres for *Neraudia ovata*. It is currently occupied by 8 individual *Isodendrion pyrifolium* plants, and is unoccupied by *Neraudia ovata*.

Critical habitat for *I. pyrifolium* was designated on Oahu (habitat for three populations), Molokai (habitat for one population), Maui (habitat for two populations); for *N. ovata* on two other locations in Hawaii. Habitat is also provided for four populations of this species on the excluded lands at PTA, as discussed later in this section. (See ''Descriptions of Critical Habitat Units'').

If these areas were designated as critical habitat, any Federal agency which proposed to approve, fund or undertake any action which might adversely modify the critical habitat would be required to consult with us. This is commonly referred to as a ''Federal nexus'' for requiring the consultation. If the area in question were not occupied by the plants, this consultation would not be required absent the critical habitat designation. If the action affected an area occupied by the plants, consultation would be required even without the critical habitat designation. As indicated above, these two units are each occupied by one small population of one species of the listed plants.

The draft economic analysis and final addendum indicate only one project associated with the exclusions within the pre-exclusion boundaries of these proposed units that is likely to have the required Federal nexus, environmental remediation of an old landfill by the non-profit Kealakehe Ahupua'a 2020 organization (K2020). The landfill adjoins the pre-exclusion boundaries of proposed unit Y2 on 3 sides, and has internal fires. K2020 plans to secure Federal grants to remediate the site, including extinguishing the fires.

This will require use of unoccupied habitat within the proposed boundary of unit Y2 for the landfill material while the remediation is conducted. The economic analysis further indicates that this project will be to the long-term benefit to the listed plants by reducing the possibilities of wildfires. However, it is anticipated that as mitigation for the temporary loss of this portion of the critical habitat, the K202 group would be required to obtain funding to manage two preserves to be established elsewhere within this proposed unit (*see* ''Benefits of Exclusion'' below) at a cost of $5.1 million over the next 10 years.

Apart from this project a critical habitat designation will not directly protect the areas proposed for exclusion from any planned development, due to the lack of any known or anticipated ''Federal nexus'' for such development. However, the plants themselves are protected against ''take'' under State law, and thus the areas in which the plants are currently found are unlikely to be developed.

Another possible benefit of a critical habitat designation is education of landowners and the public regarding the potential conservation value of these areas. This may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation values for certain species. However, we believe that this educational benefit has largely been achieved. These units have already been identified through the proposal and final designation. In addition, the State has included a preserve for listed plants within its VOLA development project which will contribute to the long-term educational benefit of conserving the habitat of these species (see ''Benefits of Exclusion'' below).

In summary, we believe that a critical habitat designation for these two plant species would provide relative low additional Federal regulatory benefits. Except for the project discussed above, there is no Federal activity which might trigger the section 7 consultation process for these species known or anticipated for the lands to be excluded. The additional educational benefits which might arise from critical habitat designation are largely accomplished through the notice and comments which accompanied the development of this regulation, and the proposed critical habitat is known to the landowners. In addition, the State is planning for a

preserve for the areas occupied by *N. ovata* in proposed Unit Y2, which will provide ongoing educational benefits.

(2) Benefits of Exclusion

There are three development projects currently planned within the pre-exclusion boundaries of proposed Units Y1 and Y2 which could suffer significant economic impacts due to indirect effects of the critical habitat designation. In addition, the $5.1 million in project modification costs to the K2020 landfill remediation project discussed above would likely be shifted from the State or from housing developers to the non-profit K2020 group.

The Housing and Community Development Corporation of Hawaii has since 1990 had a master-planned community development project known as ''Villages at Laiopua'' (VOLA), much of which is within the pre-exclusion boundary of proposed unit Y2. This includes a planned 1,700 homes within the area proposed for designation, of which 1,020, or 60%, would be classified as ''affordable housing''. The State of Hawaii has already invested $30 million in infrastructure costs, including roads, utilities, a High School, planning and expanding the local waste-water treatment plant, and some of the project has been constructed.

The plan includes two areas totaling 38 acres to be set aside as preserves for the listed plants. As noted above, the final addendum to our economic analysis indicates it would likely cost $5.1 million over the next 10 years to manage these preserves. Absent the development being largely constructed, it is not likely that these plants would benefit from the management envisioned for the preserves.

Critical habitat provides primarily prohibitive regulatory benefits. But in Hawaii, simply preventing ''harmful activities'' will not slow the extinction of listed plant species (see detailed discussion under ''Queen Liliuokalani Trust'', below). Establishment of plant preserves as planned here provide positive benefits to the species. In addition, in June 2002, the State enacted legislation allowing State entities to enter into Safe Harbor agreements and Habitat Conservation Plans for three designated areas, including the VOLA project. Absent the exclusion, it is unlikely the State would pursue either of these conservation options.

In addition, there are real but undeterminable possibilities that designation of these areas as critical habitat would lead to loss or significant restriction of the project through actions not under the control of the Federal government but resulting from the critical habitat designation. These include redistricting of land, rezoning and other regulatory approvals, and litigation related to both.

Hawaii has state-wide land classifications of Urban, Rural, Agricultural and Conservation, with restrictions on what type of activities can be conducted within the different classifications. The State Department of Land and Natural Resources commented on this proposal that they would be required to initiate rezoning of lands designated as critical habitat into the ''Conservation'' classification, which prohibits development.

While there is a low probability that the State Land Use Commission would finally vote to redistrict the lands proposed for the VOLA project, that possibility exists. In addition, there could well be litigation designed to either force the Commission to act or to have a court make the decision.

If the project were unable to proceed, the Housing and Community Development Corporation would lose the $30 million in sunk costs, and the affordable housing units that would have been constructed. Although the final addendum to the economic analysis assigns a cost to the loss of the affordable units of $4.8 million, there could well be considerable non-monetary social costs as well, particularly inasmuch as the available information indicates that there are no other affordable housing projects planned within the next 10 years.

The second project within the excluded areas is known as the Kaloko Properties/Kaloko Town Center. This project has been underway since 1987, and covers 1,150 acres, of which 335, or 29%, is within the pre-exclusion boundary of the proposed units. The developers have already expended over $20 million for infrastructure improvements, engineering and related costs, which approximately $5.8 (by percentage allocation) is associated with the portion of the project within the proposed critical habitat. This project will need both redistricting from the State and rezoning from the county for portions of the land. The final addendum to the economic analysis finds there is a reasonably foreseeable chance that the designation of critical habitat would affect this development.

In the worst-case scenario, the State or county might decide not to grant the discretionary approvals needed for the project—redistricting and rezoning—or might be prevented from doing so by litigation. This could lead to loss of the $5.8 million in sunk costs for the portion of the property within the proposed critical habitat, or of the entire $20 million investment. In addition, there would be an estimated loss of future profits from the land proposed for inclusion within the critical habitat of between $39 to $78 million. Using a present value discount, this loss would range between $17 and $34 million. There could also be the loss of all project revenues in the event the inability to utilize the lands within the critical habitat designation caused the failure of the entire project.

Alternatively, in an effort to avoid those situations, the developer might offer additional restrictions on the development. The final addendum estimates, with admitted imprecision, that these costs might range from $1.1 to $2 million for the portion of the project within the proposed designation.

The possibility of significant economic impacts to this project, while not certain, clearly exist. As noted above, we cannot find offsetting benefits from the designation of critical habitat in these two units which exceed the benefits of avoiding these possible economic costs.

The last project for which we are excluding areas for economic reasons is the environmental remediation of an old landfill by the non-profit K2020 organization discussed above. The landfill adjoins the pre-exclusion boundaries of proposed unit Y2 on 3 sides, and has internal fires. K2020 plans to secure Federal grants to remediate the site, including extinguishing the fires.

This will require use of unoccupied habitat within the boundary of proposed unit Y2 for the landfill material while the remediation is conducted. The economic analysis further indicates that this project will be to the long-term benefit to the listed plants by reducing the possibilities of wildfires. However, it is anticipated that as mitigation for the temporary loss of this portion of the critical habitat, the K202 group would be required to obtain funding to manage two preserves to be established in connection with the VOLA project, at a cost of $5.1 million over the next 10 years. Requiring this non-profit group to mitigate for use of unoccupied critical habitat to remediate an environmental problem, when the remediation will ultimately benefit the species, does not provide an overall conservation benefit to the species. This funding could well come from funds otherwise intended for conservation purposes in Hawaii, or the cost could cause the group to abandon the project.

(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion

The VOLA project has already been troubled by litigation and defaulting developers; additional regulatory or legal uncertainties arising from this designation could well cause further delays or kill the project altogether. If this were to occur, the Housing and Community Development Corporation would lose the $30 million in sunk costs, and the affordable housing units that would have been constructed. Although the final addendum to the economic analysis assigns a cost to the loss of the affordable units of $4.8 million, there could well be considerable non-monetary social costs as well, particularly inasmuch as the available information indicates that there are no other affordable housing projects planned within the next 10 years.

We do not find that the benefits from the designation of critical habitat for lands within the VOLA project, as discussed above, exceed the benefits of avoiding the possible economic and social costs which could well arise from this designation.

For the Kaloko Properties/Kaloko Town Center, there is also the real possibility that the designation of critical habitat could lead to loss of necessary regulatory approvals. This in turn could lead to loss of the $5.8 million in sunk costs for the portion of the property within the proposed critical habitat, or of the entire $20 million investment. In addition, there would be an estimated loss of future profits from the land proposed for inclusion within the critical habitat of between $39 to $78 million. Using a present value discount, this loss would range between $17 and $34 million. (There could also be the loss of all project revenues in the event the inability to utilize the lands within the critical habitat designation caused the failure of the entire project.) Alternatively, in an effort to avoid those situations, the developer might offer additional restrictions on the development. The final addendum estimates, with admitted imprecision, that these costs might range from $1.1 to $2 million for the portion of the project within the proposed designation.

We do not find that the benefits from the designation of critical habitat for lands within the VOLA project, as discussed above, exceed the benefits of avoiding the possible economic costs which could well arise from this designation.

We note that the developers of this project contacted us after the close of the comment period offering to undertake a number of actions designed to provide conservation benefits to the species. Specifically, the offer included: (1) To set aside 100 to 130 acres within the proposed unit Y2; (2) enter into good faith negotiations with the Federal, State or county entities for acquisition of the area; (3) agree to enter into a Safe Harbor agreement with us; and (4) to enter into a memorandum of understand or cooperative agreement to address habitat protection, monitoring and management actions for the remainder of their property relating to these species (and Blackburn's sphinx moth).

Due to the court-ordered date by which this designation must be completed, we were unable to conclude such an agreement prior to issuing this notice and regulation. If we had been able to do so, this is the type of agreement for which we have found in other cases that the conservation benefits of the agreement exceed the benefits of designation and thus warrant exclusion (*See* discussions below). We have generally not made exclusions under section 4(b)(2) based on offers of conservation agreements, and we are not doing so here. However, we do believe the ability to pursue this proposal, and a Safe Harbor agreement with the State, are secondary benefits of the exclusions, in that neither would likely remain a possibility without the exclusions. A decision by the State and the developers to follow through on this offer might well be in both their and the species best interest.

We also note that while preparing an original critical habitat proposal and designation is extremely costly and time-consuming, a revision to a designation, where all of the appropriate biological and economic information is already available, could be relatively easy. We will closely monitor the status of the listed plants within this exclusion and will be prepared to take necessary actions in the event their situation warrants it.

For the non-profit K2020 organization, the designation of critical habitat could add an additional $5.1 million in direct costs to their effort to remediate a burning old landfill, as discussed above. Requiring this non-profit group to raise and expend $5.1 million for use of unoccupied critical habitat to remediate an environmental problem, when the remediation will ultimately benefit the species, does not provide an overall conservation benefit to the species. This funding could well come from funds otherwise intended for conservation purposes in Hawaii, or the cost could cause the group to abandon the project. We accordingly believe the benefit of excluding the lands needed for the remediation effort, thus saving the group the $5.1 million cost and making it more likely that the landfill will be remediated, exceed the benefit of designating these lands as critical habitat.

(4) Exclusion of These Units Will Not Cause Extinction of the Species

Proposed units Y1 and Y2 on State and private lands provide occupied and unoccupied habitat for two species: *Isodendrion pyrifolium* and *Neraudia ovata*. According to our published recovery plans, recovery of these two 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 caused by natural disaster or biological threats (Service 1996, 1998). The highest priority recovery tasks include active management, such as plant propagation and reintroduction, fire control, nonnative species removal, and ungulate fencing. Failure to implement these active management measures on this and other units, all of which require voluntary landowner support and participation, virtually assures the extinction of these species in the wild. Many of these types of conservation actions in this area of the island of Hawaii will be carried out as part of a partnership with the Service and by actions taken on the landowner's initiative. These activities, which are described in more detail below, require substantial voluntary cooperation.

For both species, we conclude, based on all of the information available to us, that the projects proposed for the areas to be excluded will not adversely impact existing populations of either listed species. In addition, the Hawaii Housing and Community Development Corporation has proposed the creation of preserves for the plant with the VOLA development, which would be actively managed for the benefit of the plants. As noted below in detail, active management is an essential need of these species, one which cannot be accomplished through a critical habitat designation alone. Finally, we note that in Hawaii State law protected Federally listed plants against direct take, a protection not found in the ESA.

If a critical habitat designation reduces the likelihood that voluntary conservation activities will be carried out on the island of Hawaii, and at the same time fails to confer a 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 State and private lands in proposed units Hawaii Y1 and Y2 merit this evaluation.

Other Impacts

U.S. Army Lands

As described in the ''Analysis of Managed Lands Under Section 3(5)(A)'' section above, based on our evaluation of the adequacy of special management and protection that is provided in the Army's INRMP for PTA (Department of the Army 2002) for the plant species addressed in this proposal which are found on Army land, in accordance with section 3(5)(A)(i) of the Act, we have not included the Army's PTA in this final designation of critical habitat. However, to the extent that special management considerations and protection may be required for this area and it would meet the definition of critical habitat according to section 3(5)(A)(i), it is properly excluded from designation under section 4(b)(2) of the Act, based on the following analysis.

As explained below, we believe the benefits of designating critical habitat for the 12 species at PTA (*Asplenium fragile* var. *insulare, Hedyotis coriacea, Isodendrion hosakea, Neraudia ovata, Portulaca sclerocarpa, Silene hawaiiensis, Silene lanceolata, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium arenarium, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense*) and the lands being acquired as part of their ''Transformation'' to a Stryker Brigade Combat Team are relatively low and outweighed by the benefits of excluding these lands from critical habitat. We also have concerns that a critical habitat designation may negatively impact the Army's ability to effectively carry out a recently proposed training and equipment conversion program on the island of Hawaii.

The Army's PTA, including the lands being acquired for ''Transformation,'' is occupied habitat for 12 species, as referenced above. A total of 28,384 ha (70,138 ac) are excluded from final critical habitat, all of which is considered occupied by one or more listed species.

According to our published recovery plans, recovery of these 12 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 caused by to natural disaster or biological threats (Service 1994, 1995a, 1995b, 1996a, 1996b, 1996c, 1996d, 1997a, 1998a, 1998b, 1998c, 1999). The highest priority recovery tasks include proactive management such as plant propagation and reintroduction, fire control, nonnative species removal, and ungulate fencing. Failure to implement these active management measures, all of which require voluntary landowner support and participation, increases the likelihood that species will go extinct or not recover. The Army is undertaking many of these types of conservation actions on their land on the island of Hawaii as part of the implementation of the INRMP for PTA. These activities, which are described in more detail in the ''Analysis of Managed Lands Under Section 3(5)(A)'' section, require substantial financial obligations by the Army and cooperation with other agencies, landowners, and local residents.

The following analysis describes the likely positive and negative impacts of a critical habitat designation on Army land compared to the likely positive and negative impacts of a critical habitat exclusion of that land. The Service paid particular attention to the following issues: to what extent a critical habitat designation would confer additional regulatory, educational, and social benefits; and to what extent would critical habitat interfere with the Army's ongoing proactive conservation actions.

(1) Benefits of Designating U.S. Army Lands as Critical Habitat

Pohakuloa Training Area contains habitat essential to the conservation of the 12 species listed above. The primary regulatory benefit provided by a critical habitat designation on Army land is the requirement under section 7 of the Act that any actions authorized, funded, or carried out by the Army would not destroy or adversely modify any critical habitat, which includes an evaluation on the effects of the action on recovery of the species. However, as discussed above, all of the critical habitat proposed at PTA is occupied by listed species and thus section 7 consultation would already be required.

In addition, any net benefit of this aspect of critical habitat has been significantly minimized by the Army's commitment to coordinate with the Service on any of its activities that may adversely affect areas whether occupied or unoccupied by listed species that are considered essential to their conservation (*i.e.*, proposed as critical habitat) (Anderson, *in litt.* March 20, 2003). In fact, for the current consultation at PTA, which includes the areas being acquired for ''Transformation,'' the Army is evaluating impacts of its ongoing and future training activities on habitat considered essential to the conservation, including habitat unoccupied by listed species.

Moreover, the section 7 mandate to avoid destroying critical habitat does not extend to requiring plant reintroductions or other proactive conservation measures (*e.g.*, ungulate control) considered essential to the conservation of the species. As discussed above, the major threat to these species is the persistent and expanding presence of alien species. Failure to implement proactive management measures such as alien species removal and ungulate and rat management, as well as management of fire risk and plant propagation and reintroduction, may result in extinction of these species even with a critical habitat designation. These actions are, however, included in the Army's INRMP for PTA and will provide tangible benefits that will reduce the likelihood of extinction and increase the chances of recovery.

Another potential benefit of a critical habitat designation on this Army land is the education of the Army and the general public concerning the conservation value of this land. While we believe these educational benefits are important for the conservation of these species, we believe it has already been achieved through the Army's INRMP (for example, most of the INRMP's biologically sensitive areas overlap with proposed critical habitat), publication of the proposed critical habitat rule, the many public and interagency meetings that have been held to discuss the proposal, and discussion contained in this final rule.

In sum, the Army will manage for the conservation of all of these species through their INRMP process; this management will confer significant conservation benefits to the species that would not necessarily result from the section 7 consultation process. In addition, the Army has agreed to coordinate with the Service on any actions that may affect essential habitat areas (whether occupied or unoccupied by the listed species) even if these areas are not designated as final critical habitat. Taken together, these two management commitments by the Army lead the Service to conclude that any additional incremental regulatory benefits provided by a final critical habitat designation on Army lands would be relatively small.

(2) Benefits of Excluding U.S. Army Lands From Critical Habitat

When evaluating the potential negative impacts of a critical habitat designation and the potential benefits of excluding Army land from final critical habitat, the Service considered whether critical habitat designation would affect Army's military mission at PTA.

As noted above, these plants will need actions that proactively remove existing threats and that include propagation and reintroduction into unoccupied areas if they are to recover. Neither section 7 consultations nor a critical habitat designation would necessarily result in the implementation of actions needed for recovery of these species.

The Army is engaged in or has committed to engage in a wide variety of proactive conservation management activities that are set out in the ''Analysis of Managed Lands Under Section 3(5)(A)'' section of this rule.

The Service also considered whether a final critical habitat designation would negatively impact the Army's military mission. Overall, the Service believes it has been able to work closely and in a positive collaborative fashion with the Army to minimize potential negative impacts to the Army's military training activities as a consequence of Endangered Species Act regulation.

However, the 2nd Brigade of the 25th Infantry Division (Light) based at PTA has recently been selected to participate in the experimental ''Transformation'' of its force to a lighter rapidresponse force known as a Stryker Brigade Combat Team. The Army has stated that a final critical habitat designation may lead to disruption in training and a delay of construction of required training facilities if the Army has to consult on the impacts to newly designated critical habitat. The active training areas allow the troops to attain skills to respond to enemy fire quickly and accurately and to train in offensive operations. The natural and physical attributes of the training areas in Hawaii realistically mirror the battlefield conditions found in other nations in the Pacific region. As these training conditions are not found anywhere else in the continental United States, the Army states that it is imperative that the utilization of the military training installations in Hawaii not be impeded by additional requirements associated with section 7 consultations on critical habitat designations.

(3) The Benefits of Excluding Army Lands From Critical Habitat Outweigh the Benefits of Inclusion

Based on the above considerations, and in accordance with section 4(b)(2) of the Act, we have determined that the benefits to national security of excluding the Army's PTA from critical habitat, as set forth above, outweigh the benefits of including this land in critical habitat for the 12 species listed above. We have carefully weighed the relative benefits of each option.

Although these areas within Army land are removed from the final critical habitat designation, the Service still considers them essential to the conservation of these species. The number of populations for which the habitat on these installations provides is applied towards the overall recovery goal of 8 to 10 populations for each species (see discussion below), and it is anticipated that these lands will be managed under the Army's INRMP for PTA consistent with the conservation goals for these species.

(4) Exclusion of This Unit Will Not Cause Extinction of the Species

For both the three endemic (*Isodendrion hosakea, Neraudia ovata,* and *Silene hawaiiensis*) and the nine multi-island species (*Asplenium fragile* var. *insulare, Hedyotis coriacea, Portulaca sclerocarpa, Silene lanceolata, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium arenarium, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense*), the Service concludes that the Army's mission and management plan (*e.g.*, INRMP) will provide more net conservation benefits than would be provided if these areas were designated as critical habitat. This management plan, which is described above, will provide tangible conservation benefits that will reduce the likelihood of extinction for the listed plants in these areas of the island of Hawaii and increase their likelihood of recovery. Further, all of this area is occupied by all 12 species and thereby benefits from the section 7 protections of the Act. The exclusion of these areas 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 discretionary conservation activities as the Army has done.

In addition, critical habitat is being designated on other areas of the island of Hawaii for the three endemic species, and critical habitat has been designated elsewhere on the island, and/or designated or proposed on other islands, for eight of the remaining nine 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.

Critical habitat is not designated for *Tetramolopium arenarium* on the island of Hawaii because the areas containing the physical and biological features essential to the conservation of this species are on excluded lands at PTA. Critical habitat was not designated on Maui because we were not able to identify the physical and biological features that are considered essential to the conservation of this species on the island of Maui.

In sum, the above analysis concludes that the exclusion of these lands will not cause extinction and should in fact improve the chances of recovery for all 12 species.

Private Lands

Kamehameha Schools

The portion of proposed units Hawaii G, W, and Z on Kamehameha Schools lands is occupied habitat for six species: *Bonamia menziesii, Cyanea stictophylla, Delissea undulata, Phyllostegia racemosa, Phyllostegia velutina,* and *Pleomele hawaiiensis* and unoccupied habitat for three species: *Argyroxiphium kauense, Cyanea shipmanii,* and *Neraudia ovata.* 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 caused by natural disaster or biological threats (Service 1994, 1995a, 1996a, 1996b, 1996c, 1997a, 1998a, 1998b, 1998c, 1999). The highest priority recovery tasks include active management such as plant propagation and reintroduction, fire control, nonnative 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 the island of Hawaii are carried out as part of Kamehameha School's participation with landowner incentive-based programs and by actions taken on the landowner's initiative. These activities, which are described in more detail below, require substantial voluntary cooperation by Kamehameha Schools and other cooperating landowners and local residents.

The following analysis describes the likely conservation benefits of a critical habitat designation compared to the conservation benefits without critical habitat designation. We paid particular attention to the following issues: To what extent a critical habitat designation would confer regulatory conservation benefits on these species; to what extent the designation would educate members of the public such that conservation efforts would be enhanced; and whether a critical habitat designation would have a positive, neutral, or negative impact on voluntary conservation efforts on this privately owned land as well as other non-Federal lands on the island of Hawaii that could contribute to recovery.

If a critical habitat designation reduces the likelihood that voluntary conservation activities will be carried out on the island of Hawaii, and at the same time fails to confer a 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 the species involved, we believe the Kamehameha Schools lands on the island of Hawaii merit this evaluation.

(1) Benefits of Inclusion

Critical habitat in the Kamehameha Schools portion of units Hawaii G, W, and Z was proposed for the following species: *Argyroxiphium kauense, Bonamia menziesii, Cyanea shipmanii, Cyanea stictophylla, Delissea undulata, Neraudia ovata, Phyllostegia racemosa, Phyllostegia velutina,* and *Pleomele hawaiiensis*. 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 funded by or permits issued by a Federal agency would not likely destroy or adversely modify any critical habitat. Without critical habitat, some site-specific projects might not trigger consultation requirements under the Act in areas where 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.

Historically, we have conducted only two formal and 21 informal consultations under section 7 on the island of Hawaii for any of the 41 plant species. Only two consultations involved Kamehameha Schools lands, both of which were intra-Service consultations on conservation projects. One consultation was regarding a project to restore Opaeula Pond; however, none of the 47 species at issue were involved. The other consultation was regarding restoring dryland forest. The proposed restoration actions were found to benefit two species at issue here, *Bonamia menziesii* and *Nototrichium breviflorum*. As a result of the low level of previous Federal activity on Kamehameha Schools lands on the island, and after considering that the likely future Federal activities that might occur on these lands would be minimal and associated with Federal funding for conservation activities, it is our opinion that there is likely to be a low number of future Federal activities that would negatively affect habitat on Kamehameha Schools lands. A Federal nexus is anticipated in association with the finalization of a Safe Harbor Agreement and issuance of an enhancement of survival permit; however, these activities will have a net conservation benefit for the species concerned. Therefore, we anticipate little additional regulatory benefit from including this portion of units Hawaii G, W, and Z in critical habitat beyond what is already provided for 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 nine species for which critical habitat was proposed in this portion of units Hawaii G, W, and Z that reaches a wide audience, including other parties engaged in conservation activities, could have a positive conservation benefit. This result has been achieved through an exhaustive process that involved dozens of public and interagency meetings, media outreach including front-page articles in major newspapers, and several publications in the **Federal Register**. Final species-specific maps identifying habitat areas essential to the conservation of these species on Kamehameha Schools lands have been prepared and will be provided to Kamehameha Schools and other interested parties. These maps will ensure Kamehameha Schools is completely informed regarding what precise areas are important to which species.

In addition, we believe that education of relevant sectors of the public is being achieved through the existing management and education efforts carried out by Kamehameha Schools and their conservation partners. Kamehameha Schools participates in the Olaa-Kilauea Management Partnership along with Federal and State agencies, along with other private landowners, to protect the biological resources of the Olaa-Kilauea area.

In sum, we believe that a critical habitat designation for listed plants on Kamehameha Schools lands would provide a relatively low level of additional regulatory conservation benefits to each of the plant species beyond what is already provided by existing section 7 consultation requirements caused by the physical presence of the nine 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, we expect little Federal activity that would trigger section 7 consultation to occur on this privately owned land. We also believe that critical habitat designation would provide little additional educational benefit since the conservation value is already known by the landowner, the State, Federal agencies, and private organizations, and the area has been identified as essential to the conservation of nine plant species through publication in the proposed critical habitat rule and this final rule.

(2) Benefits of Exclusion

Proactive voluntary conservation efforts are necessary to prevent the extinction and promote the recovery of these species on the island of Hawaii and other Hawaiian islands (Shogren *et al.* 1991; 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, three of the nine species associated with proposed units Hawaii G, W, and Z are extirpated from Kamehameha Schools lands, and repopulation is likely not possible without human assistance and landowner cooperation.

Kamehameha Schools is involved in several important voluntary conservation agreements and is currently carrying out some of these

activities for the conservation of these species. They have developed two programs that demonstrate their conservation commitments, Aina Ulu and Malama Aina. The Aina Ulu program implements land based education programs, whereas Malama Aina delivers focused stewardship of natural resources.

Malama Aina has been focused in two distinct areas, Keauhou in Kau District and North-South Kona, with a budget commitment in 2002 of $1,000,000, not including staff expenses. Kamehameha Schools has more than 25 years of stewardship experience at Keauhou in Kau District, which includes the Olaa-Kilauea Management partnership project entered into on July 6, 1994. This area is within proposed critical habitat unit Hawaii G. The vision for Keauhou is to restore the native ecosystems in order to utilize the entire area for education and cultural enrichment by using sustainable economic ventures to support these programs. Activities within this program include timber certification, large and small mammal control, weed control, koa thinning, propagation and outplanting of both rare and common native plants, inventory, monitoring and data analysis of stewardship efforts, access road improvement, refuse clean up, and the purchase of Keauhou Ranch. Participating partners include: Cultural practitioners (the Edith Kanakaole Foundation and the Polynesian Voyaging Society), ranching and timber interests (Hawaii Forest Industry Association), researchers and scientists (University of Hawaii at Manoa and Hilo, the Zoological Society of San Diego, U.S. Forest Service, Hawaiian Silversword Foundation, and USGS–BRD), educators (Nawahi Charter School), natural resource managers (Olaa-Kilauea Management Group, DOFAW, the Service, HVNP, and The Nature Conservancy of Hawaii (TNCH)). Malama Aina has allocated $681,000, and Aina Ulu has allocated $33,000. Preservation of this area conserves critically endangered species of plants and animals in a mix of ecosystems with microenvironments required by some of Hawaii's rarest plants and animals, including endangered forest birds and lobeliads (plants in the family Campanulaceae). This management strategy is consistent with recovery of these species.

Kamehameha's Schools North-South Kona natural resource conservation efforts focus on three distinct areas: Honaunau Forest and Honaunau Uka, Kaupulehu Kauila Lama Forest and Kaupulehu Uka, and Pulehua. Kamehameha Schools started a weed control program in 2002 in Honaunau Forest and Honaunau Uka. In both the Forest and Uka areas, they will continue the weed control program, along with a timber certification program to write certifiable plans and complete inventories. In the Honaunau Uka area, they will construct an ungulate exclosure fence and issue a contract for a botanical survey, and in the Honaunau Forest the road will be maintained. Funds allocated for the implementation of these projects total $52,500 to Honaunau Forest and $29,500 to Honaunau Uka. Kaupulehu Kauila Lama Forest and Kaupulehu Uka lie within the proposed critical habitat unit Hawaii Z. Conservation activities in the Aina Ulu program at Kaupulehu Kauila Lama Forest include an intern program, an outreach coordinator, multimedia curriculum development, small mammal and weed control, road maintenance, installation of self-composting toilets, and precious wood-gathering. Funds allocated for these projects total $70,700. Malama Aina projects at Kaupulehu Uka include timber certification, large mammal and weed control, ungulate exclosure fencing, inventory, monitoring and data analysis of conservation actions and road maintenance. Funds allocated for those projects total $101,000. Partners include: Hawaii Forest Industry Association, the Service, DOFAW, local residents, PIA Sports Properties (lessee), U.S. Forest Service, National Tropical Botanical Garden (lessee), and Honokaa High School. Pulehua lies within proposed critical habitat unit Hawaii W. Conservation efforts at Pulehua are in the beginning stages. Conservation projects in 2003 will focus on weed control, with $7,500 allocated. In 2002, an ungulate control program was initiated, which included $7,000 to study ungulate issues in Kona. This year's budget includes $35,000 for ungulate control, with an additional $40,000 to construct enclosures to measure the success of the control efforts.

Because Kamehameha Schools' goal is to improve habitat for threatened and endangered species, the district is developing a Safe Harbor Agreement with the Service and the State through the Safe Harbor program. The Safe Harbor program encourages proactive management to benefit endangered and threatened species on non-Federal lands by providing regulatory assurances to landowners that no additional Endangered Species Act restrictions will be imposed on future land, water, or resource use for enrolled lands. The Safe Harbor Agreement would include lands within proposed critical habitat units W and Z. The purpose of Kamehameha Schools' Safe Harbor Agreement is to encourage voluntary restoration and enhancement of habitat for threatened and endangered species, and to enable certain species to be reintroduced onto Kamehameha Schools' lands where such species formerly occurred, including the bird species palila (*Loxoides bailleui*), as well as *Argyroxiphium kauense* and *Delissea undulata.* Some of the conservation activities planned under this Agreement include fencing areas containing mamane (*Sophora chrysophylla*), removal of ungulates, control of ungulates in areas that are not fenced, removal of predators (*e.g.*, rats), and the release of palila into the area. Currently, the Agreement being developed includes only the palila. However, other listed and candidate animal and plant species and other conservation activities will be added in the future (Peter Simmons, Kamehameha Schools, *in litt.* 2003).

As described earlier, Kamehameha Schools has a history of entering into conservation agreements with various Federal and State agencies and private organizations on biologically important portions of their lands. These arrangements have taken a variety of forms. They include partnership commitments such as the Olaa-Kilauea Partnership and the Dryland Forest Working Group. The listed plant species originally included within the Kamehameha Schools portion of proposed units Hawaii G, W, and Z will benefit substantially from their voluntary management actions because of a reduction in ungulate browsing and habitat conversion, a reduction in competition with nonnative weeds, 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 the island of Hawaii, simply preventing ''harmful activities'' will not slow the extinction of listed plant species. Where consistent with the discretion provided by the Act, we believe it is necessary to implement policies that provide positive incentives to private landowners to voluntarily conserve natural resources, and that remove or reduce disincentives to conservation (Michael 2001; Michael, in press). Thus, we believe it is essential for the recovery of these nine species to build on continued conservation activities, such as these with a proven

partner, and to provide incentives for other private landowners on the island of Hawaii who might be considering implementing voluntary conservation activities but have concerns about incurring incidental regulatory or economic impacts.

Approximately 80 percent of imperiled species in the United States occur partly or solely on private lands where the Service has little management authority (Wilcove *et al.* 1996). 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 large tracts of land suitable for conservation of threatened and endangered species are mostly owned by private landowners, successful recovery of listed species on the island of Hawaii is especially dependent upon working partnerships and the voluntary cooperation of private landowners.

Kamehameha Schools owns over 6,800 acres of land proposed as critical habitat in the Agricultural District. According to the final economic analysis, if this land were redistricted to the Conservation District, the total potential loss in property value could be more than approximately $1,997,000. They could also spend over $50,000 contesting a proposed redistricting. Thus, designation of critical habitat on Kamehameha Schools land could result in an economic impact to the Trust of over $2 million.

(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the above considerations, we have determined that the benefits of excluding the Kamehameha Schools lands in proposed units Hawaii G, W, and Z as critical habitat outweigh the benefits of including them as critical habitat for *Argyroxiphium kauense, Bonamia menziesii, Cyanea shipmanii, Cyanea stictophylla, Delissea undulata, Neraudia ovata, Phyllostegia racemosa, Phyllostegia velutina,* and *Pleomele hawaiiensis.*

This conclusion is based on the following factors:

1. A substantial amount of the Kamehameha Schools lands in proposed units Hawaii G, W, and Z is currently being managed by the landowner on a voluntary basis in cooperation with us, cultural practitioners (the Edith Kanakaole Foundation and the Polynesian Voyaging Society), ranching and timber interests (Hawaii Forest Industry Association), researchers and scientists (UH Manoa and Hilo, the Zoological Society of San Diego, U.S. Forest Service, Silversward Foundation, and USGS–BRD), educators (Nawahi Charter School), and natural resource managers (Olaa-Kilauea Management Group, DOFAW, HVNP, National Tropical Botanical Garden, and TNCH) to achieve important conservation goals.

2. In the past, Kamehameha Schools 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 this island, because of 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 proposed units Hawaii G, W, and Z are unoccupied by three of the nine species. Future conservation efforts, such as translocation of these three plant species back into unoccupied habitat on these lands, will require the cooperation of Kamehameha Schools. Exclusion of Kamehameha Schools lands from this critical habitat designation will help the Service maintain and improve this partnership by formally recognizing the positive contributions of Kamehameha Schools to plant recovery, and by streamlining or reducing unnecessary oversight.

4. Especially given the current partnership agreements between Kamehameha Schools and many other organizations, we believe the benefits of including Kamehameha Schools lands as critical habitat are relatively small. The designation of critical habitat can serve to educate the general public as well as conservation organizations regarding the potential conservation value of an area, but this goal is already being accomplished through the identification of this area in the management agreements described above. Likewise, there will be little Federal regulatory benefit to the species because: (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) these areas are already occupied by six listed species and a section 7 nexus already exists. We are unable to identify any other potential benefits associated with critical habitat for these portions of the proposed units.

5. We believe it is necessary to establish positive working relationships with representatives of the Native Hawaiian community. This approach of excluding critical habitat and entering into a mutually agreeable conservation partnership strengthens this relationship and should lead to conservation benefits beyond the boundaries of Kamehameha Schools land. It is an important long term conservation goal of the Service to work cooperatively with the Native Hawaiian community to help recover Hawaii's endangered species. This partnership with Kamehameha Schools is an important step forward toward this goal.

6. While we didn't find that designating critical habitat on Kamehameha Schools land would have a significant economic impact on them, the potential cost of over $1.65 million could affect Kamehameha Schools' willingness to continue their conservation partnerships. Even if they did continue to implement conservation activities on their Kamehameha Schools' land, this potential cost may result in a reduction of the amount of funding they would commit to conservation activities.

7. It is well documented that publicly owned lands and lands owned by private organizations alone are too small and poorly distributed to provide for the conservation of most listed species (Bean 2002; Crouse *et al.* 2002). Excluding these Kamehameha Schools lands from critical habitat may, by way of example, provide positive social, legal, and economic incentives to other non-Federal landowners on the island of Hawaii who own lands that could contribute to listed species recovery if voluntary conservation measures on these lands are implemented (Norton 2000; 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) on their lands that outweigh the regulatory and other benefits of a critical habitat designation.

In conclusion, we find that the exclusion of critical habitat in the Kamehameha Schools portions of

proposed units Hawaii G, W, and Z would most likely have a net positive conservation effect on the recovery and conservation of these nine 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 on Kamehameha Schools lands are relatively small. In contrast, we believe this exclusion will enhance our existing partnership with Kamehameha Schools, and it will set a positive example and provide positive incentives to other non-Federal landowners who may be considering implementing voluntary conservation activities on their lands. We conclude there is a greater likelihood of beneficial conservation activities occurring in these and other areas of the island of Hawaii without designated critical habitat than there would be with designated critical habitat on these Kamehameha Schools lands.

(4) Exclusion of This Unit Will Not Cause Extinction of the Species

In considering whether or not exclusion of Kamehameha Schools lands in proposed units Hawaii G, W, and Z might result in the extinction of any of these nine species, we first considered the impacts to the seven species endemic to the island of Hawaii (*Argyroxiphium kauense, Cyanea shipmanii, Cyanea stictophylla, Neraudia ovata, Phyllostegia racemosa, Phyllostegia velutina,* and *Pleomele hawaiiensis*), and second to the two species known from the island of Hawaii and one or more other Hawaiian islands (*Bonamia menziesii and Delissea undulata*).

These agreements, which are described above, will provide tangible proactive conservation benefits that will reduce the likelihood of extinction for both the seven endemic and the two multi-island species in these areas of the island of Hawaii 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 portions of proposed units Hawaii G, W, and Z 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 six of the nine species and thereby benefit from the section 7 protections of the Act, should such an unlikely Federal threat actually materialize. The exclusion of these Kamehameha Schools lands will not increase the risk of extinction to any of these species, and it may increase the likelihood these species will recover by encouraging other landowners to implement voluntary conservation activities as Kamehameha Schools has done.

In addition, critical habitat is being designated on other areas of the island of Hawaii for all seven of the endemic species (units Hawaii 10—*Argyroxiphium kauense*—a, Hawaii 24—*Argyroxiphium kauense*—b, Hawaii 25—*Argyroxiphium kauense*—c, Hawaii 30—*Argyroxiphium kauense*—d, Hawaii 1—*Cyanea shipmanii*—a, Hawaii 30—*Cyanea shipmanii*—b, Hawaii 30—*Cyanea shipmanii*—c, Hawaii 15—*Cyanea stictophylla*—a, Hawaii 16—*Cyanea stictophylla*—b, Hawaii 24—*Cyanea stictophylla*—c, Hawaii 30—*Cyanea stictophylla*—d, Hawaii 10—*Neraudia ovata*—a, Hawaii 18—*Neraudia ovata*—d, Hawaii 1—*Phyllostegia racemosa*—a, Hawaii 2—*Phyllostegia racemosa*—b, Hawaii 30—*Phyllostegia racemosa*—c, Hawaii 24—*Phyllostegia velutina*—a, Hawaii 30—*Phyllostegia velutina*—b, Hawaii 7—*Pleomele hawaiiensis*—a, Hawaii 10—*Pleomele hawaiiensis*—b, Hawaii 18—*Pleomele hawaiiensis*—c, and Hawaii 23—*Pleomele hawaiiensis*—d). Critical habitat has also been designated elsewhere on the island of Hawaii (Hawaii 10—*Bonamia menziesii*—a, Hawaii 10—*Delissea undulata*—a, and Hawaii 10—*Delissea undulata*—b) and designated on other islands for the remaining two multi-island species within their historical range consistent with the guidance in recovery plans. Critical habitat has been designated for *Bonamia menziesii* on Kauai (habitat for two populations), Oahu (habitat for four populations), and Maui (habitat for one population) (68 FR 9116; 68 FR 35949; 68 FR 25934). Habitat for one population is in the excluded lands on Lanai (68 FR 1220). We have designated critical habitat for *Delissea undulata* on Kauai (habitat for three populations) (68 FR 9116). 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 Kamehameha Schools lands within proposed units Hawaii G, W, and Z from final critical habitat on the island of Hawaii will have a net beneficial impact with little risk of negative impacts. Therefore, the exclusion of the Kamehameha Schools portions of proposed units Hawaii G, W, and Z will not cause extinction and should in fact improve the chances of recovery for *Argyroxiphium kauense, Bonamia menziesii, Cyanea shipmanii, Cyanea stictophylla, Delissea undulata, Neraudia ovata, Phyllostegia racemosa, Phyllostegia velutina,* and *Pleomele hawaiiensis.*

Queen Liliuokalani Trust

The southwestern portion of proposed unit Hawaii Y2 on Queen Liliuokalani Trust land is unoccupied habitat for two species: *Isodendrion pyrifolium* and *Neraudia ovata.* According to our published recovery plans, recovery of these two 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 caused by natural disaster or biological threats (Service 1996, 1998). The highest priority recovery tasks include active management, such as plant propagation and reintroduction, fire control, nonnative species removal, and ungulate fencing. Failure to implement these active management measures on this and other units, all of which require voluntary landowner support and participation, virtually assures the extinction of these species in the wild. Many of these types of conservation actions in this area of the island of Hawaii will be carried out as part of Queen Liliuokalani Trust's partnership with the Service and by actions taken on the landowner's initiative. These activities, which are described in more detail below, require substantial voluntary cooperation by Queen Liliuokalani Trust.

The following analysis describes the likely conservation benefits of a critical habitat designation compared to the conservation benefits without critical habitat designation. We paid particular attention to the following issues: To what extent a critical habitat designation would confer regulatory conservation benefits on these species; to what extent the designation would educate members of the public such that conservation efforts would be enhanced; and whether a critical habitat designation would have a positive, neutral, or negative impact on voluntary conservation efforts on this privately owned land as well as other non-Federal lands on the island of Hawaii that could contribute to recovery.

If a critical habitat designation reduces the likelihood that voluntary conservation activities will be carried out on the island of Hawaii, and at the same time fails to confer a 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 Queen Liliuokalani Trust lands in proposed unit Hawaii Y2 merit this evaluation.

(1) Benefits of Inclusion

Critical habitat in the Queen Liliuokalani Trust portion of proposed unit Hawaii Y2 was proposed for *Isodendrion pyrifolium* and *Neraudia ovata.* The primary direct benefit of inclusion of this portion of proposed unit Hawaii Y2 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.

Historically, we have conducted two formal and 21 informal consultations under section 7 on the island of Hawaii for any of the 47 plant species. None were for Queen Liliuokalani Trust land. As a result of the low level of previous Federal activity on Queen Liliuokalani Trust land, and after considering the likely low probability of Federal activities that might occur on this land (no anticipated Federal permits or funding), we think that there is likely to be a low number of future Federal activities that would negatively affect habitat on the Queen Liliuokalani Trust portion of proposed critical habitat (DEA 2002). Therefore, there is a low regulatory benefit of a critical habitat designation in this area.

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. Any information about these two species and their habitats 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 *Isodendrion pyrifolium* and *Neraudia ovata,* we believe it has mostly been achieved. Through the proposal of critical habitat, proposed unit Hawaii Y2, including the portion that lies within Queen Liliuokalani Trust land, has been identified as essential to the conservation of two of the 47 plant species addressed in this rule. In addition, the proposed conservation activities to be conducted within proposed unit Hawaii Y2, assisted by the Service, demonstrates that the landowner is already aware of the importance of this area for the conservation of these two species. It is anticipated that other portions of the general public will likewise be better informed of the value of this area as Queen Liliuokalani Trust implements conservation activities on this land.

In sum, we believe that a critical habitat designation for listed plants on Queen Liliuokalani Trust land would provide a relatively low level of additional regulatory conservation benefits to *Isodendrion pyrifolium* and *Neraudia ovata.* Any regulatory conservation benefits would accrue through the benefit associated with 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, we determined that there is little Federal activity expected to occur on this privately owned land that would trigger section 7 consultation.

(2) Benefits of Exclusion

While the economic analysis concludes the designation of critical habitat on Queen Liliuokalani Trust land would not prevent them from developing their property, the analysis assumes it is reasonably foreseeable that the designation could cause a delay in development approvals as additional environmental studies may be conducted, and State and county officials investigate the implications of critical habitat on the property. The value of the loss of this potential delay is estimated to be between $13.8 and $21.6 million.

In addition, proactive voluntary conservation efforts are necessary to prevent the extinction and promote the recovery of these listed plant species on the island of Hawaii 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, since both species associated with proposed unit Y2 are extirpated from Queen Liliuokalani Trust land, repopulation is likely not possible without human assistance and landowner cooperation.

Under the terms of its January 17, 2003, proposal to the Service, Queen Liliuokalani Trust has agreed to implement a voluntary conservation partnership with the Service which will benefit these species. The conservation partnership includes the following: (1) The Trust is willing to partner with us on a propagation project for the *Isodendrion pyrifolium* under a Service cost-sharing agreement. The Trust will contribute up to $10,000 toward the propagation research project to be conducted by an expert acceptable to both Queen Liliuokalani Trust and the Service. The trust will also integrate this effort with its cultural and educational programs with children and develop a curriculum similar to one at Kaala Farms in Waianae on Oahu, an island where *Isodendrion pyrifolium* was historically found; (2) the Trust agrees to set aside for outplanting 21 ha (53 ac) of land, consisting of 10 ha (25 ac) in the northern portion of the Queen Liliuokalani Trust property and 11 ha (28 ac) in the southeast portion. The Trust will also allow for the reintroduction of *Isodendrion pyrifolium*, *Neraudia ovata*, and other endangered species that may be found and/or reintroduced on the property into the designated 22 ha (53 ac). These conservation measures are consistent with recovery of these species.

We believe that both of the species for which proposed unit Hawaii Y2 was originally proposed will benefit from these management actions. The primary benefits are the voluntary propagation and eventual reintroduction of species currently extirpated from this area.

The conservation benefits of critical habitat are primarily regulatory or prohibitive in nature. But, on the island of Hawaii, simply preventing ''harmful activities'' will not slow the extinction of listed plant species (Bean 2002). Where consistent with the discretion provided by the Act, we believe it is necessary to implement policies that provide positive incentives to private landowners to voluntarily conserve natural resources, and that remove or reduce disincentives to conservation (Wilcove *et al.* 1998). We believe that a voluntary conservation agreement has the highest likelihood of success if critical habitat is not designated as currently proposed because the landowner believes there is an unacceptable risk that the critical habitat designation will result in a decrease in Queen Liliuokalani Trust's ability to remain economically viable. If so, they would lose the ability to generate enough income for programs that benefit orphan and destitute Hawaiian children. We believe that the landowner's concerns over these potential negative impacts, should critical habitat be designated, would affect its voluntary conservation efforts, which we believe are necessary to conserve these species.

Thus, we believe it is essential for the recovery of *Isodendrion pyrifolium* and *Neraudia ovata* to instigate voluntary conservation activities such as these that would otherwise not have occurred

on this property and to provide positive incentives for other private landowners on the island of Hawaii who might be considering implementing voluntary conservation activities but have concerns about incurring incidental regulatory or economic impacts. Approximately 80 percent of imperiled species in the United States occur partly or solely on private lands where the Service has little management authority (Wilcove *et al.* 1996). 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 large tracts of land suitable for conservation of threatened and endangered species are owned by private landowners, successful recovery of listed species on the island of Hawaii is especially dependent upon working partnerships and the voluntary cooperation of non-Federal landowners. Without additional voluntary conservation efforts for these two species, recovery will not occur.

(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the above considerations, we have determined that the benefits of excluding the Queen Liliuokalani Trust portion of proposed unit Hawaii Y2 from critical habitat outweigh the benefits of including it as critical habitat for *Isodendrion pyrifolium* and *Neraudia ovata*.

This conclusion is based on the following factors:

1. The Queen Liliukolani Trust has agreed to implement voluntary conservation measures for *Isodendrion pyrifolium* and *Neraudia ovata* on currently unoccupied habitat within Queen Liliuokalani Trust's portion of proposed unit Hawaii Y2.

2. Simple regulation of ''harmful activities'' is not sufficient to conserve these species. Critical habitat designation would not encourage, and may discourage, reintroductions of these species to these lands. Landowner cooperation and support will be required to prevent the extinction and promote the recovery of all of the listed island-endemic species caused by 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 proposed unit Hawaii Y2 is unoccupied by both of these species. Future conservation efforts, such as reintroduction of these plant species back onto these lands, will require the cooperation of Queen Liliuokalani Trust. Exclusion of Queen Liliuokalani Trust's land from this critical habitat designation will help the Service maintain and improve the voluntary cooperation of Queen Liliuokalani Trust by formally recognizing the positive contributions of Queen Liliuokalani Trust to plant conservation, and by streamlining or reducing unnecessary regulatory oversight. A critical habitat designation absent this cooperation would provide little meaningful conservation benefit to these species because the land would likely remain unoccupied.

3. Given the agreement between the landowner and us, as well as other planned conservation activities on their property, we believe the overall regulatory and educational benefits of including this portion of the unit 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 has been effectively accomplished through the identification of this area in the January 17, 2003, proposal described above. Likewise, there will be little Federal regulatory benefit to the species because (a) there is a low likelihood that this proposed critical habitat unit will be negatively affected to any significant degree by Federal activities requiring section 7 consultation, and (b) the fear that a critical habitat designation on this property will harm the ability of this landowner to generate funds to benefit orphan and destitute Hawaiian children, and any positive educational benefit of designation is negatively impacted when the impression is given that conservation goals can undermine the philanthropic goals of the landowner. We are unable to identify any other potential benefits associated with critical habitat for this portion of the proposed unit.

4. We believe it is necessary to establish positive working relationships with representatives of the Native Hawaiian community. This approach of excluding critical habitat and entering into a mutually agreeable conservation partnership strengthens this relationship and should lead to conservation benefits beyond the boundaries of Queen Liliuokalani Trust land. The Service has an important long term conservation goal to work cooperatively with the Native Hawaiian community to help recover Hawaii's endangered species. The partnership with Queen Liliuokalani Trust, as articulated in the Trust's letter to us, is an important step forward toward this goal.

5. While we didn't find designating critical habitat on Queen Lilioukolani Trust land would prevent the Trust from proceeding with their proposed development or have a significant economic impact on them, the potential cost of up to $21.6 million due to possible delays in obtaining State and county approvals and completing the development could affect their willingness to continue their conservation partnerships. Even if they did continue to implement conservation activities on their land, this potential cost may result in a reduction of the amount of funding available for implementing conservation activities. In addition, Queen Lilioukolani Trust uses revenue from its land holding to provide care for orphans and destitute children (with a preference to children of Native Hawaiian ancestry). This potential reduction in revenue could have significant social and cultural impacts on the community.

6. It is well documented that publicly owned lands, lands owned by conservation organizations and privately owned lands alone, are too small and poorly distributed to provide for the conservation of most listed species (Bean 2002, Crouse *et al.* 2002). Excluding these privately owned lands from critical habitat may, by way of example, provide positive social, legal, and economic incentives to other non-Federal landowners on the island of Hawaii who own lands that could contribute to listed species recovery if voluntary conservation measures on these lands are implemented (Norton 2000; Main *et al.* 1999; Shogren *et al.* 1999; Wilcove and Chen 1998).

In conclusion, we find that the exclusion of critical habitat in the Queen Liliuokalani Trust portion of proposed unit Hawaii Y2 would have a net positive conservation effect on the recovery and conservation of *Isodendrion pyrifolium* and *Neraudia ovata* when compared to the conservation effects of a critical habitat designation. As described above, the overall benefits to these species of a critical habitat designation on the Queen Liliuokalani Trust portion of proposed unit Hawaii Y2 are relatively small. We conclude there is a greater likelihood of beneficial conservation

activities occurring in this area of the island of Hawaii without designated critical habitat than there would be with designated critical habitat in this location. We reached this conclusion because the landowner has agreed to implement voluntary conservation efforts on their lands without critical habitat designation. Therefore, we conclude that the benefits of excluding this portion of proposed unit Hawaii Y2 from critical habitat for *Isodendrion pyrifolium* and *Neraudia ovata* outweigh the benefits of including it.

(4) Exclusion of This Unit Will Not Cause Extinction of the Species

In considering whether or not exclusion of the Queen Liliuokalani Trust portion of proposed unit Hawaii Y2 might result in the extinction of either of these two species, we first considered the impacts to the species endemic to the island of Hawaii, *Neraudia ovata,* and second to *Isodendrion pyrifolium,* which is known from the island of Hawaii and other Hawaiian islands.

For both the endemic and the multi-island species, we conclude that the voluntary conservation measures to be provided by Queen Liliuokalani Trust and the Service will provide more net conservation benefits than would be provided by designating the portion of proposed unit Hawaii Y2 as critical habitat. These conservation measures, which are described above, will provide tangible proactive conservation benefits that will reduce the likelihood of extinction for the two listed plants in this area of the island of Hawaii and increase their likelihood of recovery. Extinction for either of these species as a consequence of this exclusion is unlikely because there are no known threats in this portion of proposed unit Hawaii Y2 due to any current or reasonably anticipated Federal actions that might be regulated under section 7 of the Act. Implementation of the conservation measures by Queen Liliuokalani Trust, and the exclusion of their portion of proposed unit Hawaii Y2, have the greatest likelihood of preventing extinction of these two species, especially *Neraudia ovata,* which is endemic to the island of Hawaii.

In addition, critical habitat is being designated on other areas of the island of Hawaii for *Neraudia ovata* (Hawaii 10—*Neraudia ovata*—a and Hawaii 18—*Neraudia ovata*—d), and critical habitat has been designated elsewhere in the state for *Isodendrion pyrifolium.* We have designated critical habitat for *Isodendrion pyrifolium* within its historical range on Oahu (habitat for three populations), Molokai (habitat for one population), and Maui (habitat for two populations) (68 FR 35949, June 17, 2003; 68 FR 12982, March 19, 2003; 68 FR 25934, May 14, 2003). In addition, habitat for two populations is within the area excluded from critical habitat on Lanai (68 FR 1220, January 9, 2003). 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 Queen Liliuokalani Trust land within proposed unit Hawaii Y2 from final critical habitat on the island of Hawaii will have a net beneficial impact with little risk of negative impacts. Therefore, the exclusion of the Queen Liliuokalani Trust portion of proposed unit Hawaii Y2 will not cause extinction and should in fact improve the chances of recovery for *Isodendrion pyrifolium* and *Neraudia ovata.*

Other Private Landowners

As resources allow, the Service would be willing to consider future revisions or amendments to this final critical habitat rule if other 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.

Taxonomic Changes

At the time we listed *Delissea undulata, Hibiscus brackenridgei, Mariscus fauriei, Mariscus pennatiformis,* and *Phyllostegia parviflora,* we followed the taxonomic treatments in Wagner *et al.* (1990), the widely used and accepted *Manual of the Flowering Plants of Hawaii.* Subsequent to the final listing, we became aware of new taxonomic treatments of these species. Also, in the recently published *Hawaii's Ferns and Fern Allies* (Palmer 2003), *Asplenium fragile* var. *insulare* has undergone a taxonomic revision. Due to the court-ordered deadlines, we are required to publish this final rule to designate critical habitat on the island of Hawaii before we can prepare and publish a notice of taxonomic changes for these six species. We plan to publish a taxonomic change notice for these six species after we have published the final critical habitat designation on the island of Hawaii.

Summary of Recovery Populations for 255 Hawaiian Plants

During the public comment periods on the proposed designations and nondesignations of critical habitat for plants from the islands of Kauai, Niihau, Lanai, Maui, Molokai, Northwestern Hawaiian Islands, Oahu, and the island of Hawaii, we received several comments regarding the difficulty of commenting in an informed manner on critical habitat for species occurring on more than one island because the proposed rules did not provide information on critical habitat proposed on other islands for multi-island species. To address this concern, on August 20, 2002, we reopened simultaneous comment periods for the proposed designations and nondesignations of critical habitat for plant species on the islands of Kauai, Niihau, Maui, Molokai, and the Northwestern Hawaiian Islands until September 30, 2002, and for plant species on the islands of Hawaii and Oahu until November 30, 2002. The new comment periods allowed all interested parties to review all the proposals together and submit written comments. A comment period for the proposed designations and nondesignations of critical habitat for plant species on Lanai opened on July 15, 2002, and closed on August 30, 2002, overlapping with the reopened comment periods for the islands mentioned above.

As outlined in the above section ''Criteria Used to Identify Critical Habitat,'' 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. To be considered recovered, the populations of a multi-island species should be distributed among the islands of its known historic range. In this final critical habitat rule, we include a table that summarizes the distribution of recovery populations by island for each of the 255 species at issue (Table 5).

TABLE 5.—SUMMARY OF ISLAND DISTRIBUTION OF RECOVERY POPULATIONS FOR 255 LISTED HAWAIIAN PLANTS

Species	Island Distribution							Totals
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	Niihau Kahoolawe NWHI	
Abutilon eremitopetalum				*8				8
Abutilon sandwicense		10						10
Acaena exigua†	0				0			0
Achyranthes mutica	[2]0					10		10
Adenophorus periens	4	1	4	*1	[2]0	1		11
Alectryon macrococcus	2	2	1	*4				9
Alsinidendron lychnoides	10							10
Alsinidendron obovatum		*[1]8						[1]8
Alsinidendron trinerve		*[1]7						[1]7
Alsinidendron viscosum	9							9
Amaranthus brownii							[1]1 (Nihoa)	[1 8]1
Argyroxiphium kauense						*[1]8		[1 7]8
Argyroxiphium sandwicense ssp. *macrocephalum*					[5]1			[5]1
Asplenium fragile var. *insulare*					*2	*8		10
Bidens micrantha ssp. *kalealaha*				3	7			10
Bidens wiebkei			*9					9
Bonamia menziesii	2	4	[2]0	*1	1	1		9
Brighamia insignis	9						1 (Niihau)	10
Brighamia rockii			4	*3	3			10
Canavalia molokaiensis			*10					10
Cenchrus agrimonioides		7		*1	2	[2]0	0 (NWHI)	10
Centaurium sebaeoides	4	2	1	*1	2			10
Chamaesyce celastroides var. *kaenana*		[1]7						[1]7
Chamaesyce deppeana		[1]2						[1]2
Chamaesyce halemanui	10							10
Chamaesyce herbstii		[1]7						[1]7
Chamaesyce kuwaleana		[1]7						[1]7
Chamaesyce rockii		*10						10
Clermontia drepanomorpha						[1]6		[1]6
Clermontia lindseyana					2	8		10
Clermontia oblongifolia ssp. *brevipes*			7					7
Clermontia oblongifolia ssp. *mauiensis*				*3	7			10
Clermontia peleana					[2]0	10		10
Clermontia pyrularia						[1]6		[1]6
Clermontia samuelii					[1]5			[1]5
Colubrina oppositifolia		3			3	4		10
Ctenitis squamigera	1	1	1	*1	*5	[2]0		9
Cyanea acuminata		*10						10
Cyanea asarifolia	10							10
Cyanea copelandii ssp. *copelandii*†						0		0
Cyanea copelandii ssp. *haleakalaensis*					8			8
Cyanea crispa		*10						10
Cyanea dunbarii			10					10
Cyanea glabra					10			10
Cyanea grimesiana ssp. *grimesiana*		*4	2	*2			10.	
Cyanea grimesiana ssp. *obatae*		*8						8
Cyanea hamatiflora ssp. *carlsonii*						[1]8		[1]8
Cyanea hamatiflora ssp. *hamatiflora*					8			8
Cyanea humboltiana		*10						10
Cyanea koolauensis		*10						10
Cyanea lobata				*3	7			10
Cyanea longiflora		*10						10
Cyanea macrostegia ssp. *gibsonii*				*8				8
Cyanea mannii			*10					10
Cyanea mceldowneyi					[1]5			[1]5
Cyanea pinnatifida		[1]4						[1]4
Cyanea platyphylla						9		9
Cyanea procera			*10					10
Cyanea recta	10							10
Cyanea remyi	10							10
Cyanea shipmanii						[1]7		[1]7
Cyanea stictophylla						10		10
Cyanea st.-johnii		*10						10
Cyanea superba		8						8
Cyanea truncata		10						10
Cyanea undulata	[1]5							[1]5
Cyperus trachysanthos	6	3	[2]0	[2]0			[3]0 (Niihau)	9
Cyrtandra crenata		0						0

TABLE 5.—SUMMARY OF ISLAND DISTRIBUTION OF RECOVERY POPULATIONS FOR 255 LISTED HAWAIIAN PLANTS—Continued

Species	Island Distribution							Totals
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	Niihau Kahoolawe NWHI	
Cyrtandra cyaneoides	10							10
Cyrtandra dentata		*8						8
Cyrtandra giffardii						10		10
Cyrtandra limahuliensis	10							10
Cyrtandra munroi				*3	7			10
Cyrtandra polyantha		[1]5						[1]5
Cyrtandra subumbellata		[1]7						[1]7
Cyrtandra tintinnabula						9		9
Cyrtandra viridiflora		*8						8
Delissea rhytidosperma	[1]6							[1]6
Delissea rivularis	[1]3							[1]3
Delissea subcordata		10						10
Delissea undulata	3				[2]0	*5	[2]0 (Niihau)	8
Diellia erecta	1	1	1	*1	3	2		9
Diellia falcata		*10						10
Diellia pallida	[1]3							[1]3
Diellia unisora		[1]6						[1]6
Diplazium molokaiense	1	1	1	*1	6			10
Dubautia herbstobatae		[1]6						[1]6
Dubautia latifolia	[1]7							[1]7
Dubautia pauciflorula	[1]4							[1,6]4
Dubautia plantaginea ssp. *humilis*					[1]6			[1]6
Eragrostis fosbergii		[1]1						[1]1
Eugenia koolauensis		*6	2					8
Euphorbia haeleeleana	6	4						10
Exocarpos luteolus	10							10
Flueggea neowawraea	4	*2	1		*1	2		10
Gahnia lanaiensis				*8				8
Gardenia mannii		*10						10
Geranium arboreum					[1]7			[1]7
Geranium multiflorum					*8			8
Gouania meyenii	5	*5						10
Gouania vitifolia		7			1	2		10
Hedyotis cookiana	[1]7					[2]0		[1]7
Hedyotis coriacea		2			2	*6		10
Hedyotis degeneri		9						9
Hedyotis mannii			*4	*2	2			8
Hedyotis parvula		*9						9
Hedyotis schlechtendahliana var. *remyi*				*8				8
Hedyotis st.-johnii	[1]7							[1]7
Hesperomannia arborescens		*6	2	*1	*2			11
Hesperomannia arbuscula		5			5			10
Hesperomannia lydgatei	[6]5							[6]5
Hibiscadelphus giffardianus						[1]1		[1]1
Hibiscadelphus hualalaiensis						8		8
Hibiscadelphus woodii	[1]5							[1]5
Hibiscus arnottianus ssp. *immaculatus*			[1]6					[1]6
Hibiscus brackenridgei	[2]0	3	1	*1	3	1	[3]0 (Kahoolawe)	9
Hibiscus clayi	[1]6							[1]6
Hibiscus waimeae ssp. *hannerae*	8							8
Ischaemum byrone	3		2		2	3		10
Isodendrion hosakae						8		8
Isodendrion laurifolium	4	6						10
Isodendrion longifolium	6	4						10
Isodendrion pyrifolium	[2]0	3	1	*2	2	0	[2]0 (Niihau)	8
Kanaloa kahoolawensis							[1]6 (Kahoolawe)	[1]6
Kokia kauaiensis	8							8
Labordia cyrtandrae		*10						10
Labordia lydgatei	6							[6]6
Labordia tinifolia var. *lanaiensis*				*8				8
Labordia tinifolia var. *wahiawaensis*	[1]4							[1]4
Labordia triflora			*8					8
Lepidium arbuscula		*10						10
Lipochaeta fauriei	[1]6							[1]6
Lipochaeta kamolensis					*[1]6			[1]6
Lipochaeta lobata var. *leptophylla*		10						10
Lipochaeta micrantha	[1]4							[1]4

TABLE 5.—SUMMARY OF ISLAND DISTRIBUTION OF RECOVERY POPULATIONS FOR 255 LISTED HAWAIIAN PLANTS—Continued

Species	Island Distribution							Totals
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	Niihau Kahoolawe NWHI	
Lipochaeta tenuifolia		*[1]5						[1]5
Lipochaeta waimeaensis	[1]1							[1]1
Lobelia gaudichaudii ssp. *koolauensis*		*9						9
Lobelia monostachya		[1]7						[1]7
Lobelia niihauensis	7	*3						10
Lobelia oahuensis		10						10
Lysimachia filifolia	4	6						10
Lysimachia lydgatei					*8			8
Lysimachia maxima			10					10
Mariscus fauriei			7	[2]0		1		8
Mariscus pennatiformis	3	4			2	[2]0	1 (NWHI)	10
Marsilea villosa		4	[4]0					[6]4
Melicope adscendens					*[1]1			[1]1
Melicope balloui					*[1]3			[1]3
Melicope haupuensis	[1]7							[1]7
Melicope knudsenii	[1]5				*[1]2			[1]7
Melicope lydgatei		*10						10
Melicope mucronulata			*7		*2			9
Melicope munroi			[2]0	*8				8
Melicope ovalis					3			3
Melicope pallida	3	6						9
Melicope reflexa			8					8
Melicope quadrangularis †	0						0.	
Melicope saint-johnii		[1]3						[1]3
Melicope zahlbruckneri						[1]3		[1]3
Munroidendron racemosum	10							10
Myrsine juddii		*10						10
Myrsine linearifolia	9							9
Neraudia angulata		*10						10
Neraudia ovata						*8		8
Neraudia sericea †			6	*1	7		[2]0 (Kahoolawe)	14
Nothocestrum breviflorum						9		9
Nothocestrum peltatum	9							9
Nototrichium humile		*8			2			10
Ochrosia kilaueaensis †						0		0
Panicum niihauense	[1]7							[1]7
Peucedanum sandwicense	4	*2	3		2			11
Phlegmariurus mannii	[2]0				*8	[2]0		8
Phlegmariurus nutans	3	*7						10
Phyllostegia glabra var. lanaiensis †				0				0
Phyllostegia hirsuta		*9						9
Phyllostegia kaalaensis		10						10
Phyllostegia knudsenii	[1]3							[1]3
Phyllostegia mannii			*8		2			10
Phyllostegia mollis		*4	*3		3			10
Phyllostegia parviflora		9			[2]0	[2]0		9
Phyllostegia racemosa						*10		10
Phyllostegia velutina						*10		10
Phyllostegia waimeae	[1]1							[1]1
Phyllostegia warshaueri						10		10
Phyllostegia wawrana	8							8
Plantago hawaiensis						10		10
Plantago princeps	4	3	1		2	[2]0		10
Platanthera holochila	4	2	*2		2			10
Pleomele hawaiiensis						*10		10
Poa mannii	10							10
Poa sandvicensis	7							7
Poa siphonoglossa	10							10
Portulaca sclerocarpa				1		*9		10
Pritchardia affinis †						0		0
Pritchardia aylmer-robinsonii †							0 (Niihau)	0
Pritchardia kaalae †		0						0
Pritchardia munroi †			0					0
Pritchardia napaliensis †	0							0
Pritchardia remota							[1]2 (NWHI)	[1,8]2
Pritchardia schattaueri †						0		0
Pritchardia viscosa †	0							0

TABLE 5.—SUMMARY OF ISLAND DISTRIBUTION OF RECOVERY POPULATIONS FOR 255 LISTED HAWAIIAN PLANTS—Continued

Species	Island Distribution							Totals
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	Niihau Kahoolawe NWHI	
Pteralyxia kauaiensis	9							9
Pteris lidgatei		*4	3		3			10
Remya kauaiensis	10							10
Remya mauiensis					*[1]6			[1]6
Remya montgomeryi	[1]7							[1]7
Sanicula mariversa		[1]6						[1]6
Sanicula purpurea		*6			4			10
Schiedea apokremnos	9							9
Schiedea haleakalensis					[1]2			[1]2
Schiedea helleri	[1]7							[1]7
Schiedea hookeri		*10			[2]0			10
Schiedea kaalae		10						10
Schiedea kauaiensis	[1]7							[1]7
Schiedea kealiae		[1]4						[1]4
Schiedea lydgatei			10					10
Schiedea membranacea	7							7
Schiedea nuttallii	2	6	2		[2]0			10
Schiedea sarmentosa			10					10
Schiedea spergulina var. *leiopoda*	[1]1							[1]1
Schiedea spergulina var. *spergulina*	[1]6							[1]6
Schiedea stellarioides	[1]6							[1]6
Schiedea verticillata							[1]1(NWHI)	[1 8]1
Sesbania tomentosa	2	2	2	[3]0	2	2	[3]0 (Kahoolawe) 2 (NWHI).	12
Sicyos alba						10		10
Silene alexandri			*10					10
Silene hawaiiensis						*10		10
Silene lanceolata	0	*2	2	0		*6		10
Silene perlmanii		[1]6						[1]6
Solanum incompletum	0		0	*1	0	*9		10
Solanum sandwicense	6	*4						10
Spermolepis hawaiiensis	2	2	1	*1	2	*2		10
Stenogyne bifida			*10					10
Stenogyne campanulata	[1]3							[1]3
Stenogyne kanehoana		*[1]5						[1]5
Tetramolopium arenarium					[2]0	*[1]7		*[1]7
Tetramolopium capillare					[1]6			[1]6
Tetramolopium filiforme		*[1]6						[1]6
Tetramolopium lepidotum ssp. *lepidotum*		8		[2]0				8
Tetramolopium remyi				*6	3			9
Tetramolopium rockii			[1]4					[1]4
Tetraplasandra gymnocarpa		*9						9
Trematolobelia singularis		[1]6						[1]6
Urera kaalae		*9						9
Vigna o-wahuensis	0	3	*1	*1	1	4	[3]0 (Kahoolawe)	10
Viola chamissoniana ssp. *chamissoniana*		*10						*10
Viola helenae	[6]5							[6]5
Viola kauaiensis var. *wahiawaensis*	[1]5							[1]5
Viola lanaiensis				*8				8
Viola oahuensis		*10						10
Wilkesia hobdyi	9							9
Xylosma crenatum	[1]5							[1]5
Zanthoxylum dipetalum var. *tomentosum*						[1]7		[1]7
Zanthoxylum hawaiiense	2		1	0	1	*6		10

* Including on lands excluded under 4(b)(2)).
† Critical habitat not prudent.
[1] We do not believe that sufficient suitable habitat currently exists to reach the recovery goal of 8 to 10 populations.
[2] We are unable to identify any habitat essential to its conservation on the island.
[3] Habitat not essential to the conservation of the species.
[4] We plan to publish a separate rule to designate critical habitat for the species.
[5] Only one population of greater than 50,000 mature individuals is required for recovery of this species.
[6] Five to six populations required for recovery.
[7] At least 10 populations of 2,000 individuals are required for recovery of this species.
[8] At least five populations on Nihoa and one to three additional populations on another island.

This table includes the following information: (1) The number of populations on each island we believe the designated critical habitat or other habitat essential for the conservation of the species can provide for; (2) the species for which we are unable to identify any habitat essential to their conservation (*e.g., Adenophorus periens* on Maui); (3) the species for which sufficient habitat essential to their conservation is not available for at least eight populations (*e.g., Alsinidendron obovatum* on the island of Oahu); the species for which we determined the designation of critical habitat is not prudent (*e.g., Pritchardia kaalae*); proposed critical habitat identified as not essential during the public comment periods and removed from final designation (*e.g.,* proposed critical habitat for *Sesbania tomentosa* on Kahoolawe); the species for which the general recovery goal of 8 to 10 populations does not apply (*e.g., Hesperomannia lydgatei*); and the species whose population recovery goals include habitat that has been excluded from critical habitat designation under section 4(b)(2) of the Act.

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 formally 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 island of Hawaii 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.

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, this 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 Electric Co-Op, Inc.* v. *F.E.R.C.* and *America Trucking Associations, Inc.* v. *EPA.*)

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. By this definition, Federal and State governments and Hawaii County are not a small governmental jurisdictions because its population was 148,677 in 2000.

SBREFA further defines ''small organization'' as any not-for-profit enterprise that is independently owned and operated and is not dominant in its field. TNCH is a large organization that is dominant in the conservation and land management field on the Big Island. Thus, according to RFA/SBREFA definitions, TNCH is not likely to be considered a small organization. Kamehameha Schools is the largest charitable trust in Hawaii, as well as the State's largest private landowner; it also has a substantial investment in securities and owns real estate in other states. In 2001, Kamehameha Schools had over $1 billion in revenues, gains, and other support (Kamehameha Schools 2001). Thus, it is not likely to be considered a small organization.

To determine if the rule would affect a substantial number of small private 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) in this particular area/market affected by the regulation. 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 by private entities that might be directly affected by the designation that could affect small entities include farming and ranching operations and lending institutions. Based on our draft economic analysis and addendum, there were 1,400 diversified farmers and 470 ranchers in Hawaii County in 2000. The 2000 average annual sales for diversified farmers on the island of Hawaii were $59,600 per farmer, and the average annual sales for ranchers were $30,100 per rancher (DBEDT 2002). Since $8,700 is 15 percent of the average annual sales for a diversified farmer and 29 percent of the average annual sales for a rancher, it is assumed that critical habitat will have a significant economic impact (*i.e.*, 3 percent or more of a business's annual sales) on the farmers or ranchers. However, there are 1,400 diversified farmers and 470 ranchers on the island of Hawaii. Based on the annual sales figures, we can define most of these farmers and ranchers as small businesses (*i.e.*, less than $750,000 in annual sales). Five farmers or ranchers represent 0.3 percent of the number of diversified farmers and 1 percent of the number of ranchers on the island of Hawaii. This does not equal a substantial number of the small businesses in either the diversified farming or ranching industries.

Our economic analysis also found there are between two and three small lending institutions on the island of Hawaii that may be involved in section 7 consultations regarding HUD loan

programs. Participation in the consultation was estimated to cost $1,400, and conducting the biological survey was estimated to cost $3,900, so the total impact was estimated to be $5,300 per lending institution. The average annual revenues for the two to three small lending institutions is unknown. If they each earn less than $176,700 in annual sales ($5,300 divided by 3 percent), the economic impact attributable to critical habitat would be a significant economic impact to the lending institutions (*i.e.*, greater than 3 percent of annual sales). There are currently 26 mortgage lending institutions on the island of Hawaii. Of these, 23 meet the SBA definition of a small business (*i.e.*, less that $6 million in annual sales) (Dun & Bradstreet 2002). Two to three lending institutions out of 23 (9 to 13 percent) will potentially be subject to a significant economic impact. This does not equal a substantial number of the small lending institutions on the island of Hawaii.

The actual impacts of the final rule may even be smaller. These estimates were based on the proposed designations. However, this final rule designates 92,737 ha (229,147 ac) less than had been proposed, or a 52 percent reduction.

These conclusions are supported by the history of consultations on the island of Hawaii. Since these 41 plant species were listed (between 1991 and 1996), we have conducted 21 informal consultations and only two formal consultations on the island of Hawaii, 11 of which concerned PTA, in addition to consultations on Federal grants to State wildlife programs, which also do not affect small entities. The 21 informal consultations have concerned 10 of the 41 species (*Asplenium fragile* var. *insulare, Mariscus fauriei, Neraudia ovata, Nothocestrum breviflorum, Plantago hawaiensis, Pleomele hawaiiensis, Portulaca sclerocarpa, Sesbania tomentosa, Silene hawaiiensis,* and *Solanum incompletum*).

One of the two formal consultations involving the 41 species was conducted with the Army regarding the addition of two firing lanes to Range 8 at PTA. *Silene hawaiiensis,* one of the 41 species, was the only listed species addressed in the biological opinion, which concluded that with implementation of the preferred alternative and accompanying mitigation procedures, the project was not likely to jeopardize the continued existence of the species. The other formal consultation was with the Federal Highway Administration (FHWA) on realignment of and improvements to Saddle Road. *Silene hawaiiensis* and the palila (or honeycreeper, *Loxioides bailleui*), a listed bird, were the two species addressed in the biological opinion, which concluded that with the conservation and mitigation measures built into the project by FHWA, the project was not likely to jeopardize the continued existence of the two species and was not likely to adversely modify critical habitat for the palila. Neither of the two formal consultations directly affected or concerned small entities. In both consultations, we concluded that the preferred alternative for the project, with accompanying conservation and mitigation procedures, was not likely to jeopardize the continued existence of the species. The only ongoing project is the Saddle Road realignment, which does not directly affect small entities. Neither of these formal consultations directly affected or concerned small entities, nor does the ongoing project directly affect small entities. As a result, the requirement to reinitiate consultation for ongoing projects will not affect a substantial number of small entities on the island of Hawaii.

Three of the 21 informal consultations that have been conducted on the island of Hawaii concern the National Park Service's Hawaii Volcanoes National Park: One on fence construction for the purpose of excluding ungulates and regarding three of the 41 species (*Asplenium fragile* var. *insulare, Plantago hawaiensis,* and *Silene hawaiiensis*) as well as 1 listed bird and 2 listed plants not included in the 41 species in today's rule; 1 on use of the Marsokhod planetary rover at Kilauea Volcano's summit regarding *Silene hawaiiensis;* and 1 on outplanting food plants for the endangered Hawaiian nene goose regarding *Sesbania tomentosa* and 2 listed birds. Four informal consultations were conducted with the Army Corps of Engineers (ACOE): 1 for the Defense Environmental Restoration Program on removal of unexploded ordnance from the former Waikoloa Maneuver Area regarding *Portulaca sclerocarpa;* 1 on the Alenaio Stream flood control project in Hilo regarding *Asplenium fragile* var. *insulare* as well as several listed birds and a listed plant not included in today's rule; 1 for the Multi-Purpose Range Complex at PTA regarding *Asplenium fragile* var. *insulare, Hedyotis coriacea, Silene hawaiiensis, Silene lanceolata,* and 1 listed plant not in today's rule; and 1 consultation for the Endangered Species Management Plan for PTA regarding 8 of the 41 species (*Asplenium fragile* var. *insulare, Hedyotis coriacea, Portulaca sclerocarpa, Silene hawaiiensis, Silene lanceolata, Solanum incompletum, Tetramolopium arenarium,* and *Zanthoxylum hawaiiense*) and 3 listed plants not in today's rule. Eleven informal consultations were conducted with the Army concerning PTA: 3 on archery hunts regarding *Silene hawaiiensis* and 3 listed plants not in today's rule; 1 on a grenade machine gun range regarding *Asplenium fragile* var. *insulare* and *Silene hawaiiensis;* 1 on a quarry rock crusher regarding *Silene hawaiiensis* and a listed plant not in today's rule; 1 on the proposed acquisition of a Parker Ranch parcel regarding *Silene lanceolata* and a listed plant not in today's rule; 1 on military training regarding *Hedyotis coriacea, Portulaca sclerocarpa, Silene hawaiiensis, Silene lanceolata, Tetramolopium arenarium,* and *Zanthoxylum hawaiiense;* 2 on threats to rare plants from feral ungulates regarding 8 of the 41 species (*Asplenium fragile* var. *insulare, Hedyotis coriacea, Portulaca sclerocarpa, Silene hawaiiensis, Silene lanceolata, Solanum incompletum, Tetramolopium arenarium, and Zanthoxylum hawaiiense*) as well as 3 listed plants not in today's rule; 1 on the Ecosystem Management Plan regarding 9 of the 41 species (*Asplenium fragile* var. *insulare, Hedyotis coriacea, Neraudia ovata, Portulaca sclerocarpa, Silene hawaiiensis, Silene lanceolata, Solanum incompletum, Tetramolopium arenarium,* and *Zanthoxylum hawaiiense*) as well as the listed Hawaiian hoary bat and 2 listed plants not in today's rule; and 1 consultation concerning PTA's Ecosystem Management Plan, Endangered Species Management Plan, and Fire Management Plan regarding the same 9 species, bat, and 2 listed plants referred to just above. Two informal consultations were conducted with the FHWA on Kealakehe Parkway construction regarding 3 of the 41 species (*Mariscus fauriei, Nothocestrum breviflorum,* and *Pleomele hawaiiensis*) as well as 1 listed plant not included in the 41 species in today's rule, and *Pritchardia affinis,* for which we determine that the designation of critical habitat is not prudent in today's rule.

None of these informal consultations directly affected or concerned small entities. In all 21 informal consultations, we concurred with each agency's determination that the project, as proposed or modified, was not likely to adversely affect listed species. The only ongoing projects are Kealakehe Parkway and those concerning military training

and management plans at PTA, which do not directly affect small entities. None of these consultations directly affected or concerned small entities, and none of the ongoing projects directly affect small entities. As a result, the requirement to reinitiate consultation for ongoing projects will not affect a substantial number of small entities on the island of Hawaii.

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 *Achyranthes mutica, Adenophorus periens, Argyroxiphium kauense, Asplenium fragile* var. *insulare, Bonamia menziesii, Clermontia drepanomorpha, Clermontia lindseyana, Clermontia peleana, Clermontia pyrularia, Colubrina oppositifolia, Cyanea hamatiflora* ssp. *carlsonii, Cyanea platyphylla, Cyanea shipmanii, Cyanea stictophylla, Cyrtandra giffardii, Cyrtandra tintinnabula, Delissea undulata, Diellia erecta, Flueggea neowawraea, Gouania vitifolia, Hibiscadelphus giffardianus, Hibiscadelphus hualalaiensis, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion hosakae, Mariscus fauriei, Melicope zahlbruckneri, Neraudia ovata, Nothocestrum breviflorum, Phyllostegia racemosa, Phyllostegia velutina, Phyllostegia warshaueri, Plantago hawaiensis, Pleomele hawaiiensis, Portulaca sclerocarpa, Sesbania tomentosa, Sicyos alba, Silene hawaiiensis, Solanum incompletum, Vigna o-wahuensis,* and *Zanthoxylum dipetalum* ssp. *tomentosum* 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 annual 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 significant 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 species on the island of Hawaii 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) This rule will not ''significantly or uniquely'' affect small governments. A small Government Agency Plan is not required. Small governments will not be affected unless they propose an action requiring Federal funds, permits, or other authorizations. Any such activities will require that the Federal agency ensure that the action will not adversely modify or destroy designated critical habitat.

(b) 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 obligations on State or local governments.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for the 41 species from the island of Hawaii 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. This rule imposes no regulatory requirements unless an agency is seeking Federal funding or authorization, so it does not have Federal implications. In addition, this rule will not have substantial direct compliance costs because many of the planned projects that could affect critical habitat have no Federal involvement.

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 the island of Hawaii.

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 primary 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 *Achyranthes mutica, Argyroxiphium kauense, Bonamia menziesii, Clermontia drepanomorpha, Clermontia lindseyana, Clermontia peleana, Clermontia pyrularia, Colubrina oppositifolia, Cyanea hamatiflora* ssp. *carlsonii, Cyanea platyphylla, Cyanea shipmanii, Cyanea stictophylla, Cyrtandra giffardii, Cyrtandra tintinnabula, Delissea undulata, Flueggea neowawraea, Gouania vitifolia, Hibiscadelphus giffardianus, Hibiscadelphus hualalaiensis, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion hosakae, Mariscus fauriei, Melicope zahlbruckneri, Neraudia ovata, Nothocestrum breviflorum, Phyllostegia racemosa, Phyllostegia velutina, Phyllostegia warshaueri, Plantago hawaiensis, Pleomele hawaiiensis, Portulaca sclerocarpa, Sesbania tomentosa, Sicyos alba, Silene hawaiiensis, Solanum incompletum, Vigna o-wahuensis,* and *Zanthoxylum dipetalum* ssp. *tomentosum* to read as follows; and

■ b. Under the table's heading FERNS AND ALLIES, by revising the entries for *Adenophorus periens, Asplenium fragile* var. *insulare,* and *Diellia erecta* 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							
*	*	*	*	*		*	*
Achyranthes mutica.	None	U.S.A (HI)	Amaranthaceae	E	592	17.99(k)	NA
*	*	*	*	*		*	*
Argyroxiphium kauense.	Mauna Loa silversword.	U.S.A. (HI)	Asteraceae	E	497	17.99(k)	NA
*	*	*	*	*		*	*
Bonamia menziesii.	None	U.S.A. (HI)	Convolvulaceae	E	559	17.99(a)(1), (e)(1), (i), and (k).	NA
*	*	*	*	*		*	*
Clermontia drepanomorpha.	Oha wai	U.S.A. (HI)	Campanulaceae	E	595	17.99(k)	NA
Clermontia lindseyana.	Oha wai	U.S.A. (HI)	Campanulaceae	E	532	17.99(e)(1) and (k).	NA
*	*	*	*	*		*	*
Clermontia peleana.	Oha wai	U.S.A. (HI)	Campanulaceae	E	532	17.99(k)	NA
Clermontia pyrularia.	Oha wai	U.S.A. (HI)	Campanulaceae	E	532	17.99(k)	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*		*	*
Colubrina oppositifolia.	Kauila	U.S.A. (HI)	Rhamnaceae	E	532	17.99(e)(1), (i), and (k).	NA
*	*	*	*	*		*	*
Cyanea hamatiflora ssp. *carlsonii*.	Haha	U.S.A. (HI)	Campanulaceae	E	532	17.99(k)	NA
*	*	*	*	*		*	*
Cyanea platyphylla.	Haha	U.S.A. (HI)	Campanulaceae	E	595	17.99(k)	NA
*	*	*	*	*		*	*
Cyanea shipmanii	Haha	U.S.A. (HI)	Campanulaceae	E	532	17.99(k)	NA
*	*	*	*	*		*	*
Cyanea stictophylla.	Haha	U.S.A. (HI)	Campanulaceae	E	532	17.99(k)	NA
*	*	*	*	*		*	*
Cyrtandra giffardii	Haiwale	U.S.A. (HI)	Gesneriaceae	E	532	17.99(k)	NA
*	*	*	*	*		*	*
Cyrtandra tintinnabula.	Haiwale	U.S.A. (HI)	Gesneriaceae	E	532	17.99(k)	NA
*	*	*	*	*		*	*
Delissea undulata	None	U.S.A. (HI)	Campanulaceae	E	593	17.99(a)(1) and (k).	NA
*	*	*	*	*		*	*
Flueggea neowawraea.	Mehamehame	U.S.A. (HI)	Euphorbiaceae	E	559	17.99(a)(1), (c), (e)(1), (i) and (k).	NA
*	*	*	*	*		*	*
Gouania vitifolia	None	U.S.A. (HI)	Rhamnaceae	E	541	17.99(e)(1), and (k).	NA
*	*	*	*	*		*	*
Hibiscadelphus giffardianus.	Hau kuahiwi	U.S.A. (HI)	Malvaceae	E	595	17.99(k)	NA
Hibiscadelphus hualalaiensis.	Hau kuahiwi	U.S.A. (HI)	Malvaceae	E	595	17.99(k)	NA
*	*	*	*	*		*	*
Hibiscus brackenridgei.	Mao hau hele	U.S.A. (HI)	Malvaceae	E	559	17.99(c), (e)(1), (i), and (k).	NA
*	*	*	*	*		*	*
Ischaemum byrone.	Hilo ischaemum	U.S.A. (HI)	Poaceae	E	532	17.99(a)(1), (c), (e)(1), and (k).	NA
Isodendrion hosakae.	Aupaka	U.S.A (HI)	Violaceae	T	414	17.99(k)	NA
*	*	*	*	*		*	*
Mariscus fauriei	None	U.S.A (HI)	Cyperaceae	E	532	17.99(c) and (k)	NA
*	*	*	*	*		*	*
Melicope zahlbruckneri.	Alani	U.S.A (HI)	Rutaceae	E	595	17.99(k)	NA
*	*	*	*	*		*	*
Neraudia ovata	None	U.S.A (HI)	Urticaceae	E	595	17.99(k)	NA
*	*	*	*	*		*	*
Nothocestrum breviflorum.	Aiea	U.S.A (HI)	Solanaceae	E	532	17.99(k)	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*		*	*
Phyllostegia racemosa.	Kiponapona	U.S.A (HI)	Lamiaceae	E	595	17.99(k)	NA
*	*	*	*	*		*	*
Phyllostegia velutina.	None	U.S.A (HI)	Lamiaceae	E	595	17.99(k)	NA
*	*	*	*	*		*	*
Phyllostegia warshaueri.	None	U.S.A (HI)	Lamiaceae	E	595	17.99(k)	NA
*	*	*	*	*		*	*
Plantago hawaienis.	Laukahi kuahiwi	U.S.A (HI)	Plantaginaceae	E	532	17.99(k)	NA
*	*	*	*	*		*	*
Pleomele hawaiiensis.	Hala pepe	U.S.A (HI)	Liliaceae	E	595	17.99(k)	NA
*	*	*	*	*		*	*
Portulaca sclerocarpa.	Poe	U.S.A (HI)	Portulacaceae	E	532	17.96(b) and 17.99(k).	NA
*	*	*	*	*		*	*
Sesbania tomentosa.	Ohai	U.S.A (HI)	Fabaceae	E	559	17.99(a)(1), (c), (e)(1), (g), (i), and (k).	NA
*	*	*	*	*		*	*
Sicyos alba	Anunu	U.S.A (HI)	Cucurbitaceae	E	595	17.99(k)	NA
*	*	*	*	*		*	*
Silene hawaiiensis	None	U.S.A (HI)	Caryophyllaceae	T	532	17.99(k)	NA
*	*	*	*	*		*	*
Solanum incompletum.	Popolo ku mai	U.S.A (HI)	Solanaceae	E	559	17.99(k)	NA
*	*	*	*	*		*	*
Vigna o-wahuensis.	None	U.S.A (HI)	Fabaceae	E	559	17.99(e)(1), (i), and (k).	NA
*	*	*	*	*		*	*
Zanthoxylum dipetalum var. tomentosum.	Ae	U.S.A (HI)	Rutaceae	E	595	17.99(k)	NA
*	*	*	*	*		*	*
FERNS AND ALLIES							
Adenophorus periens.	Pendent kihi fern	U.S.A (HI)	Grammitidaceae	E	559	17.99(a)(1), (c), (i), and (k).	NA
*	*	*	*	*		*	*
Asplenium fragile var. insulare.	None	U.S.A (HI)	Aspleniaceae	E	553	17.99(e)(1) and (k).	NA
*	*	*	*	*		*	*
Diellia erecta	Asplenium-leaved diellia.	U.S.A (HI)	Aspleniaceae	E	559	17.99(a)(1), (c), (e)(1), (i), and (k).	NA
*	*	*	*	*		*	*

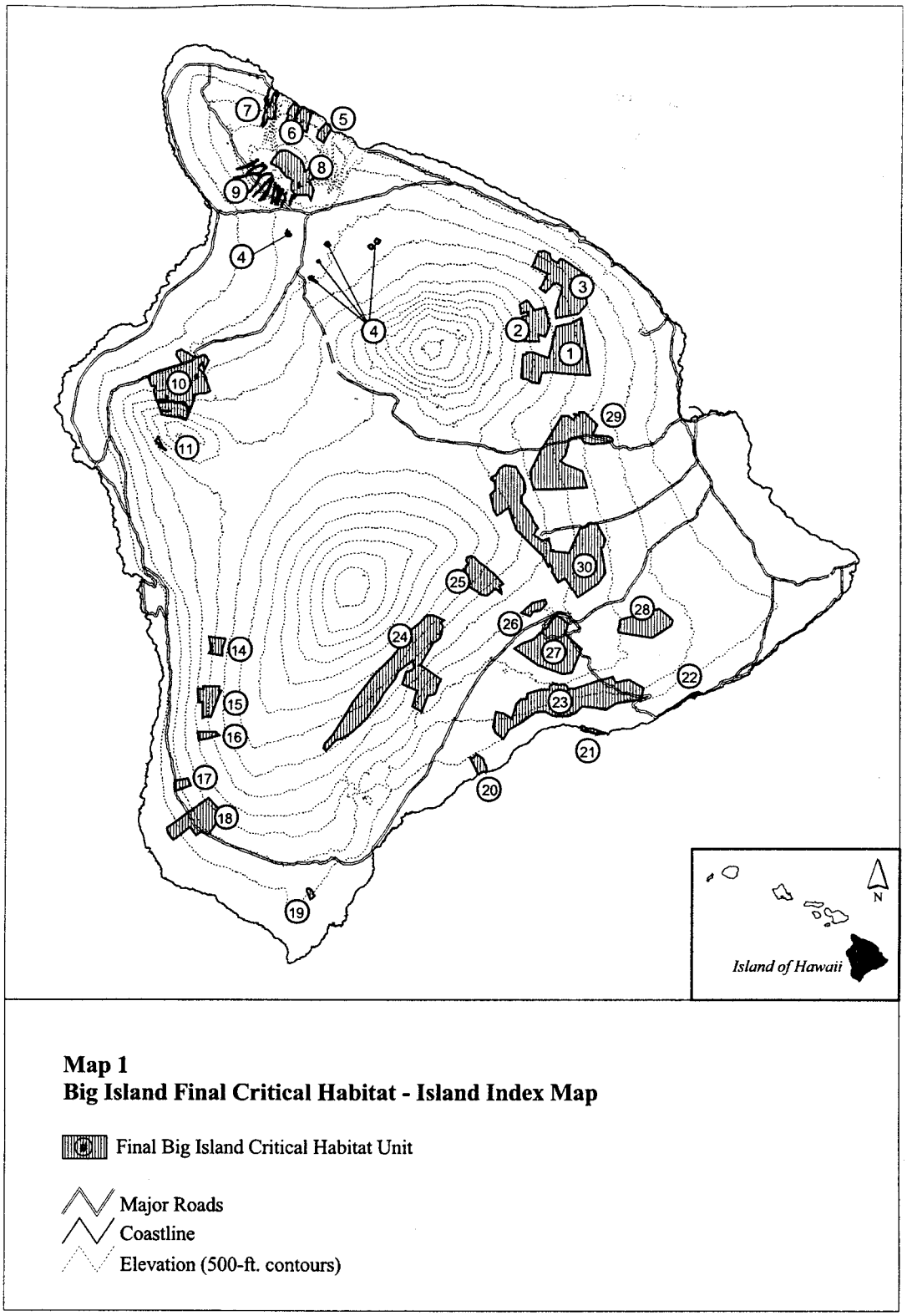
■ 3. Amend § 17.99 as set forth below:
■ a. By revising the section heading to read as follows; and
■ b. By adding new paragraphs (k) and (l) to read as follows.

§ 17.99 Critical habitat; plants on the islands of Kauai, Niihau, Molokai, Maui, Kahoolawe, Oahu, and Hawaii, HI, and on the Northwestern Hawaiian Islands.

(k) *Maps and critical habitat unit descriptions for the island of Hawaii, HI.* The following sections contain the legal descriptions of the critical habitat units designated for the island of Hawaii. 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; existing trails), campgrounds and their immediate surrounding landscaped area, scenic lookouts, remote helicopter landing sites, existing fences, 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 the primary constituent elements described for each species in paragraph (l) of this section and therefore are not included in the critical habitat designations. Coordinates are in UTM Zone 5 with units in meters using North American Datum of 1983 (NAD83). The following map shows the general locations of the 99 critical habitat units designated on the island of Hawaii.

(1) **Note:** Map 1—Index map follows:

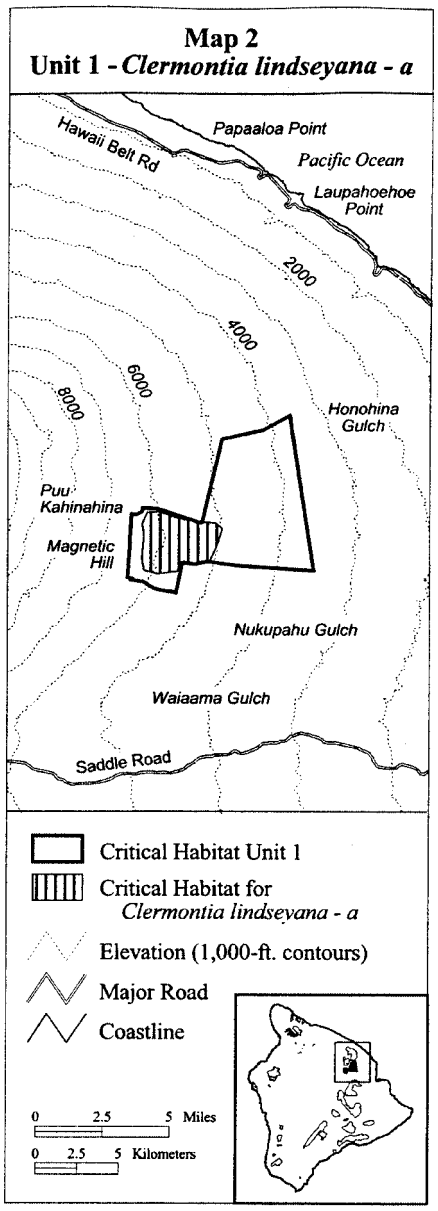
BILLING CODE 4310–55–P



(2) Hawaii 1—*Clermontia lindseyana*—a (1,337 ha, 3,303 ac)

(i) Unit consists of the following 18 boundary points: Start at 259287, 2189980; 258514, 2190124; 258227, 2189531; 257076, 2189405; 256231, 2189611; 256096, 2190304; 256159, 2190978; 256258, 2191715; 256132, 2192452; 256438, 2193135; 257202, 2193171; 258074, 2192865; 259566, 2192515; 260015, 2192551; 260564, 2192488; 260937, 2192137; 260600, 2191095; 260195, 2190187; return to starting point.

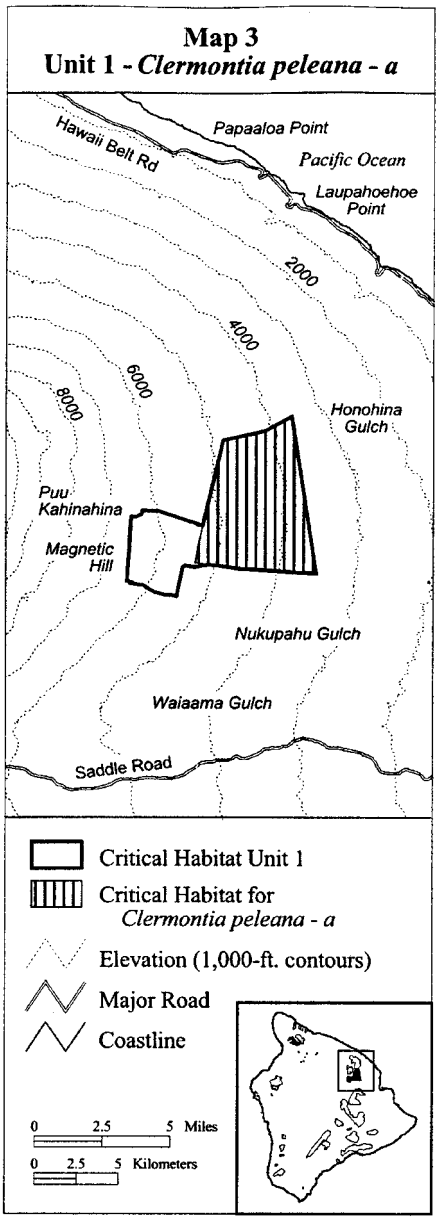
(ii) **Note:** Map 2 follows:



(3) Hawaii 1—*Clermontia peleana*—a (4,704 ha, 11,624 ac)

(i) Unit consists of the following seven boundary points: Start at 261799, 2189905; 259290, 2190265; 259437, 2191186; 260905, 2197592; 263380, 2198183; 264962, 2199047; 266443, 2189598; return to starting point.

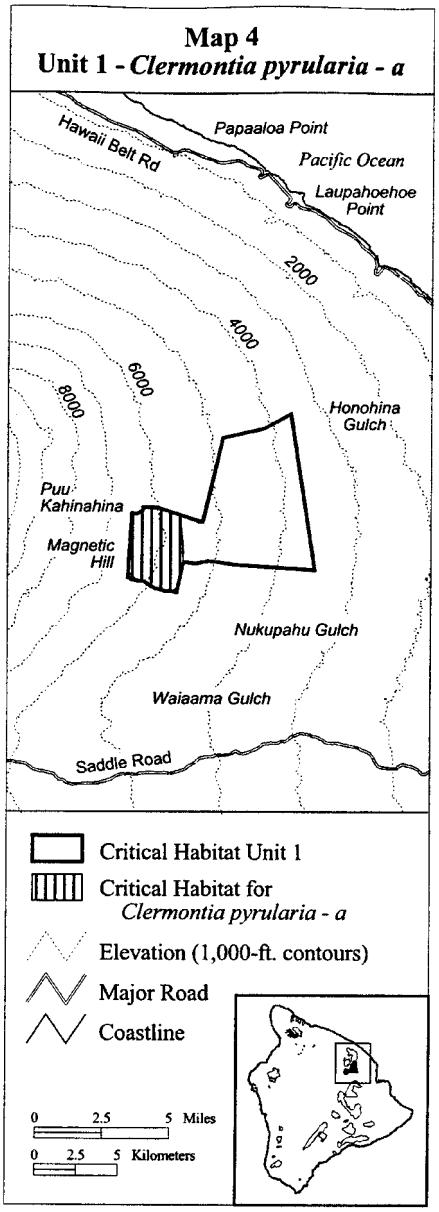
(ii) **Note:** Map 3 follows:



(4) Hawaii 1—*Clermontia pyrularia*—a (1,378 ha, 3,405 ac)

(i) Unit consists of the following 21 boundary points: Start at 258551, 2191038; 258529, 2189991; 258210, 2188565; 257890, 2188331; 257487, 2188365; 256896, 2188490; 256215, 2188925; 255931, 2188918; 255675, 2189060; 255456, 2189333; 255283, 2189470; 255306, 2189929; 255346, 2190140; 255408, 2190618; 255387, 2191557; 255496, 2193031; 255782, 2193009; 256122, 2193173; 256270, 2193339; 257054, 2193360; 258360, 2192915; return to starting point.

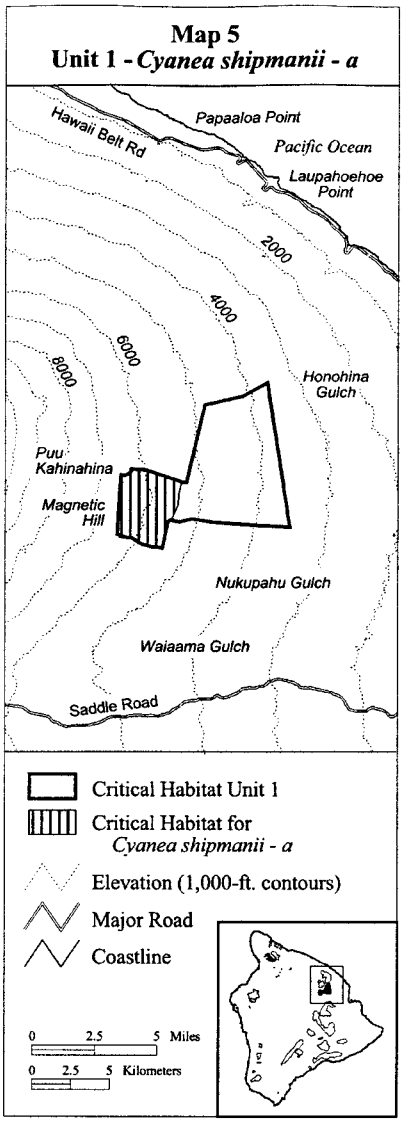
(ii) **Note:** Map 4 follows:



(5) Hawaii 1—*Cyanea shipmanii*—a (1,577 ha, 3,898 ac)

(i) Unit consists of the following 15 boundary points: Start at 258782, 2190167; 258548, 2189979; 258183, 2188260; 257434, 2188452; 256928, 2188480; 256188, 2188929; 255258, 2189156; 255505, 2193009; 255781, 2192991; 256152, 2193174; 256156, 2193377; 257053, 2193355; 259425, 2192593; 259263, 2191816; 259174, 2191010; return to starting point.

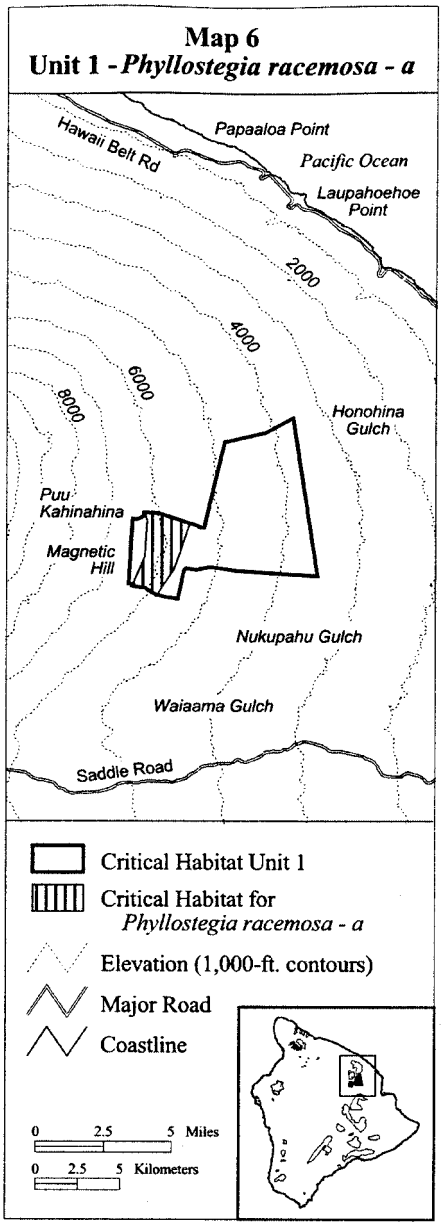
(ii) **Note:** Map 5 follows:



(6) Hawaii 1—*Phyllostegia racemosa*—a (938 ha, 2,317 ac)

(i) Unit consists of the following 14 boundary points: Start at 258101, 2190453; 257892, 2189913; 256913, 2188486; 256656, 2188640; 256222, 2188920; 255488, 2189023; 255638, 2189438; 256199, 2190746; 256201, 2190776; 256355, 2192927; 256193, 2193388; 257046, 2193366; 258868, 2192771; 258286, 2190933; return to starting point.

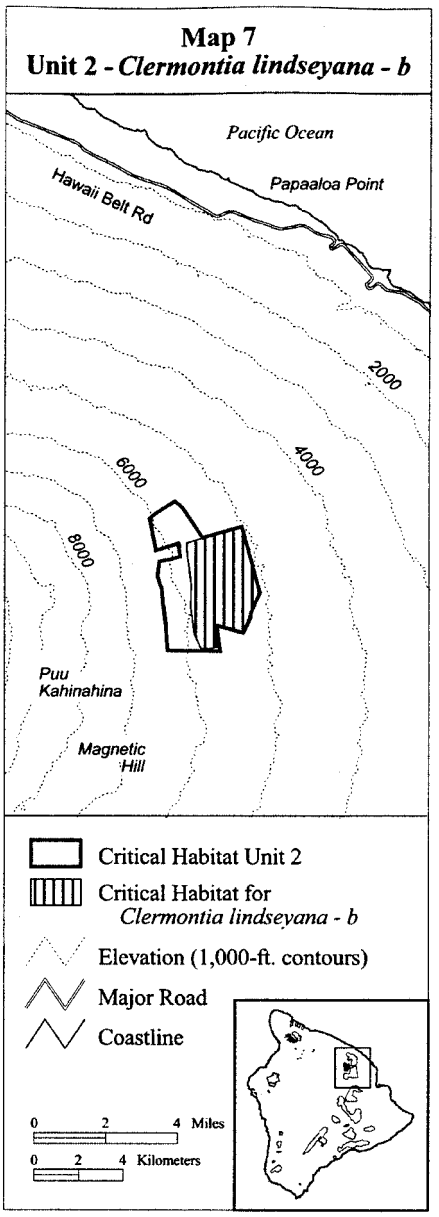
(ii) **Note:** Map 6 follows:



(7) Hawaii 2—*Clermontia lindseyana*—b (1,262 ha, 3,119 ac)

(i) Unit consists of the following 11 boundary points: Start at 257292, 2195256; 256959, 2195939; 256806, 2197162; 256815, 2198142; 256627, 2199661; 256609, 2200056; 259081, 2200802; 259908, 2197800; 259126, 2196047; 257939, 2196380; 257957, 2195319; return to starting point.

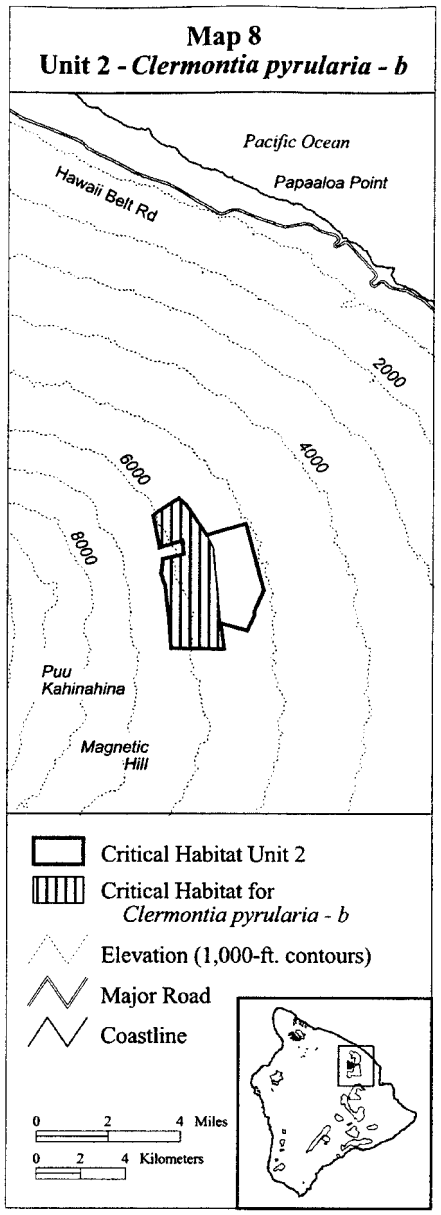
(ii) **Note:** Map 7 follows:



(8) Hawaii 2—*Clermontia pyrularia*—b (1,383 ha, 3,418 ac)

(i) Unit consists of the following 20 boundary points: Start at 255651, 2196455; 255597, 2196941; 255516, 2197725; 255512, 2197761; 255468, 2198050; 255421, 2198130; 255299, 2198552; 255372, 2199203; 256335, 2199414; 256242, 2200024; 255213, 2199704; 254946, 2201156; 255168, 2201360; 256079, 2201937; 256430, 2201672; 257336, 2200280; 257616, 2199751; 257968, 2196298; 258088, 2195186; 255745, 2195208; return to starting point.

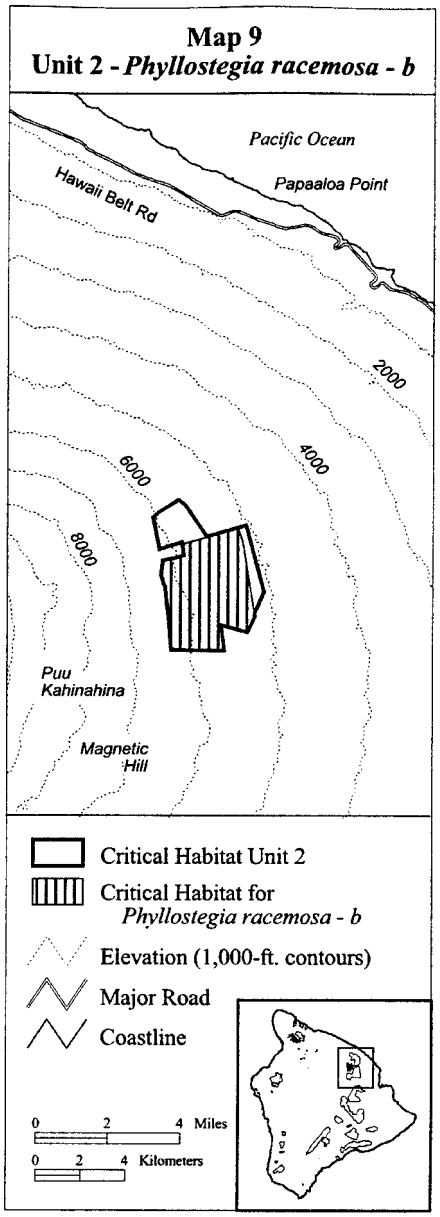
(ii) **Note:** Map 8 follows:



(9) Hawaii 2—*Phyllostegia racemosa*—b (1,683 ha, 4,158 ac)

(i) Unit consists of the following 13 boundary points: Start at 258723, 2200661; 258940, 2200060; 259480, 2196687; 259164, 2195977; 257990, 2196313; 258115, 2195161; 255794, 2195189; 255648, 2196936; 255554, 2197804; 255334, 2198495; 255397, 2199185; 256317, 2199426; 256234, 2199928; return to starting point.

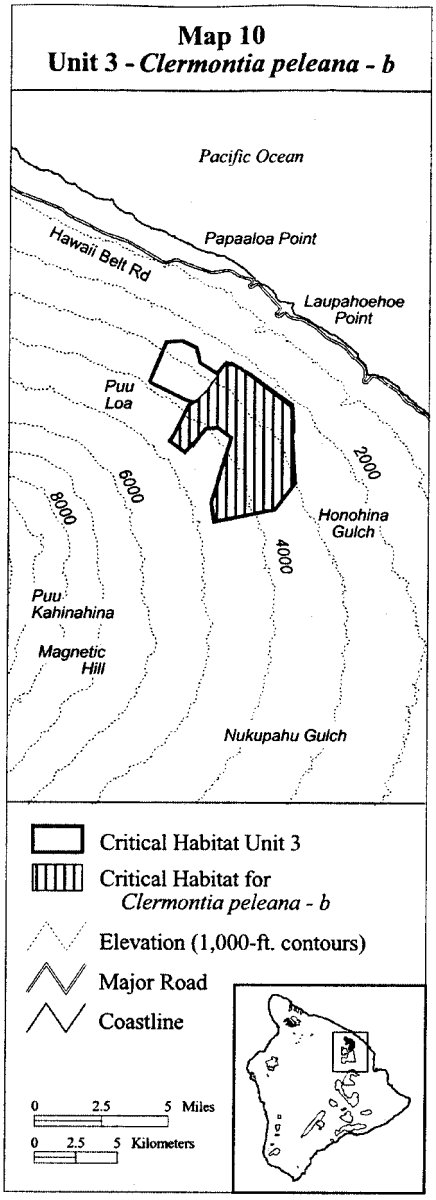
(ii) **Note:** Map 9 follows:



(10) Hawaii 3—*Clermontia peleana*—b (4,098 ha, 10,126 ac)

(i) Unit consists of the following 16 boundary points: Start at 265536, 2206014; 265870, 2201356; 264628, 2199741; 260958, 2198980; 260785, 2200155; 262026, 2204132; 261185, 2204813; 260398, 2204759; 259170, 2203211; 258222, 2203945; 258477, 2204289; 259386, 2206126; 259977, 2206520; 260443, 2206955; 261652, 2208710; 262533, 2208323; return to starting point.

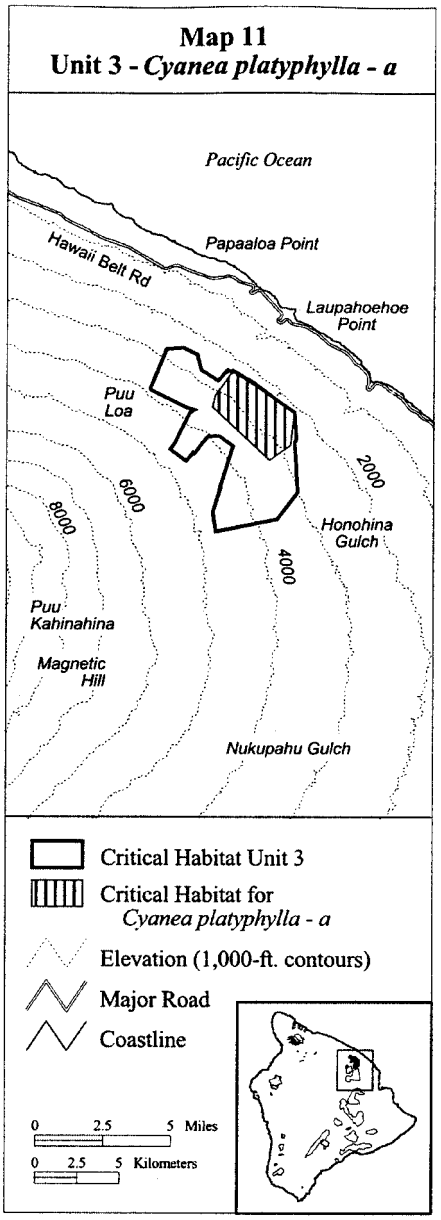
(ii) **Note:** Map 10 follows:



(11) Hawaii 3—*Cyanea platyphylla*—a (1,403 ha, 3,467 ac)

(i) Unit consists of the following eight boundary points: Start at 261936, 2208604; 263321, 2207740; 265617, 2206104; 265417, 2204172; 264174, 2203283; 260750, 2206482; 260875, 2207122; 261952, 2208637; return to starting point.

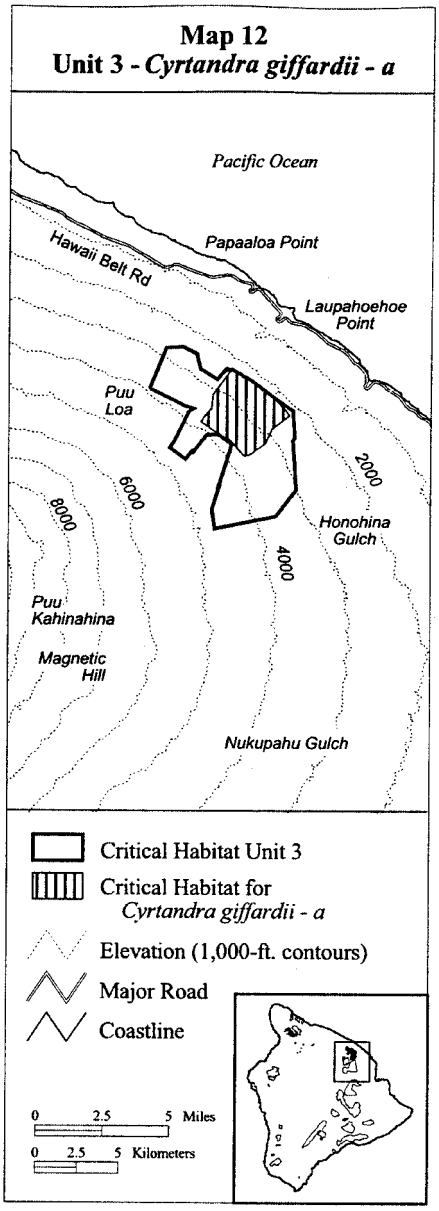
(ii) **Note:** Map 11 follows:



(12) Hawaii 3—*Cyrtandra giffardii*—a (1,510 ha, 3,731 ac)

(i) Unit consists of the following 22 boundary points: Start at 263977, 2204191; 263091, 2203511; 262736, 2203406; 261836, 2204431; 261358, 2204610; 261162, 2204774; 261114, 2204782; 260137, 2205484; 260269, 2205773; 260727, 2206307; 260808, 2207135; 261955, 2208667; 262335, 2208492; 262457, 2208405; 262682, 2208256; 262829, 2208171; 263062, 2208031; 264606, 2206914; 264702, 2206732; 265162, 2206251; 265443, 2205871; 264381, 2205051; return to starting point.

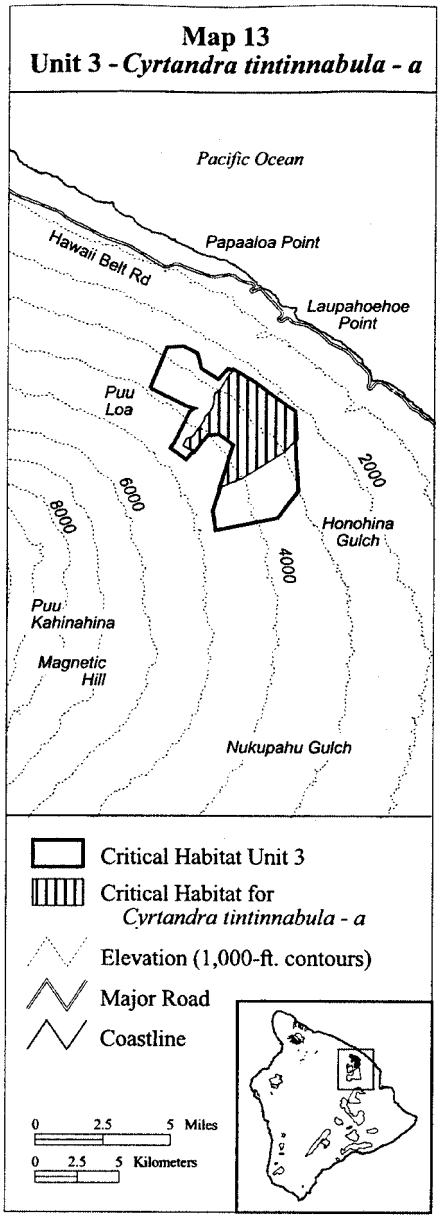
(ii) **Note:** Map 12 follows:



(13) Hawaii 3—*Cyrtandra tintinnabula*—a (2,322 ha, 5,738 ac)

(i) Unit consists of the following 30 boundary points: Start at 261996, 2208648; 262049, 2208624; 263522, 2207698; 265651, 2206158; 265754, 2204527; 265122, 2203759; 262570, 2202152; 261169, 2201554; 261944, 2204127; 261158, 2204766; 260467, 2204723; 260185, 2204367; 260136, 2204327; 260129, 2204298; 259641, 2203682; 259436, 2203822; 258995, 2204073; 259216, 2204499; 259562, 2204625; 259924, 2205129; 260239, 2205570; 260255, 2205790; 260539, 2206042; 260743, 2206373; 260822, 2206782; 260854, 2207176; 261184, 2207475; 261515, 2208026; 261720, 2208326; 261972, 2208593; return to starting point.

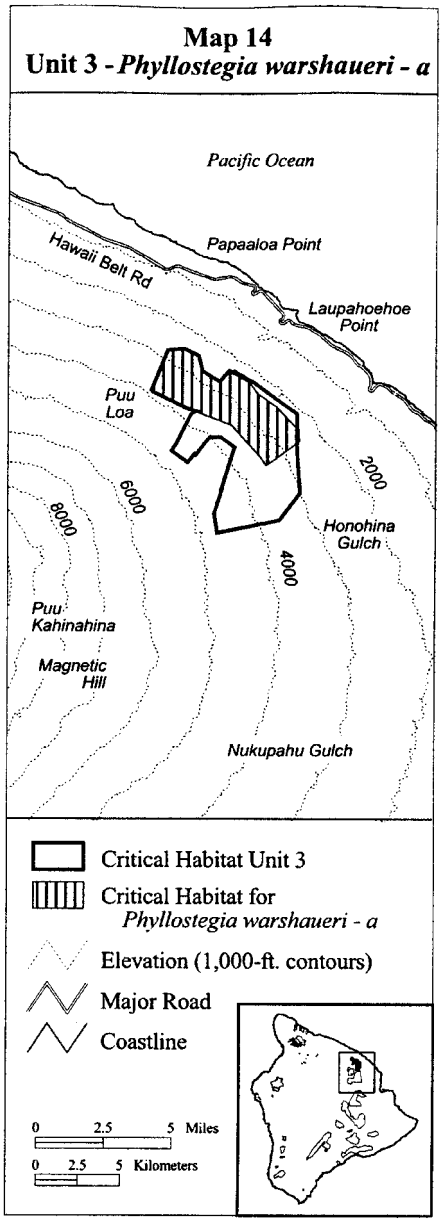
(ii) **Note:** Map 13 follows:



(14) Hawaii 3—*Phyllostegia warshaueri*—a (2,471 ha, 6,105 ac)

(i) Unit consists of the following 21 boundary points: Start at 257006, 2207522; 257019, 2207554; 257990, 2209960; 258969, 2210027; 258996, 2210030; 259000, 2210028; 259841, 2209621; 260070, 2208710; 261086, 2208085; 261545, 2208642; 262022, 2208476; 262839, 2208040; 263330, 2207359; 264502, 2206514; 265710, 2205217; 265744, 2204501; 265526, 2204234; 263864, 2203016; 263466, 2203598; 261804, 2205478; 259132, 2206487; return to starting point.

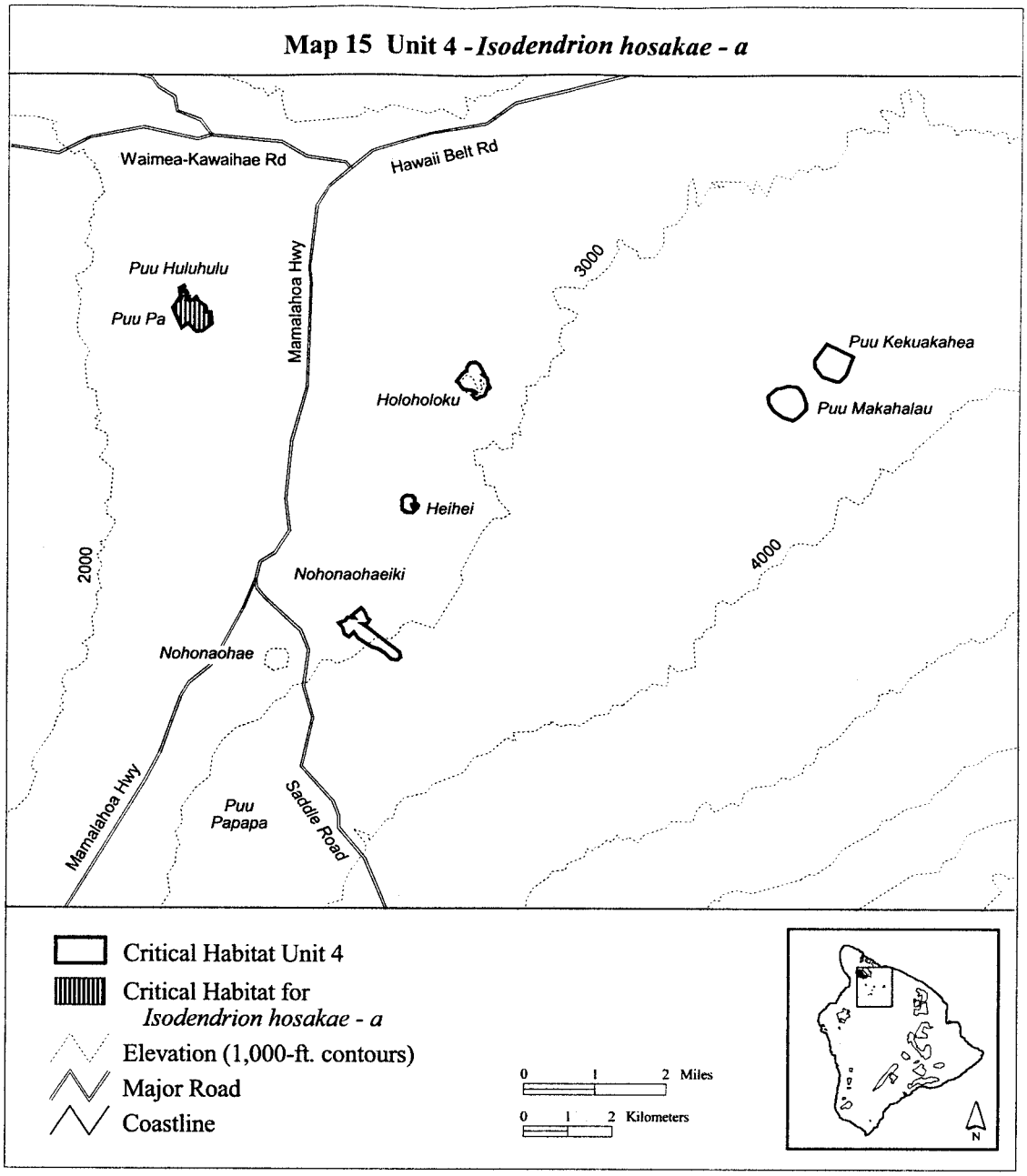
(ii) **Note:** Map 14 follows:



(15) Hawaii 4—*Isodendrion hosakae*—a (49 ha, 121 ac)

(i) Unit consists of the following 30 boundary points: Start at 216918, 2213235; 217016, 2213305; 217029, 2213274; 217005, 2213247; 217021, 2213158; 217073, 2213172; 217095, 2213120; 217071, 2213088; 217094, 2213045; 217129, 2213041; 217123, 2212977; 217141, 2212945; 217161, 2212966; 217207, 2212974; 217303, 2213051; 217353, 2212944; 217455, 2212885; 217511, 2212825; 217544, 2212704; 217624, 2212704; 217658, 2212443; 217423, 2212270; 217284, 2212268; 217105, 2212451; 216974, 2212346; 216772, 2212797; 216900, 2213009; 216946, 2212994; 216966, 2213060; 216928, 2213088; return to starting point.

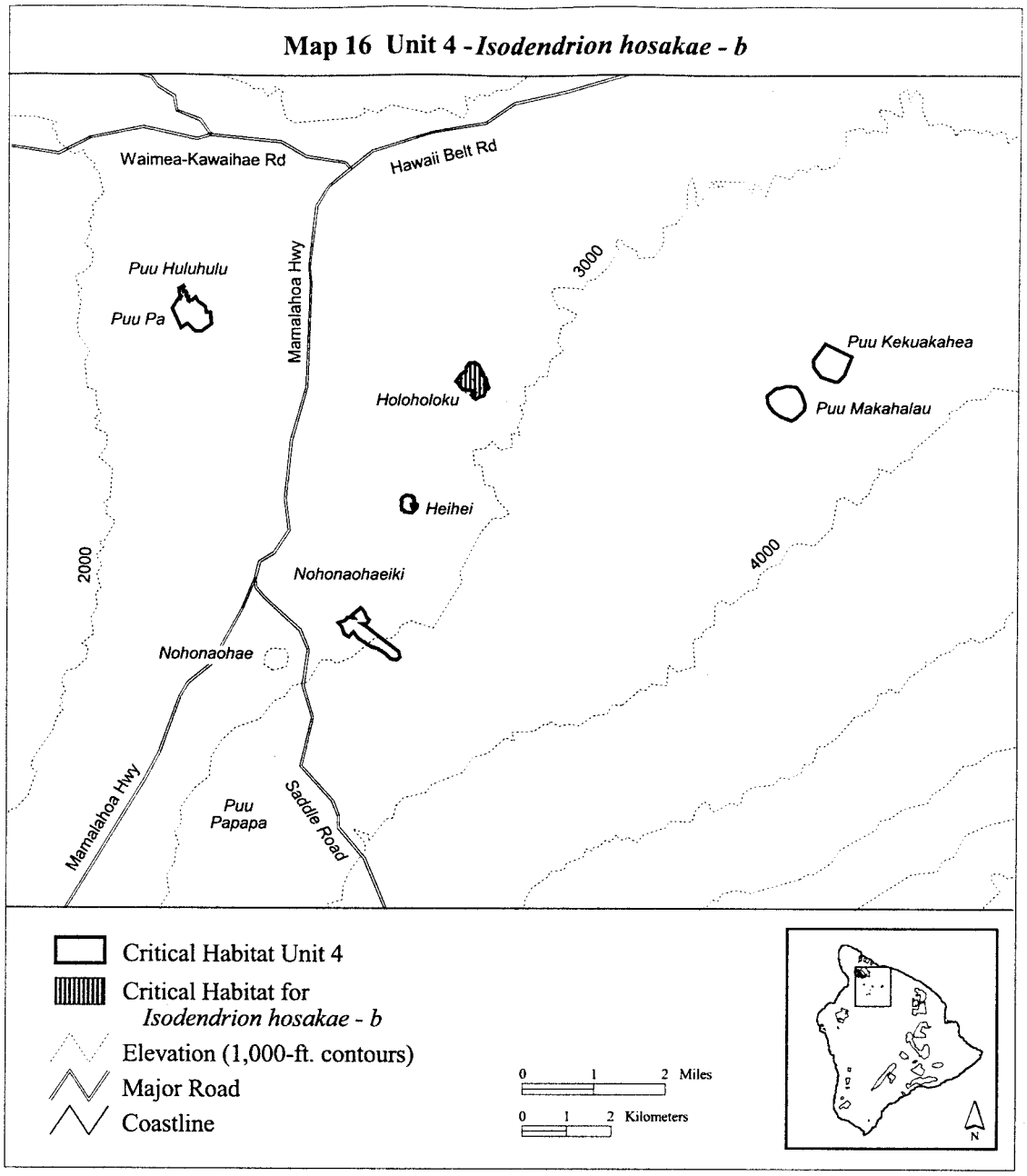
(ii) **Note:** Map 15 follows:



(16) Hawaii 4—*Isodendrion hosakae*—b (35 ha, 87 ac)

(i) Unit consists of the following 32 boundary points: Start at 223492, 2211567; 223608, 2211572; 223691, 2211528; 223727, 2211464; 223811, 2211316; 223763, 2211291; 223859, 2211232; 223887, 2211182; 223881, 2211116; 223938, 2211006; 223918, 2210977; 223876, 2210984; 223832, 2210851; 223809, 2210816; 223729, 2210799; 223636, 2210739; 223556, 2210796; 223552, 2210877; 223614, 2210869; 223630, 2210891; 223572, 2210924; 223506, 2210932; 223418, 2210946; 223338, 2210965; 223296, 2211003; 223244, 2211091; 223188, 2211145; 223294, 2211291; 223359, 2211352; 223406, 2211368; 223414, 2211415; 223415, 2211453; return to starting point.

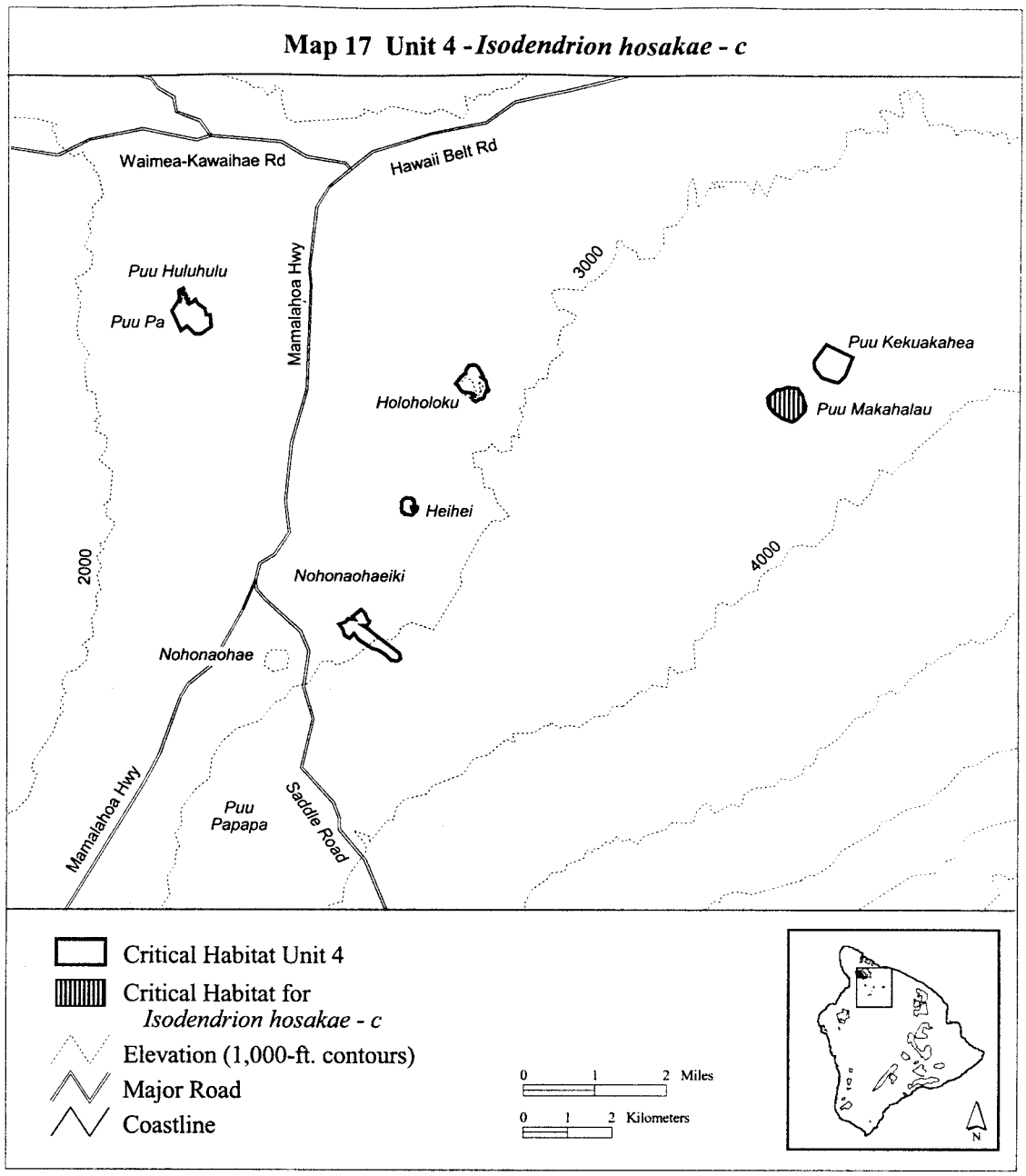
(ii) **Note:** Map 16 follows:



(17) Hawaii 4—*Isodendrion hosakae*—c (49 ha, 121 ac)

(i) Unit consists of the following 15 boundary points: Start at 230256, 2210857; 230438, 2210998; 230517, 2211001; 230682, 2211057; 230897, 2211021; 231011, 2210874; 231090, 2210642; 231078, 2210504; 230899, 2210322; 230783, 2210259; 230543, 2210360; 230357, 2210475; 230289, 2210576; 230244, 2210644; 230224, 2210817; return to starting point.

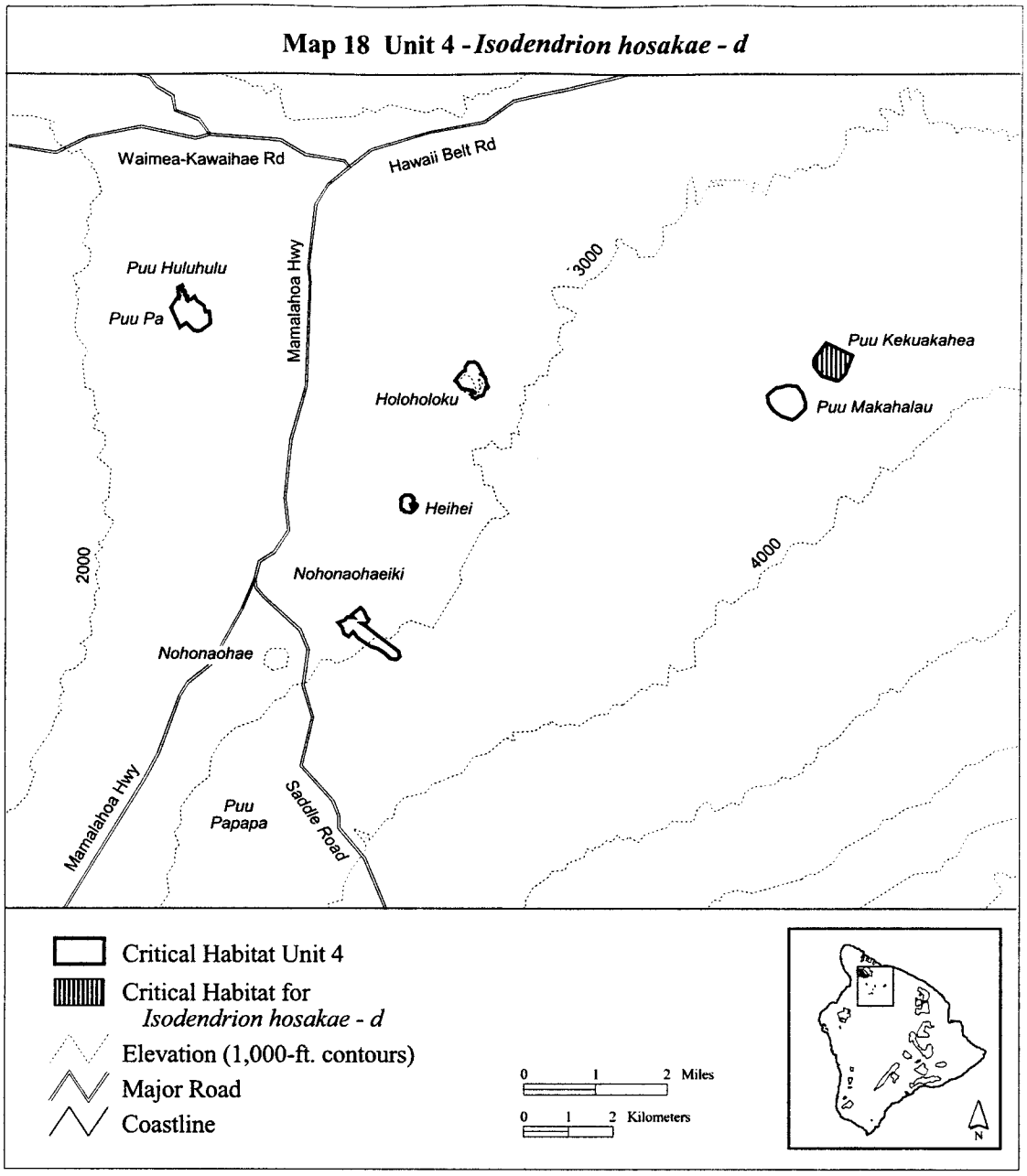
(ii) **Note:** Map 17 follows:



(18) Hawaii 4—*Isodendrion hosakae*—d (49 ha, 121 ac)

(i) Unit consists of the following nine boundary points: Start at 231266, 2211631; 231267, 2211631; 231537, 2212023; 232139, 2211722; 231979, 2211293; 231830, 2211149; 231774, 2211152; 231436, 2211271; 231277, 2211485; return to starting point.

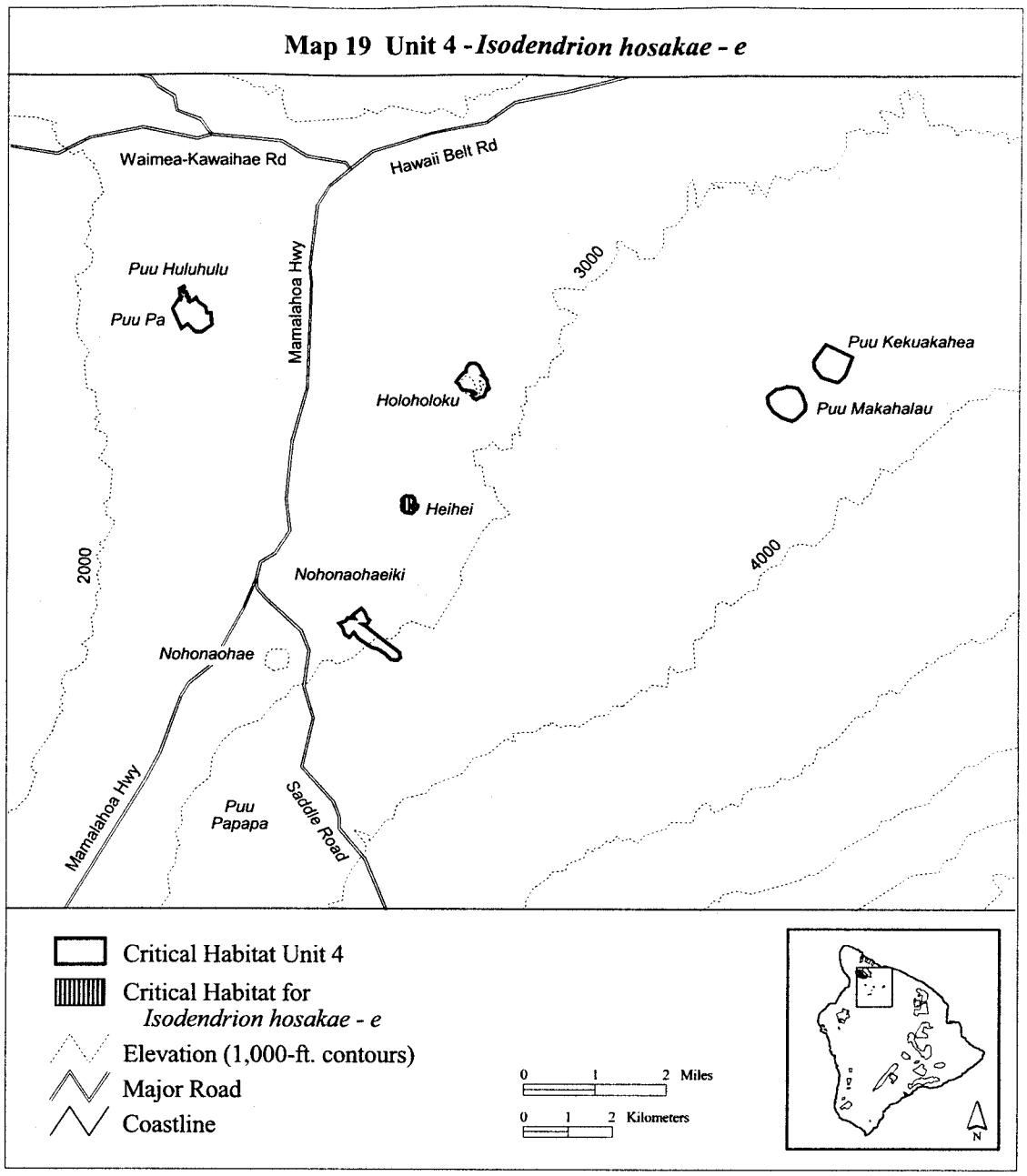
(ii) **Note:** Map 18 follows:



(19) Hawaii 4—*Isodendrion hosakae*—e (11 ha, 26 ac)

(i) Unit consists of the following 39 boundary points: Start at 222273, 2208478; 222265, 2208455; 222245, 2208415; 222245, 2208393; 222331, 2208332; 222330, 2208290; 222311, 2208248; 222279, 2208219; 222256, 2208215; 222254, 2208246; 222251, 2208259; 222230, 2208261; 222222, 2208286; 222213, 2208303; 222225, 2208306; 222227, 2208316; 222214, 2208320; 222209, 2208331; 222194, 2208337; 222189, 2208329; 222194, 2208324; 222202, 2208299; 222198, 2208283; 222219, 2208259; 222244, 2208216; 222238, 2208183; 222198, 2208149; 222045, 2208166; 222020, 2208212; 221971, 2208225; 221966, 2208306; 221969, 2208396; 221963, 2208440; 221988, 2208483; 222015, 2208509; 222077, 2208552; 222199, 2208535; 222218, 2208498; 222247, 2208498; return to starting point.

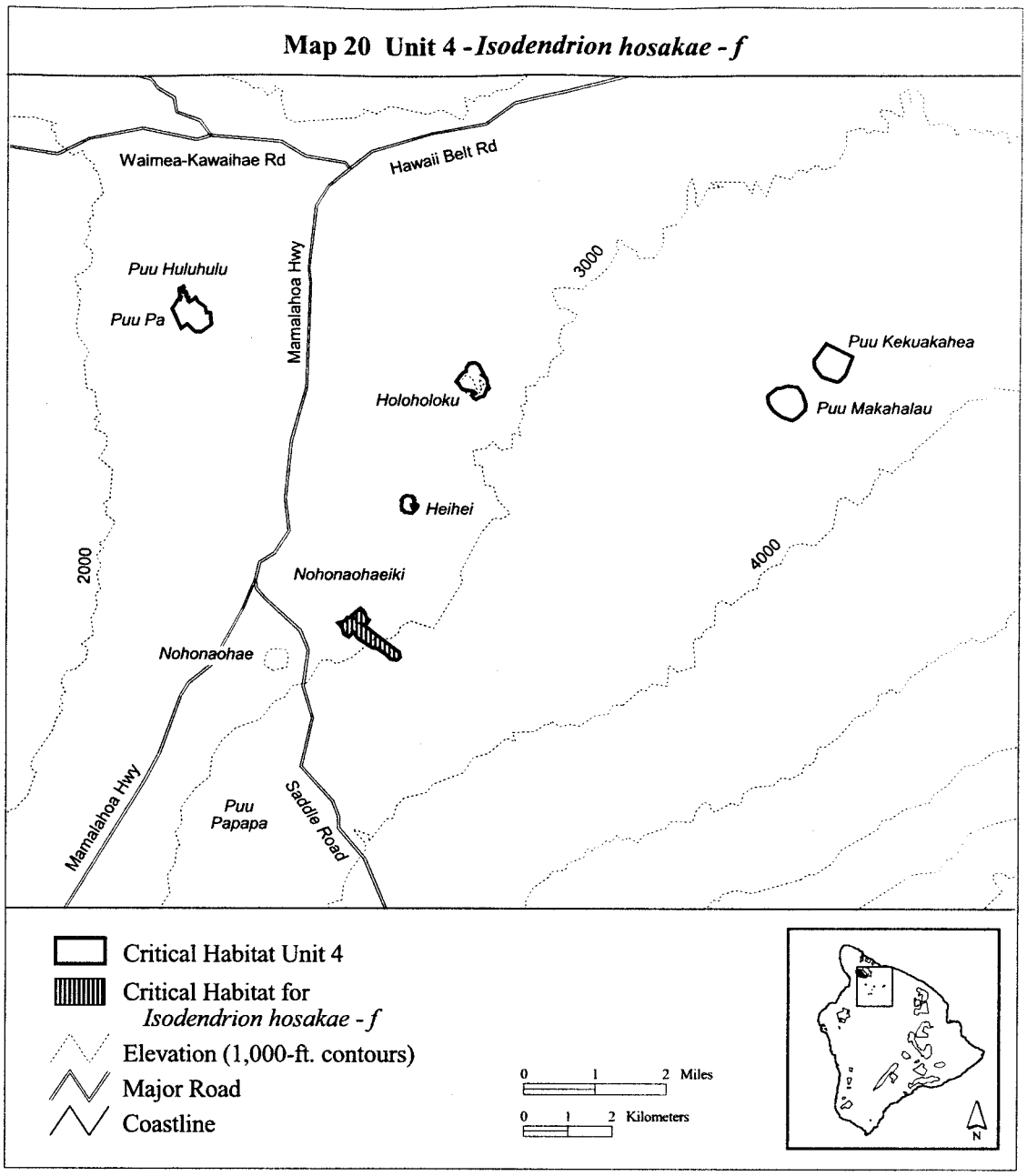
(ii) **Note:** Map 19 follows:



(20) Hawaii 4—*Isodendrion hosakae*—f (51 ha, 127 ac)

(i) Unit consists of the following 27 boundary points: Start at 221456, 2205056; 221315, 2205089; 220996, 2205294; 220895, 2205435; 220799, 2205324; 220680, 2205394; 220645, 2205535; 220550, 2205636; 220701, 2205687; 220754, 2205770; 220904, 2205756; 220861, 2205816; 221058, 2205989; 221139, 2205911; 221195, 2205756; 221253, 2205717; 221216, 2205641; 221179, 2205613; 221095, 2205611; 221197, 2205553; 221326, 2205451; 221675, 2205188; 221929, 2204996; 221948, 2204869; 221871, 2204802; 221737, 2204828; 221610, 2204957; return to starting point.

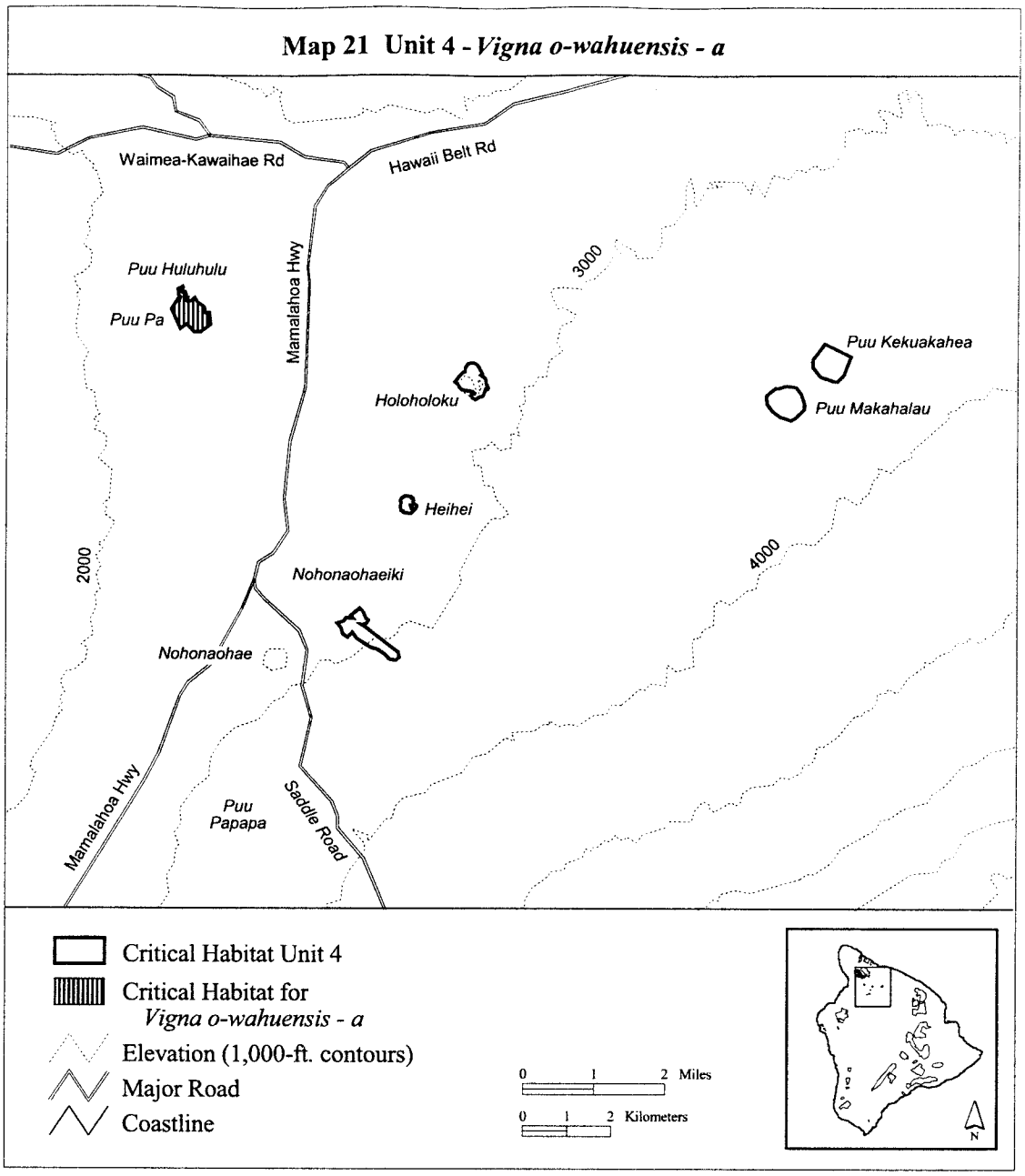
(ii) **Note:** Map 20 follows:



(21) Hawaii 4—*Vigna o-wahuensis*—a (49 ha, 121 ac)

(i) Unit consists of the following 30 boundary points: Start at 216918, 2213235; 217016, 2213305; 217029, 2213274; 217005, 2213247; 217021, 2213158; 217073, 2213172; 217095, 2213120; 217071, 2213088; 217094, 2213045; 217129, 2213041; 217123, 2212977; 217141, 2212945; 217161, 2212966; 217207, 2212974; 217303, 2213051; 217353, 2212944; 217455, 2212885; 217511, 2212825; 217544, 2212704; 217624, 2212704; 217658, 2212443; 217423, 2212270; 217284, 2212268; 217105, 2212451; 216974, 2212346; 216772, 2212797; 216900, 2213009; 216946, 2212994; 216966, 2213060; 216928, 2213088; return to starting point.

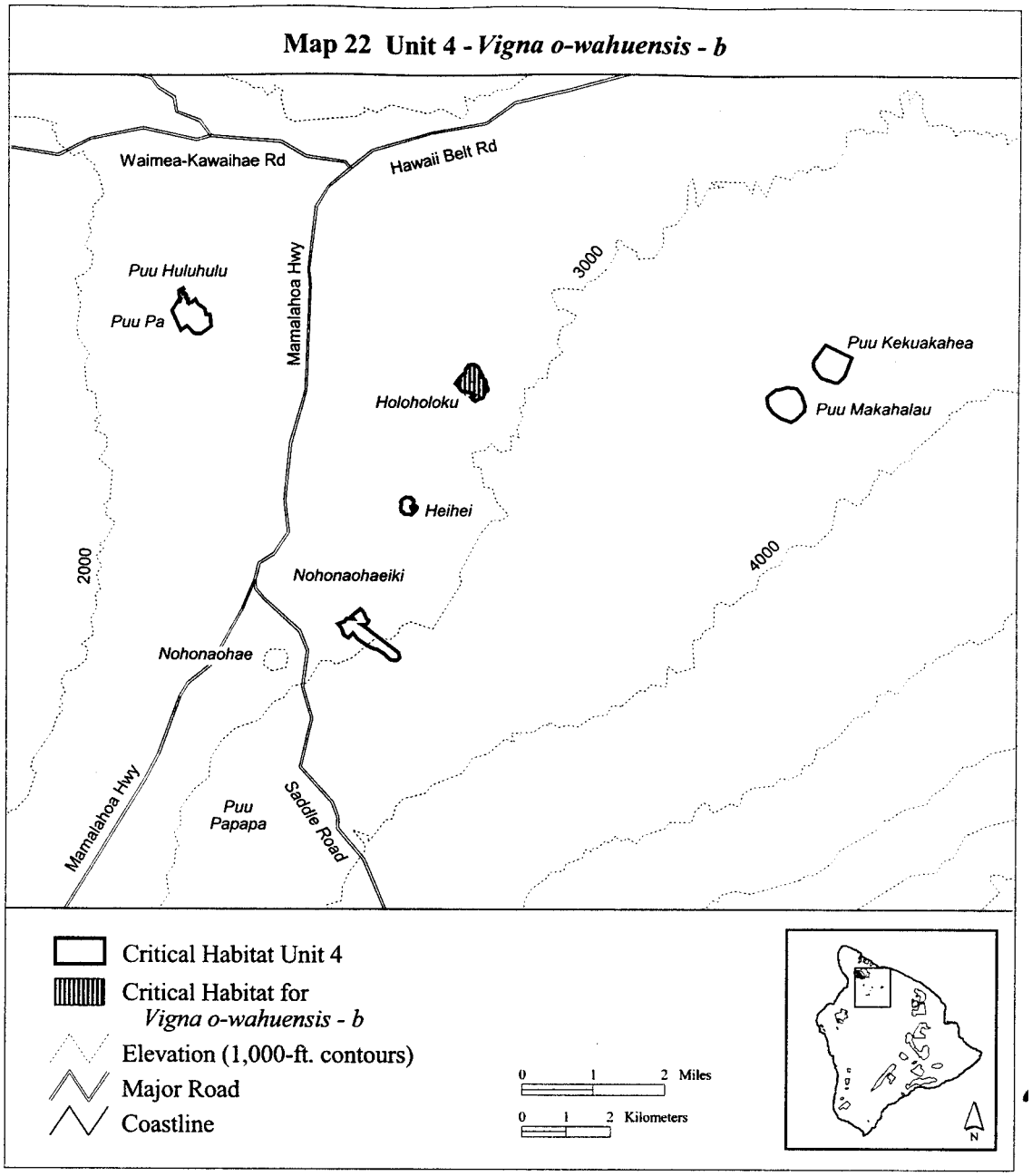
(ii) **Note:** Map 21 follows:



(22) Hawaii 4—*Vigna o-wahuensis*—b (35 ha, 87 ac)

(i) Unit consists of the following 32 boundary points: Start at 223492, 2211567; 223608, 2211572; 223691, 2211528; 223727, 2211464; 223811, 2211316; 223763, 2211291; 223859, 2211232; 223887, 2211182; 223881, 2211116; 223938, 2211006; 223918, 2210977; 223876, 2210984; 223832, 2210851; 223809, 2210816; 223729, 2210799; 223636, 2210739; 223556, 2210796; 223552, 2210877; 223614, 2210869; 223630, 2210891; 223572, 2210924; 223506, 2210932; 223418, 2210946; 223338, 2210965; 223296, 2211003; 223244, 2211091; 223188, 2211145; 223294, 2211291; 223359, 2211352; 223406, 2211368; 223414, 2211415; 223415, 2211453; return to starting point.

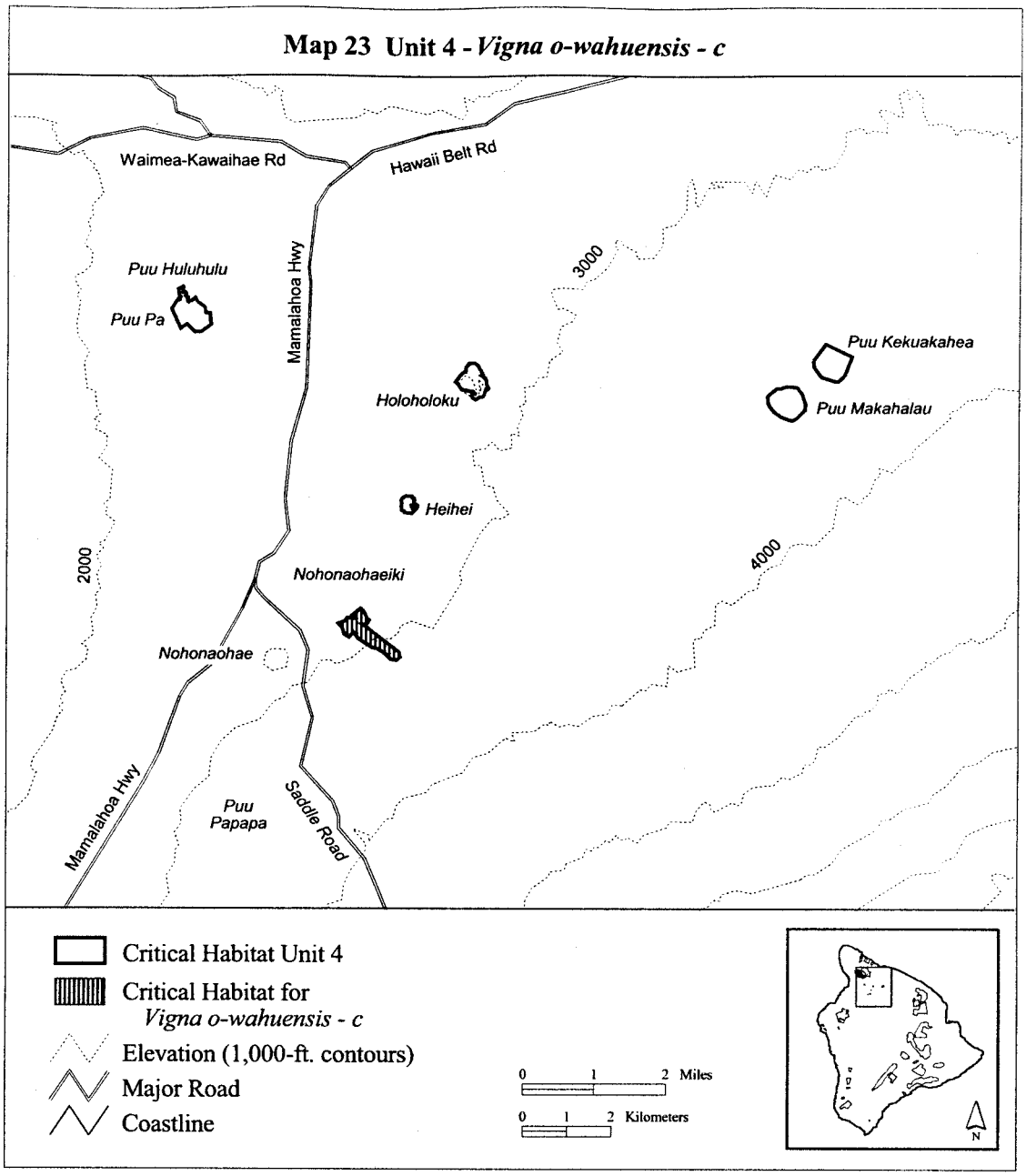
(ii) **Note:** Map 22 follows:



(23) Hawaii 4—*Vigna o-wahuensis*—c (51 ha, 127 ac)

(i) Unit consists of the following 27 boundary points: Start at 221456, 2205056; 221315, 2205089; 220996, 2205294; 220895, 2205435; 220799, 2205324; 220680, 2205394; 220645, 2205535; 220550, 2205636; 220701, 2205687; 220754, 2205770; 220904, 2205756; 220861, 2205816; 221058, 2205989; 221139, 2205911; 221195, 2205756; 221253, 2205717; 221216, 2205641; 221179, 2205613; 221095, 2205611; 221197, 2205553; 221326, 2205451; 221675, 2205188; 221929, 2204996; 221948, 2204869; 221871, 2204802; 221737, 2204828; 221610, 2204957; return to starting point.

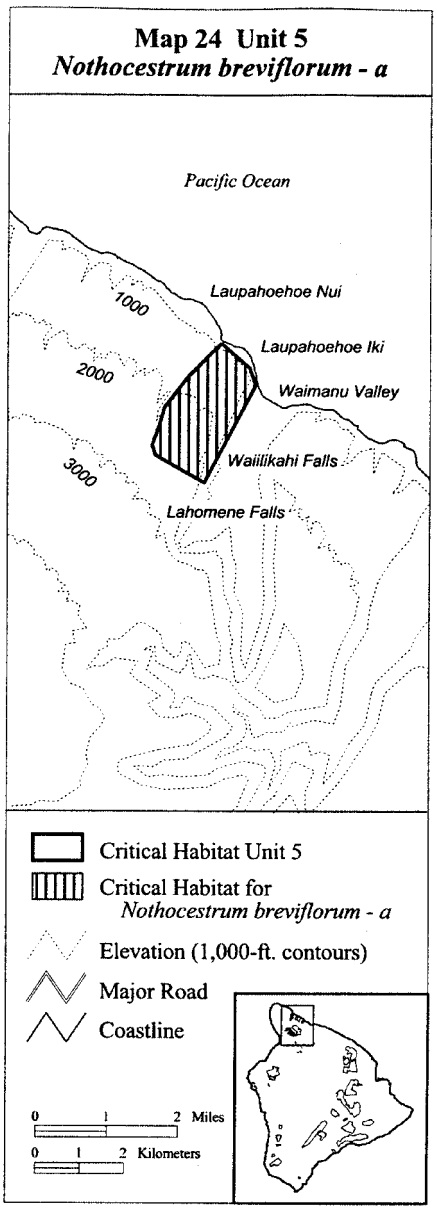
(ii) **Note:** Map 23 follows:


Map 23 Unit 4 - *Vigna o-wahuensis - c*
Waimea-Kawaihae Rd
Hawaii Belt Rd
Mamalahoa Hwy
Puu Huluhulu
Puu Pa
3000
Puu Kekuakahea
Puu Makahalau
Holoholoku
Heihei
2000
4000
Nohonaohaeiki
Nohonaohae
Mamalahoa Hwy
Puu Papapa
Saddle Road
Critical Habitat Unit 4
Critical Habitat for *Vigna o-wahuensis - c*
Elevation (1,000-ft. contours)
Major Road
Coastline
0 1 2 Miles
0 1 2 Kilometers
N

(24) Hawaii 5—*Nothocestrum breviflorum*—a (403 ha, 995 ac)

(i) Unit consists of the following 10 boundary points: Start at 223325, 2230961; 223717, 2230611; 223961, 2230395; 224099, 2230006; 222943, 2227775; 221847, 2228401; 221769, 2228638; 221914, 2229066; 222052, 2229490; 222606, 2230217; return to starting point.

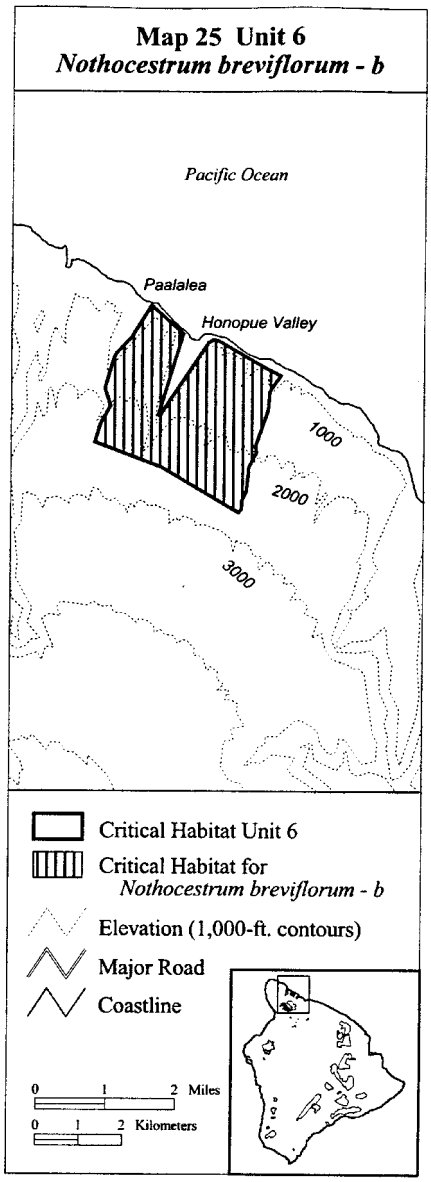
(ii) **Note:** Map 24 follows:



(25) Hawaii 6—*Nothocestrum breviflorum*—*b* (1,113 ha, 2,750 ac)

(i) Unit consists of the following 29 boundary points: Start at 217283, 2233128; 217629, 2233499; 218093, 2234242; 218828, 2233584; 218277, 2231773; 218266, 2231685; 218291, 2231675; 219411, 2233375; 219521, 2233443; 219655, 2233414; 220288, 2233050; 220656, 2232834; 221080, 2232612; 220999, 2232500; 220822, 2232233; 220802, 2231818; 220498, 2230963; 220529, 2230813; 220350, 2230453; 220296, 2229915; 220205, 2229697; 220190, 2229504; 220122, 2229416; 218354, 2230452; 216792, 2231049; 216919, 2231470; 217150, 2231890; 217026, 2232314; 217214, 2232981; return to starting point.

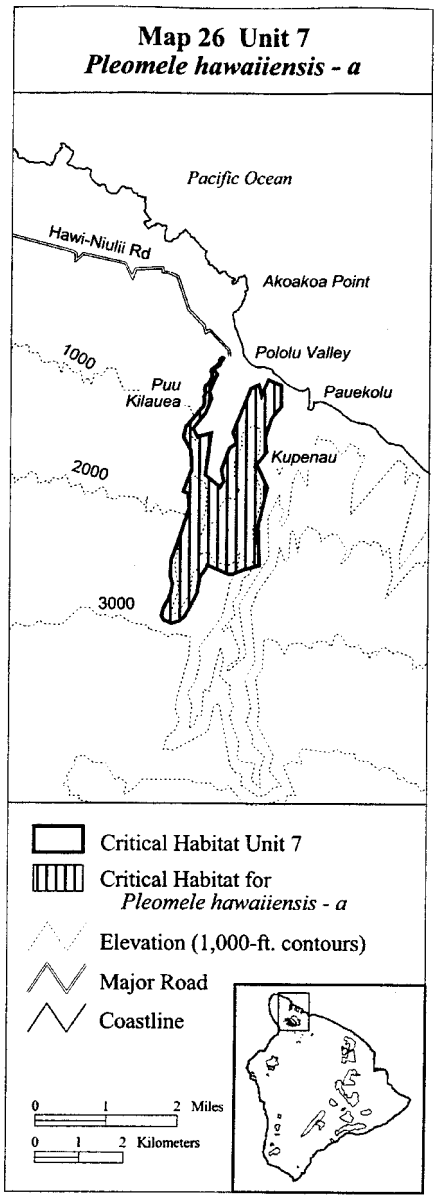
(ii) **Note:** Map 25 follows:



(26) Hawaii 7—*Pleomele hawaiiensis*—a (677 ha, 1,673 ac)

(i) Unit consists of the following 92 boundary points: Start at 213884, 2231521; 213842, 2231562; 213785, 2231427; 213666, 2231261; 213601, 2230893; 213453, 2230596; 213305, 2230350; 213204, 2230269; 213030, 2230210; 212859, 2230290; 212807, 2230381; 212812, 2230467; 212835, 2230541; 212877, 2230637; 212939, 2230736; 213011, 2230905; 213041, 2231129; 212997, 2231275; 213007, 2231651; 213147, 2232011; 213409, 2232858; 213387, 2233177; 213269, 2233218; 213462, 2233730; 213453, 2233976; 213443, 2234090; 213442, 2234162; 213373, 2234284; 213315, 2234388; 213271, 2234480; 213320, 2234721; 213371, 2234760; 213429, 2234835; 213464, 2234878; 213513, 2234943; 213559, 2235003; 213642, 2235106; 213659, 2235121; 213685, 2235147; 213724, 2235205; 213745, 2235328; 213734, 2235407; 213765, 2235497; 213747, 2235588; 213771, 2235662; 213817, 2235706; 213849, 2235729; 213891, 2235850; 213906, 2235884; 213908, 2235940; 213886, 2235998; 213892, 2236033; 214009, 2236115; 214062, 2236170; 214080, 2236202; 214083, 2236227; 214091, 2236260; 214140, 2236304; 214165, 2236296; 214069, 2236123; 213954, 2236053; 214016, 2235921; 213862, 2235537; 213901, 2235357; 213770, 2235029; 213484, 2234675; 213587, 2234485; 213891, 2234567; 213773, 2233608; 214112, 2233331; 214183, 2233458; 214141, 2233713; 214320, 2234212; 214483, 2234338; 214390, 2234581; 214802, 2235593; 214978, 2235684; 215037, 2235434; 215190, 2235808; 215483, 2235675; 215479, 2235179; 215269, 2234894; 215127, 2234463; 215158, 2234131; 214937, 2233848; 215182, 2233321; 214973, 2232427; 215018, 2231531; 214640, 2231432; 214495, 2231365; 214382, 2231329; 214332, 2231335; return to starting point.

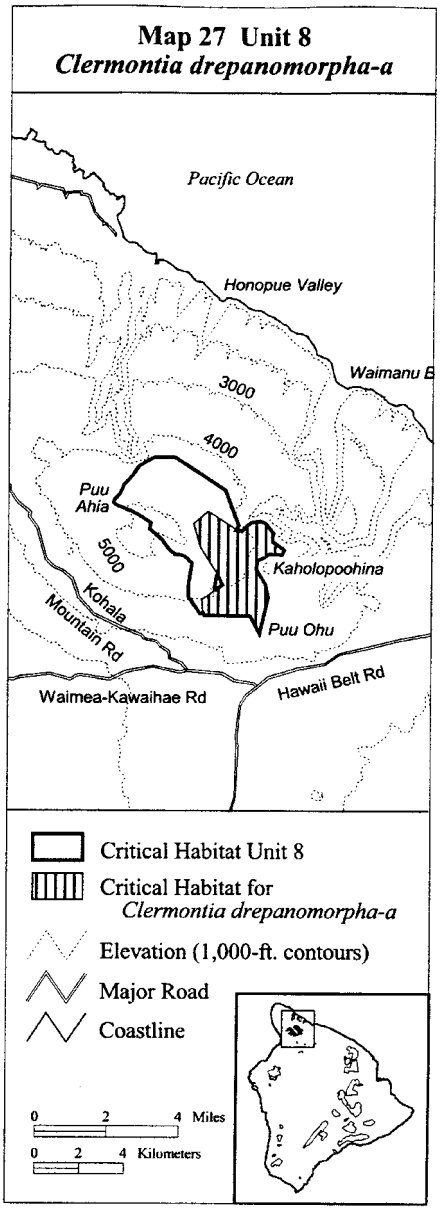
(ii) **Note:** Map 26 follows:



(27) Hawaii 8—*Clermontia drepanomorpha*—a (1,906 ha, 4,709 ac)

(i) Unit consists of the following 30 boundary points: Start at 214766, 2225082; 215176, 2225539; 215405, 2225905; 215716, 2226097; 216131, 2226318; 217035, 2226328; 218354, 2225470; 219286, 2224824; 219895, 2223228; 218899, 2220922; 218806, 2219907; 218769, 2219298; 218197, 2219271; 217672, 2220036; 217653, 2220562; 217819, 2221512; 217520, 2221821; 217378, 2221880; 217229, 2221937; 217063, 2221937; 216768, 2222158; 216463, 2222582; 215919, 2223071; 215956, 2223348; 215550, 2223643; 215070, 2223892; 214393, 2224156; 214299, 2224261; 214335, 2224407; 214570, 2224647; return to starting point.

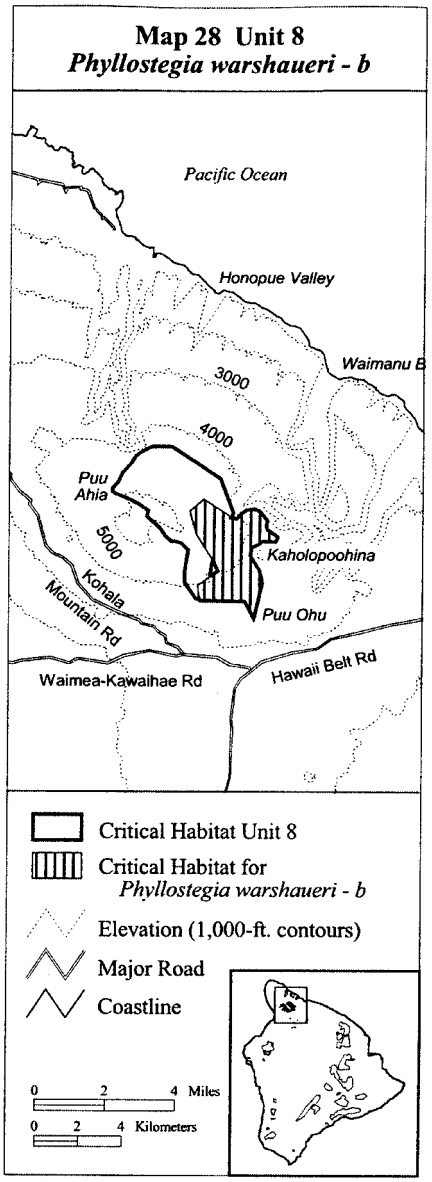
(ii) **Note:** Map 27 follows:



(28) Hawaii 8—*Phyllostegia warshaueri*—b (1,177 ha, 2,908 ac)

(i) Unit consists of the following 27 boundary points: Start at 218326, 2219182; 218265, 2219899; 218572, 2220103; 219186, 2220554; 218961, 2221066; 218183, 2222274; 217900, 2223294; 218531, 2223871; 219842, 2223011; 220052, 2222981; 220255, 2223197; 220513, 2223371; 220883, 2223437; 221142, 2223301; 221469, 2222879; 221431, 2222712; 221443, 2222484; 221956, 2222124; 221860, 2221917; 221276, 2221939; 221020, 2221746; 220775, 2221645; 220679, 2221263; 221125, 2220585; 221255, 2220003; 220857, 2218373; 220445, 2219168; return to starting point.

(ii) **Note:** Map 28 follows:



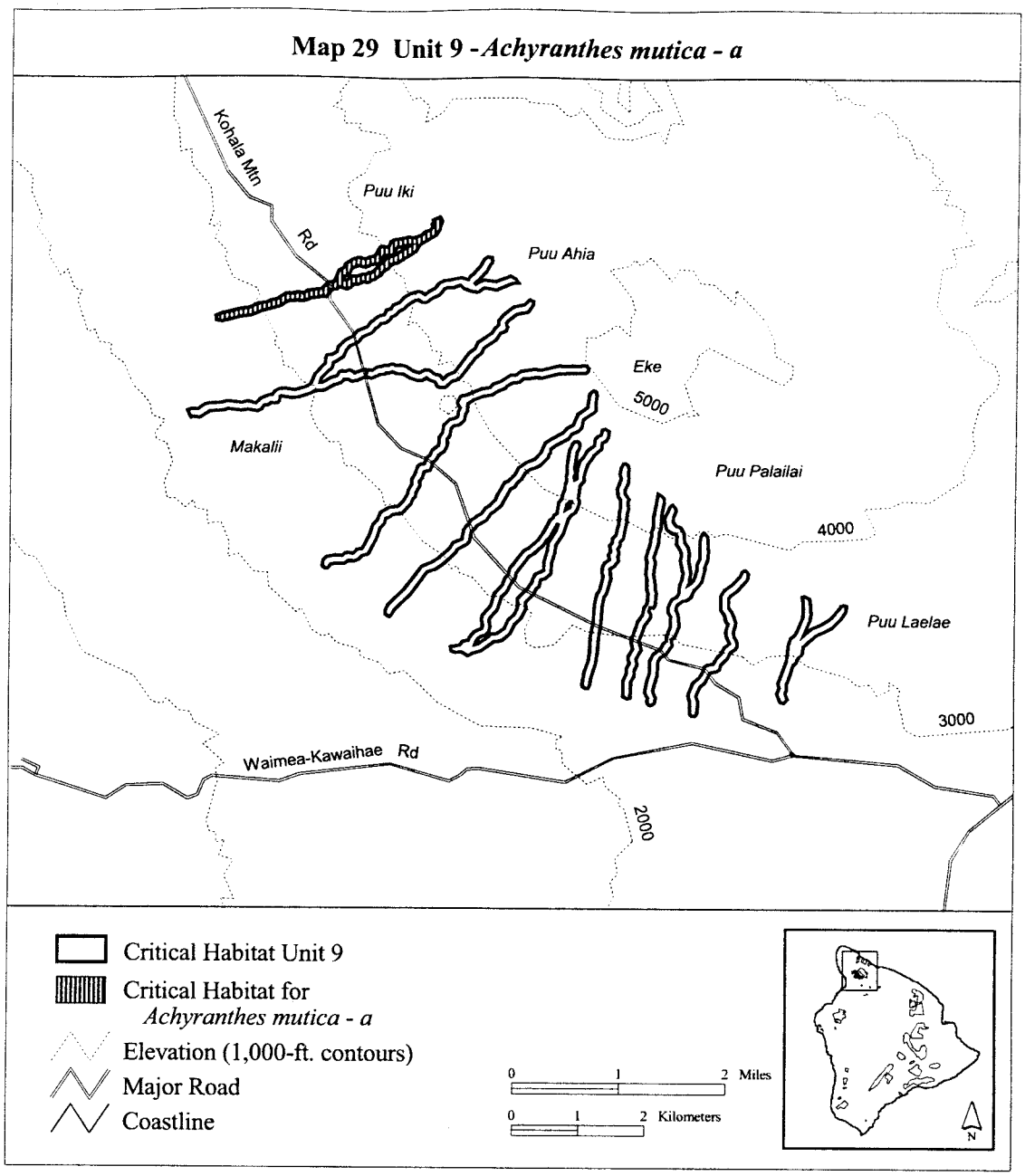
(29) Hawaii 9—*Achyranthes mutica*—a (63 ha, 157 ac)

(i) Unit consists of the following 82 boundary points: Start at 211908, 2224450; 211840, 2224339; 211562, 2224160; 211477, 2224142; 211418, 2224067; 211356, 2224034; 211319, 2223969; 211271, 2223951; 211220, 2223903; 211172, 2223900; 211144, 2223870; 211106, 2223860; 211053, 2223873; 210980, 2223837; 210916, 2223837; 210864, 2223788; 210802, 2223764; 210694, 2223796; 210650, 2223761; 210578, 2223756; 210489, 2223646; 210425, 2223652; 210359, 2223635; 210254, 2223626; 210218, 2223598; 210154, 2223584; 210056, 2223595; 209922, 2223585; 209805, 2223507; 209521, 2223432; 209365, 2223366; 209228, 2223347; 208930, 2223267; 208835, 2223286; 208830, 2223355; 208907, 2223389; 209205,

2223465; 209333, 2223482; 209483, 2223546; 209548, 2223555; 209606, 2223568; 209652, 2223593; 209761, 2223619; 209887, 2223699; 209956, 2223703; 209996, 2223703; 210057, 2223716; 210148, 2223704; 210219, 2223742; 210431, 2223770; 210529, 2223870; 210603, 2223875; 210683, 2224047; 210751, 2224079; 210773, 2224145; 210846, 2224182; 210875, 2224212; 210992, 2224241; 211084, 2224220; 211131, 2224248; 211225, 2224269; 211290, 2224395; 211339, 2224415; 211428, 2224394; 211464, 2224477; 211515, 2224517; 211607, 2224525; 211733, 2224561; 211824, 2224547; 211926, 2224590; 211986, 2224640; 212066, 2224670; 212094, 2224717; 212088, 2224750; 212115, 2224806; 212108, 2224823; 212219, 2224872; 212243, 2224820; 212243, 2224778; 212216, 2224731; 212213, 2224684; 212160, 2224595; return to starting point.

(ii) Excluding one area bounded by the following 31 points (8 ha, 19 ac): Start at 211235, 2224062; 211172, 2224016; 211129, 2224012; 211093, 2223986; 211042, 2223992; 210945, 2223954; 210872, 2223952; 210792, 2223885; 210751, 2223908; 210770, 2223960; 210841, 2223994; 210870, 2224063; 210928, 2224102; 210992, 2224116; 211080, 2224094; 211174, 2224135; 211293, 2224156; 211335, 2224196; 211345, 2224253; 211373, 2224282; 211439, 2224272; 211501, 2224297; 211562, 2224404; 211619, 2224407; 211657, 2224425; 211731, 2224441; 211766, 2224436; 211506, 2224267; 211403, 2224240; 211340, 2224159; 211274, 2224128; return to starting point.

(iii) **Note:** Map 29 follows:

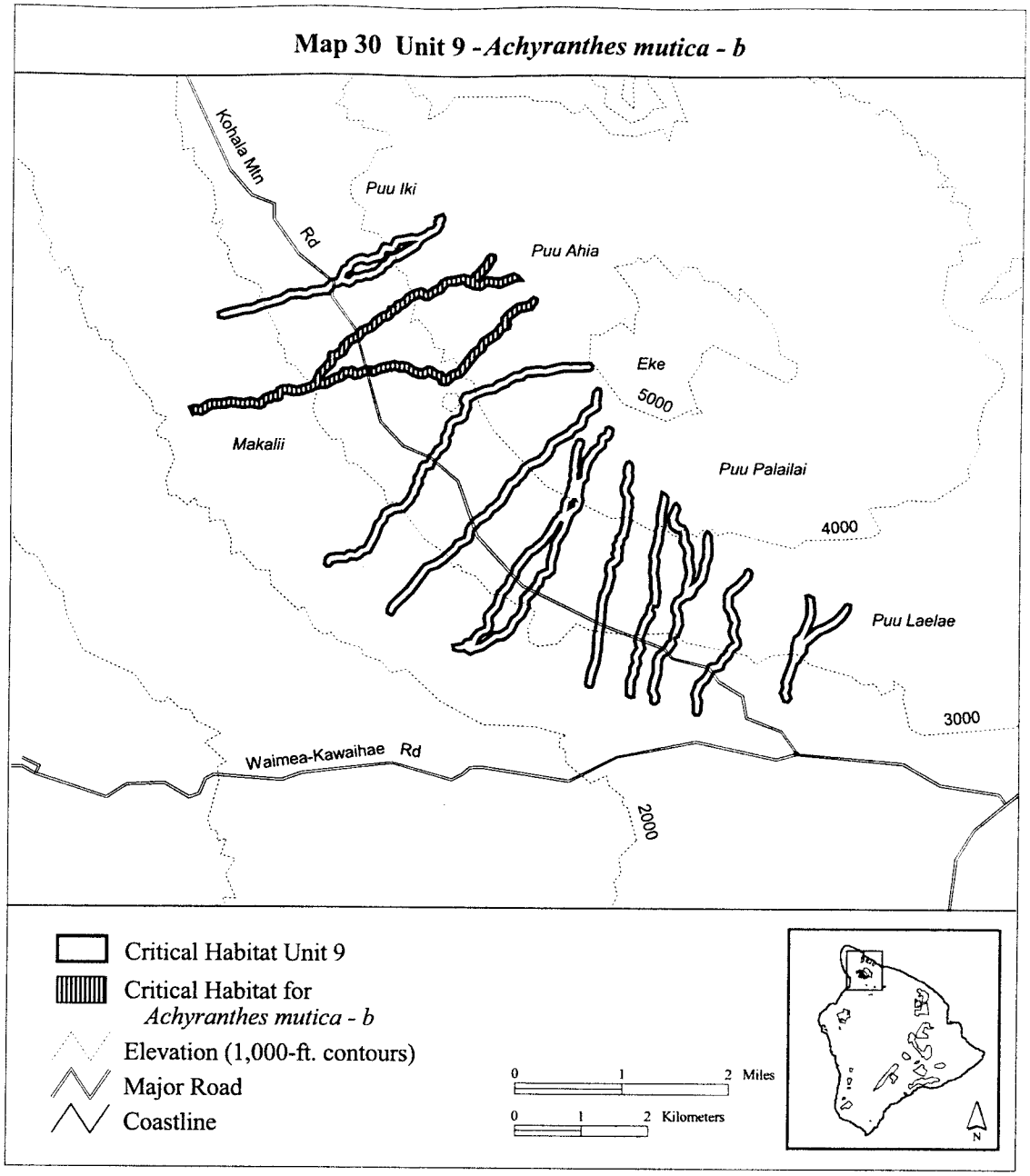


(30) Hawaii 9—*Achyranthes mutica*—b (124 ha, 306 ac)

(i) Unit consists of the following 211 boundary points: Start at 211305, 2223364; 211375, 2223384; 211403, 2223445; 211471, 2223464; 211508, 2223521; 211605, 2223565; 211667, 2223634; 211757, 2223690; 211885, 2223733; 211931, 2223724; 211986, 2223686; 212068, 2223746; 212139, 2223774; 212198, 2223854; 212277, 2223900; 212406, 2223912; 212539, 2223951; 212645, 2223915; 212681, 2223974; 212720, 2223994; 212836, 2224123; 212883, 2224222; 212935, 2224265; 213002, 2224253; 213015, 2224188; 212983, 2224154; 212926, 2224043; 212826, 2223931; 212746, 2223863; 212766, 2223847; 212819, 2223884; 212890, 2223915; 213075, 2223887; 213289, 2223971; 213371, 2223934; 213409, 2223871; 213316, 2223863; 213077, 2223764; 212894, 2223794; 212820, 2223740; 212780, 2223729; 212674, 2223741; 212626, 2223773; 212579, 2223781; 212533, 2223829; 212510, 2223825; 212439, 2223796; 212348, 2223795; 212294, 2223777; 212205, 2223673; 212125, 2223641; 212013, 2223563; 211957, 2223565; 211888, 2223610; 211803, 2223577; 211717, 2223519; 211686, 2223470; 211593, 2223426; 211549, 2223371; 211491, 2223344; 211458, 2223292; 211397, 2223257; 211323, 2223241; 211283, 2223193; 211242, 2223171; 211187, 2223097; 211045, 2223037; 210978, 2222957; 210854, 2222894; 210790, 2222817; 210763, 2222740; 210607, 2222645; 210591, 2222566; 210546, 2222536; 210433, 2222414; 210413, 2222350; 210443, 2222344; 210571, 2222422; 210666, 2222448; 210691, 2222500; 210725, 2222521; 210793, 2222517; 210852, 2222539; 210905, 2222517; 210925, 2222488; 211073, 2222553; 211191, 2222530; 211279, 2222586; 211348, 2222589; 211378, 2222610; 211441, 2222613; 211494, 2222638; 211568, 2222607; 211619, 2222618; 211712, 2222598; 211828, 2222527; 211912, 2222500; 212003, 2222547; 212069, 2222542; 212147, 2222486; 212228, 2222467; 212274, 2222404; 212348, 2222471; 212448, 2222511; 212668, 2222802; 212761, 2222874; 212802, 2222963; 213012, 2223108; 213060, 2223184; 213115, 2223225; 213115, 2223296; 213180, 2223380; 213342, 2223505; 213502, 2223538; 213592, 2223617; 213636, 2223593; 213643, 2223539; 213565, 2223434; 213394, 2223394; 213253, 2223285; 213234, 2223260; 213253, 2223205; 213231, 2223147; 213152, 2223106; 213084, 2223011; 212891, 2222882; 212863, 2222805; 212756, 2222719; 212535, 2222428; 212497, 2222398; 212412, 2222369; 212308, 2222279; 212217, 2222281; 212186, 2222304; 212160, 2222365; 212097, 2222377; 212025, 2222427; 211944, 2222384; 211894, 2222380; 211782, 2222415; 211678, 2222482; 211644, 2222482; 211575, 2222486; 211508, 2222513; 211448, 2222492; 211413, 2222496; 211386, 2222474; 211328, 2222470; 211194, 2222417; 211089, 2222433; 210981, 2222380; 210899, 2222365; 210832, 2222399; 210774, 2222396; 210736, 2222348; 210624, 2222314; 210481, 2222229; 210331, 2222220; 210250, 2222177; 210082, 2222125; 209980, 2222118; 209833, 2222142; 209813, 2222131; 209804, 2222071; 209776, 2222040; 209729, 2222030; 209675, 2222040; 209640, 2222012; 209577, 2222003; 209527, 2221938; 209471, 2221916; 209325, 2221943; 209234, 2221919; 209020, 2221948; 208952, 2221925; 208760, 2221918; 208599, 2221816; 208492, 2221827; 208460, 2221817; 208410, 2221927; 208484, 2221948; 208565, 2221936; 208676, 2222014; 208732, 2222035; 208927, 2222043; 209015, 2222068; 209236, 2222040; 209325, 2222064; 209449, 2222035; 209526, 2222112; 209647, 2222157; 209695, 2222158; 209723, 2222210; 209793, 2222256; 209892, 2222262; 210029, 2222239; 210205, 2222289; 210267, 2222326; 210332, 2222479; 210486, 2222645; 210485, 2222700; 210505, 2222750; 210534, 2222771; 210592, 2222771; 210670, 2222819; 210675, 2222877; 210775, 2222984; 210911, 2223056; 210970, 2223132; 211117, 2223195; 211175, 2223273; return to starting point.

(ii) Excluding one area bounded by the following five points (<1 ha, <1 ac): Start at 211099, 2222496; 211109, 2222499; 211114, 2222499; 211118, 2222497; 211103, 2222479; return to starting point.

(iii) **Note:** Map 30 follows:

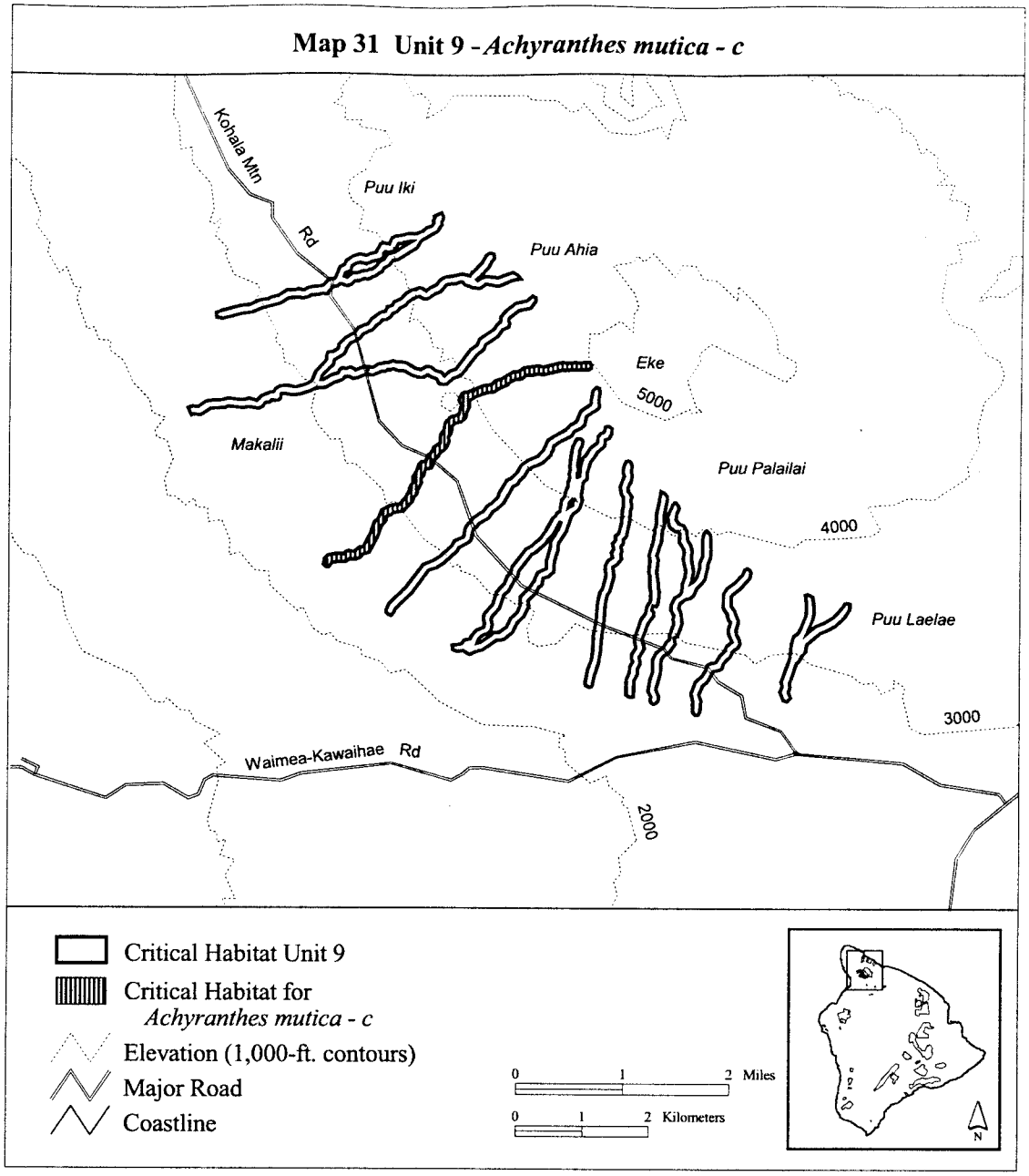


(31) Hawaii 9—*Achyranthes mutica*—c (67 ha, 166 ac)

(i) Unit consists of the following 114 boundary points: Start at 214447, 2222623; 214480, 2222585; 214474, 2222534; 214441, 2222505; 214055, 2222500; 213775, 2222429; 213683, 2222443; 213605, 2222423; 213500, 2222421; 213445, 2222367; 213339, 2222356; 213251, 2222303; 213225, 2222268; 213112, 2222232; 213029, 2222167; 212905, 2222150; 212752, 2222091; 212654, 2222033; 212657, 2221930; 212627, 2221876; 212610, 2221781; 212532, 2221714; 212449, 2221692; 212403, 2221653; 212384, 2221545; 212341, 2221489; 212348, 2221423; 212328, 2221349; 212298, 2221305; 212213, 2221243; 212181, 2221177; 212126, 2221131; 212117, 2221072; 212086, 2221019; 212000, 2220995; 211970, 2220899; 211930, 2220851; 211934, 2220790; 211874, 2220666; 211868, 2220609; 211830, 2220572; 211804, 2220499; 211669, 2220360; 211517, 2220331; 211480, 2220298; 211424, 2220284; 211404, 2220203; 211334, 2220125; 211281, 2219976; 211155, 2219728; 211059, 2219692; 211026, 2219657; 210955, 2219623; 210865, 2219627; 210798, 2219584; 210675, 2219589; 210587, 2219571; 210551, 2219507; 210505, 2219505; 210465, 2219555; 210482, 2219632; 210532, 2219684; 210655, 2219709; 210771, 2219702; 210805, 2219739; 210843, 2219752; 210929, 2219741; 210992, 2219793; 211068, 2219818; 211172, 2220027; 211227, 2220180; 211295, 2220255; 211335, 2220366; 211461, 2220440; 211611, 2220468; 211703, 2220566; 211753, 2220665; 211761, 2220714; 211810, 2220794; 211811, 2220884; 211862, 2220954; 211895, 2221066; 211936, 2221107; 212003, 2221115; 212026, 2221204; 212080, 2221243; 212124, 2221326; 212220, 2221402; 212224, 2221522; 212274, 2221597; 212292, 2221705; 212388, 2221798; 212459, 2221812; 212503, 2221840; 212510,

2221905; 212540, 2221974; 212507, 2222024; 212501, 2222072; 212543, 2222144; 212583, 2222162; 212627, 2222158; 212872, 2222265; 212987, 2222280; 213048, 2222334; 213150, 2222369; 213305, 2222475; 213389, 2222475; 213467, 2222537; 213685, 2222564; 213761, 2222548; 214042, 2222616; 214157, 2222613; 214239, 2222618; 214319, 2222611; return to starting point.

(ii) **Note:** Map 31 follows:

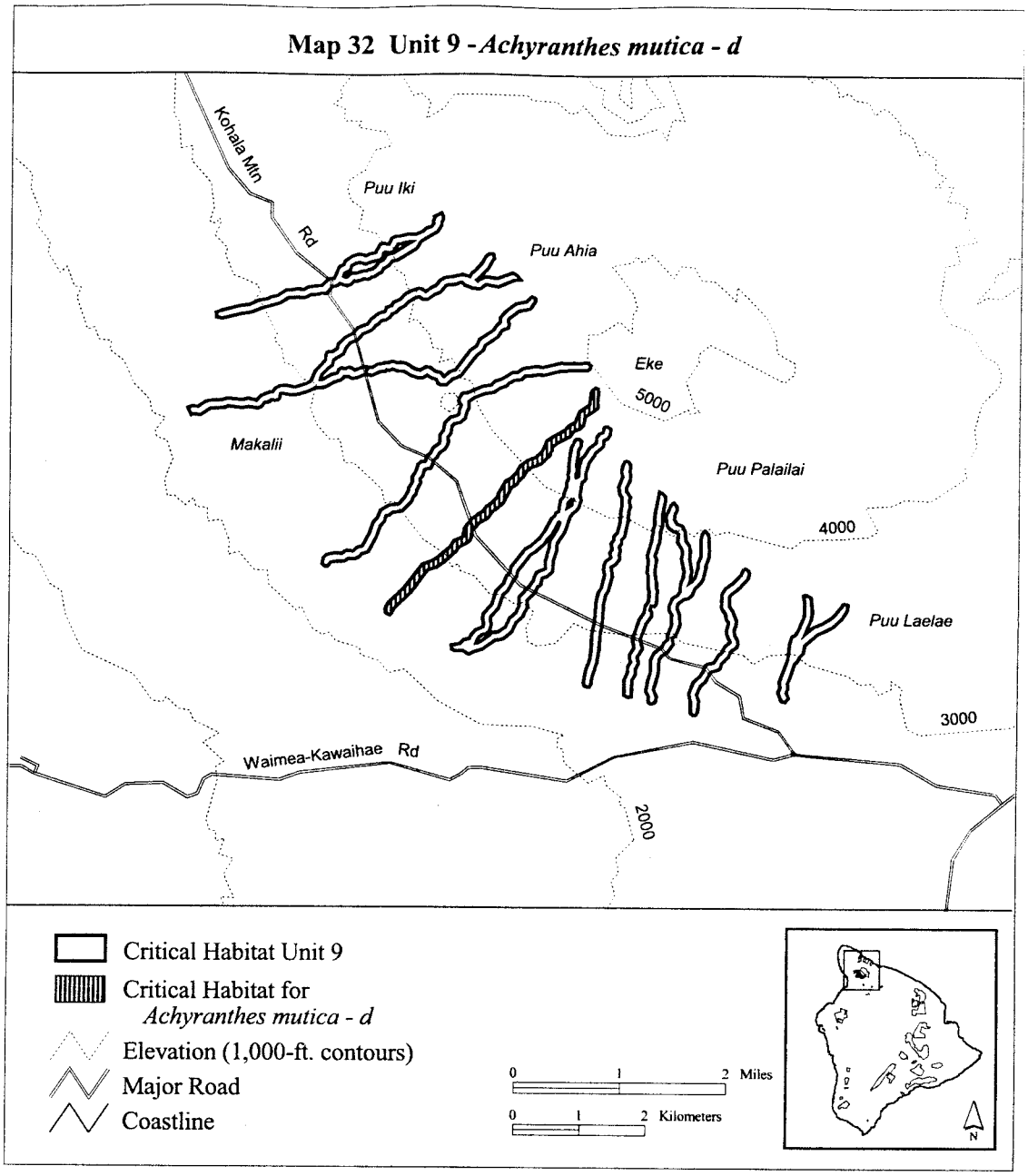


(32) Hawaii 9—*Achyranthes mutica*—d (58 ha, 143 ac)

(i) Unit consists of the following 83 boundary points: Start at 214438, 2221820; 214413, 2221797; 214386, 2221680; 214341, 2221624; 214236, 2221577; 214192, 2221506; 214008, 2221412; 213919, 2221344; 213917, 2221296; 213890, 2221262; 213884, 2221222; 213758, 2221097; 213685, 2221055; 213605, 2221031; 213535, 2220982; 213480, 2220882; 213407, 2220820; 213384, 2220774; 213316, 2220740; 213178, 2220485; 213084, 2220393; 213022, 2220355; 212956, 2220257; 212808, 2220171; 212777, 2220117; 212741, 2220090; 212715, 2220056; 212695, 2219935; 212668, 2219888; 212516, 2219808; 212489, 2219754; 212288, 2219567; 212179, 2219502; 212052, 2219459; 211790, 2219103; 211552, 2218878; 211513, 2218800; 211486, 2218774; 211451, 2218791; 211424, 2218818; 211424, 2218878; 211459, 2218955; 211700, 2219183; 211969, 2219547; 212135, 2219614; 212226, 2219670; 212391, 2219825; 212443, 2219903; 212578, 2219968; 212603, 2220105; 212654, 2220177; 212688, 2220198; 212709, 2220249; 212787, 2220293; 212824, 2220334; 212873, 2220352; 212940, 2220443; 213005, 2220484; 213090,

2220567; 213108, 2220631; 213225, 2220827; 213293, 2220862; 213379, 2220952; 213439, 2221062; 213540, 2221136; 213683, 2221191; 213768, 2221286; 213838, 2221437; 213939, 2221510; 214108, 2221602; 214163, 2221673; 214261, 2221717; 214322, 2221877; 214479, 2221995; 214474, 2222036; 214504, 2222187; 214564, 2222248; 214601, 2222232; 214615, 2222160; 214609, 2222121; 214595, 2222026; 214602, 2221949; 214578, 2221912; return to starting point.

(ii) **Note:** Map 32 follows:



(33) Hawaii 9—*Achyranthes mutica*—e (96 ha, 238 ac)

(i) Unit consists of the following 99 boundary points: Start at 214237, 2221396; 214246, 2221433; 214279, 2221468; 214325, 2221468; 214358, 2221436; 214355, 2221358; 214318, 2221305; 214305, 2221223; 214287, 2221049; 214300, 2220991; 214278, 2220930; 214286, 2220881; 214313, 2220902; 214322, 2221047; 214365, 2221179; 214410, 2221218; 214476, 2221333; 214576, 2221408; 214591, 2221498; 214624, 2221541; 214679, 2221569; 214698, 2221646; 214740, 2221664; 214796, 2221627; 214793, 2221531; 214759, 2221478; 214700, 2221448; 214690, 2221357; 214573, 2221258; 214555, 2221210; 214474, 2221113; 214430, 2220938; 214431, 2220859; 214371, 2220793; 214339, 2220598; 214356, 2220538; 214326, 2220426; 214294, 2220372; 214236, 2220332; 214188, 2220269; 214118, 2220061; 214005, 2219871; 213995, 2219762; 213945, 2219600; 213933, 2219438; 213852, 2219367; 213784, 2219348; 213756, 2219241; 213719, 2219214; 213680, 2219137; 213551, 2219003; 213560, 2218908; 213486, 2218751; 213396, 2218673; 213327, 2218524; 213204, 2218429; 213145,

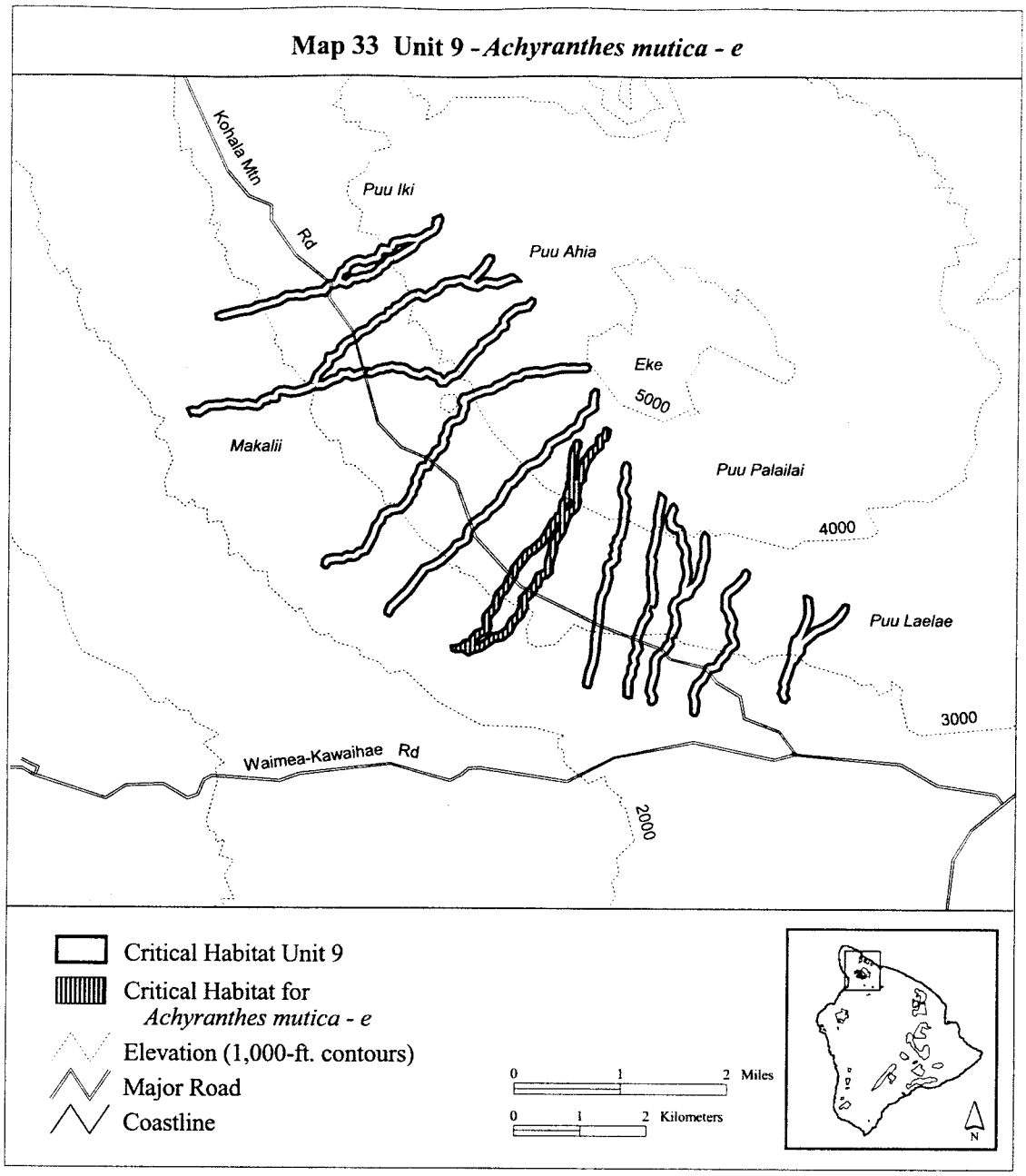
2218404; 213092, 2218406; 212882, 2218263; 212764, 2218230; 212684, 2218191; 212589, 2218244; 212485, 2218242; 212425, 2218262; 212420, 2218327; 212558, 2218345; 212607, 2218406; 212693, 2218421; 212709, 2218465; 212774, 2218551; 212890, 2218603; 212903, 2218650; 212889, 2218747; 212904, 2218803; 213028, 2218949; 213082, 2219133; 213196, 2219265; 213245, 2219371; 213290, 2219423; 213311, 2219514; 213517, 2219786; 213597, 2219831; 213729, 2219948; 213812, 2220057; 213922, 2220266; 213959, 2220297; 213979, 2220340; 214024, 2220366; 214050, 2220531; 214097, 2220597; 214097, 2220637; 214143, 2220749; 214139, 2220807; 214167, 2220862; 214158, 2220933; 214175, 2221002; 214166, 2221051; 214187, 2221243; 214206, 2221349; return to starting point.

(ii) Excluding two areas:

(A) Bounded by the following seven points (1 ha, 1 ac): Start at 214223, 2220569; 214237, 2220545; 214219, 2220515; 214216, 2220461; 214146, 2220412; 214161, 2220500; 214199, 2220523; return to starting point.

(B) Bounded by the following 42 points (38 ha, 94 ac): Start at 214049, 2220213; 214008, 2220110; 213892, 2219916; 213877, 2219786; 213826, 2219614; 213823, 2219491; 213696, 2219433; 213663, 2219365; 213649, 2219307; 213619, 2219275; 213591, 2219218; 213434, 2219056; 213440, 2218923; 213385, 2218816; 213302, 2218748; 213232, 2218602; 213126, 2218523; 213033, 2218514; 212998, 2218479; 212834, 2218368; 212794, 2218356; 212809, 2218402; 212825, 2218431; 212855, 2218461; 212888, 2218485; 212953, 2218499; 212996, 2218545; 213022, 2218636; 213007, 2218725; 213013, 2218754; 213131, 2218887; 213194, 2219087; 213261, 2219149; 213346, 2219306; 213394, 2219361; 213412, 2219449; 213602, 2219700; 213668, 2219734; 213820, 2219870; 213852, 2219933; 213913, 2219992; 214024, 2220195; return to starting point.

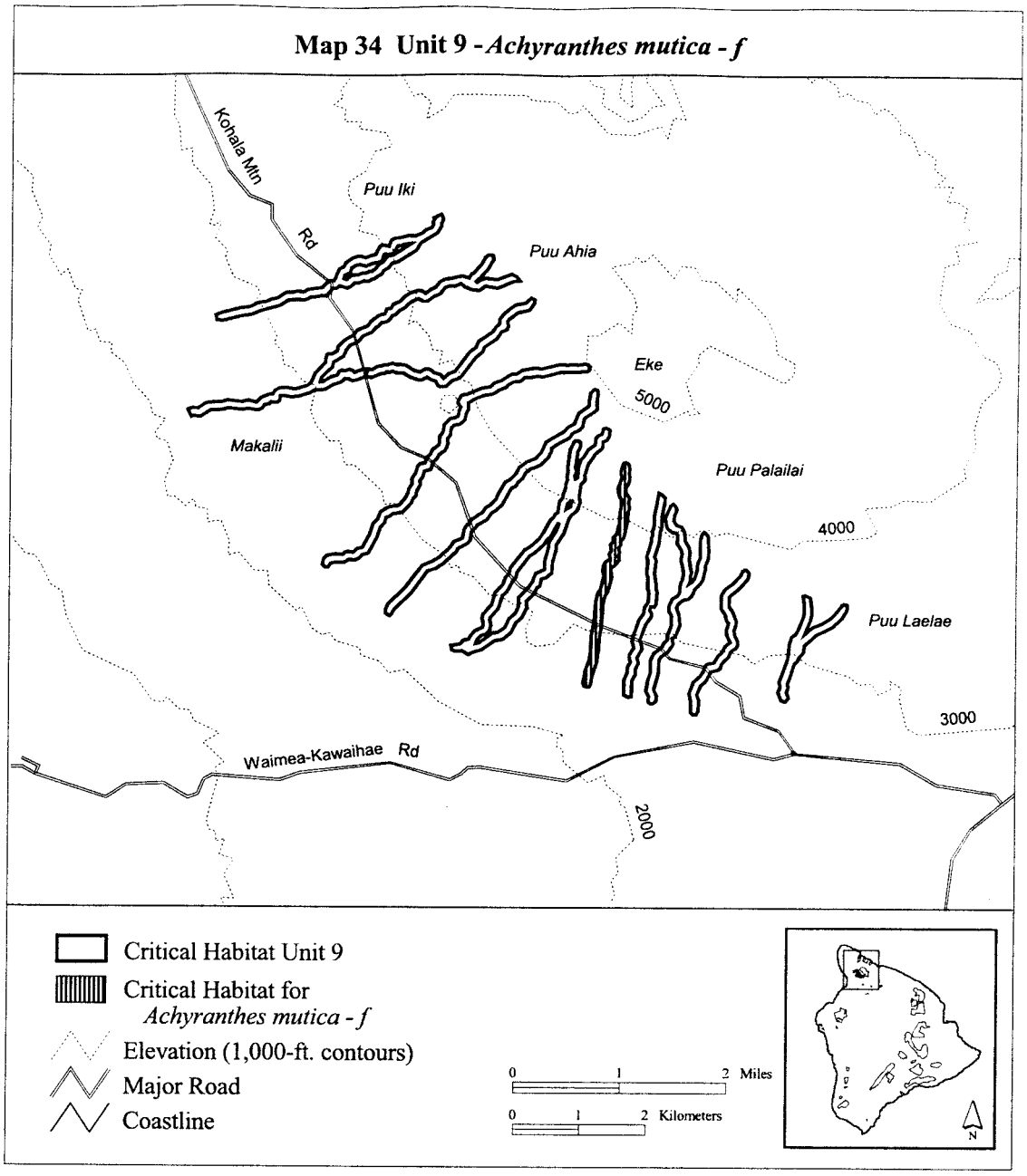
(iii) **Note:** Map 33 follows:



(34) Hawaii 9—*Achyranthes mutica*—f (43 ha, 105 ac)

(i) Unit consists of the following 65 boundary points: Start at 215029, 2221141; 215078, 2221118; 215100, 2221081; 215105, 2221047; 215092, 2220971; 215106, 2220903; 215094, 2220834; 215046, 2220727; 215049, 2220676; 215102, 2220585; 215091, 2220525; 215103, 2220441; 215078, 2220357; 215072, 2220203; 215020, 2219976; 214978, 2219936; 214975, 2219872; 214947, 2219833; 214959, 2219766; 214941, 2219705; 214948, 2219637; 214883, 2219550; 214829, 2219519; 214843, 2219377; 214782, 2219151; 214741, 2219084; 214717, 2218965; 214700, 2218708; 214660, 2218467; 214650, 2218237; 214625, 2218082; 214553, 2217870; 214527, 2217739; 214511, 2217708; 214476, 2217702; 214431, 2217728; 214417, 2217776; 214449, 2217955; 214510, 2218118; 214530, 2218247; 214540, 2218479; 214581, 2218725; 214598, 2218985; 214627, 2219125; 214669, 2219193; 214725, 2219396; 214706, 2219465; 214712, 2219549; 214738, 2219603; 214819, 2219663; 214796, 2219730; 214835, 2219788; 214819, 2219871; 214858, 2219922; 214862, 2219981; 214908, 2220033; 214951, 2220206; 214958, 2220369; 214981, 2220452; 214979, 2220577; 214947, 2220626; 214924, 2220735; 214985, 2220898; 214972, 2220976; 214987, 2221070; return to starting point.

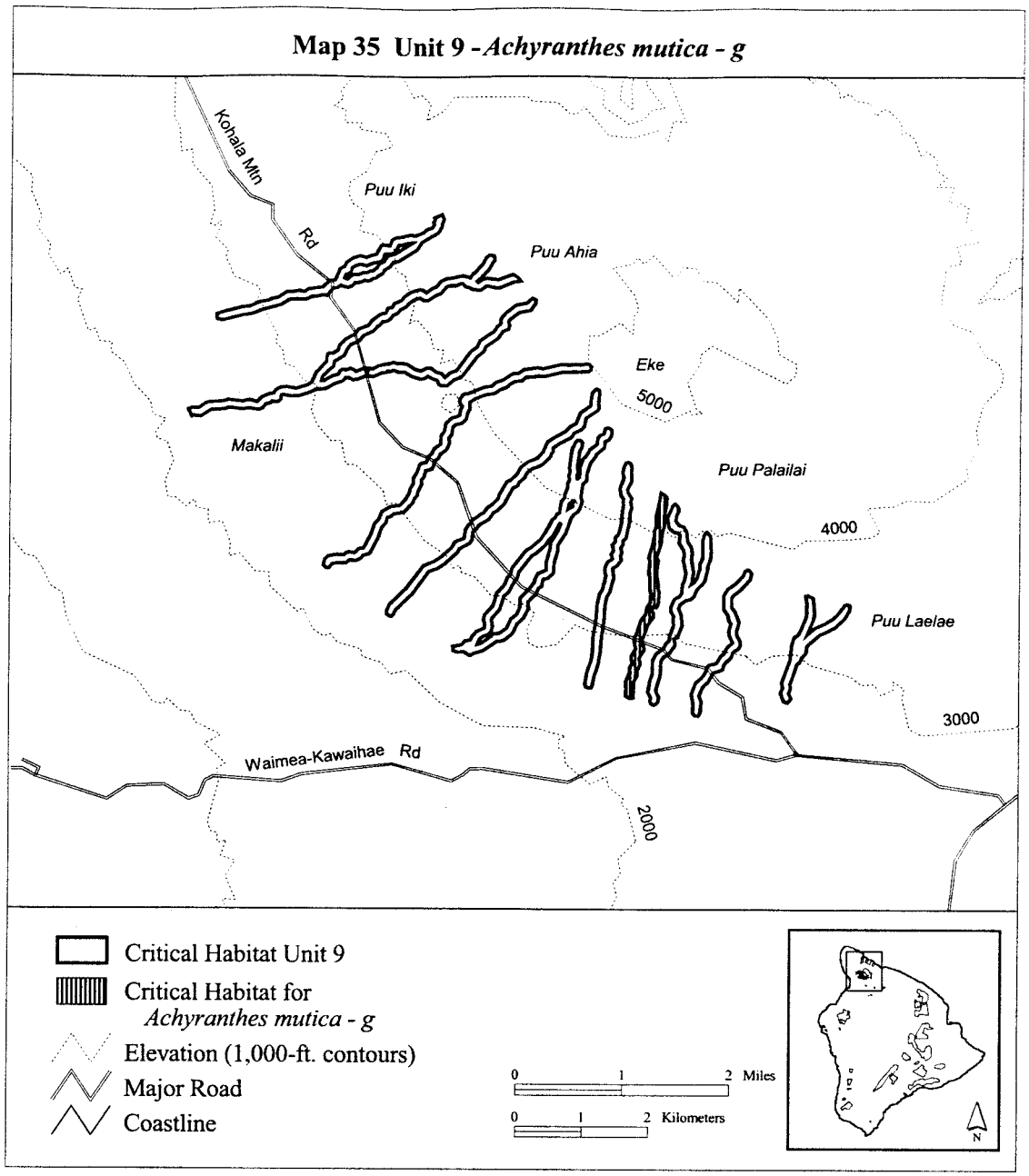
(ii) **Note:** Map 34 follows:



(35) Hawaii 9—*Achyranthes mutica*—g (37 ha, 92 ac)

(i) Unit consists of the following 58 boundary points: Start at 215603, 2220632; 215636, 2220594; 215638, 2220532; 215595, 2220313; 215594, 2220146; 215573, 2220086; 215557, 2219909; 215486, 2219693; 215509, 2219626; 215490, 2219443; 215514, 2219279; 215507, 2219212; 215525, 2219154; 215513, 2218965; 215487, 2218921; 215439, 2218935; 215421, 2218871; 215447, 2218842; 215441, 2218779; 215356, 2218664; 215275, 2218426; 215304, 2218286; 215233, 2218154; 215249, 2218060; 215206, 2217972; 215206, 2217897; 215158, 2217810; 215145, 2217560; 215094, 2217556; 215038, 2217584; 215038, 2217818; 215090, 2217932; 215089, 2218007; 215131, 2218085; 215109, 2218142; 215112, 2218184; 215185, 2218304; 215155, 2218404; 215160, 2218458; 215247, 2218714; 215328, 2218821; 215342, 2218926; 215394, 2219001; 215403, 2219144; 215387, 2219204; 215383, 2219387; 215367, 2219431; 215388, 2219616; 215365, 2219699; 215438, 2219924; 215431, 2219963; 215454, 2220022; 215453, 2220094; 215475, 2220163; 215474, 2220317; 215523, 2220516; 215533, 2220621; 215545, 2220669; return to starting point.

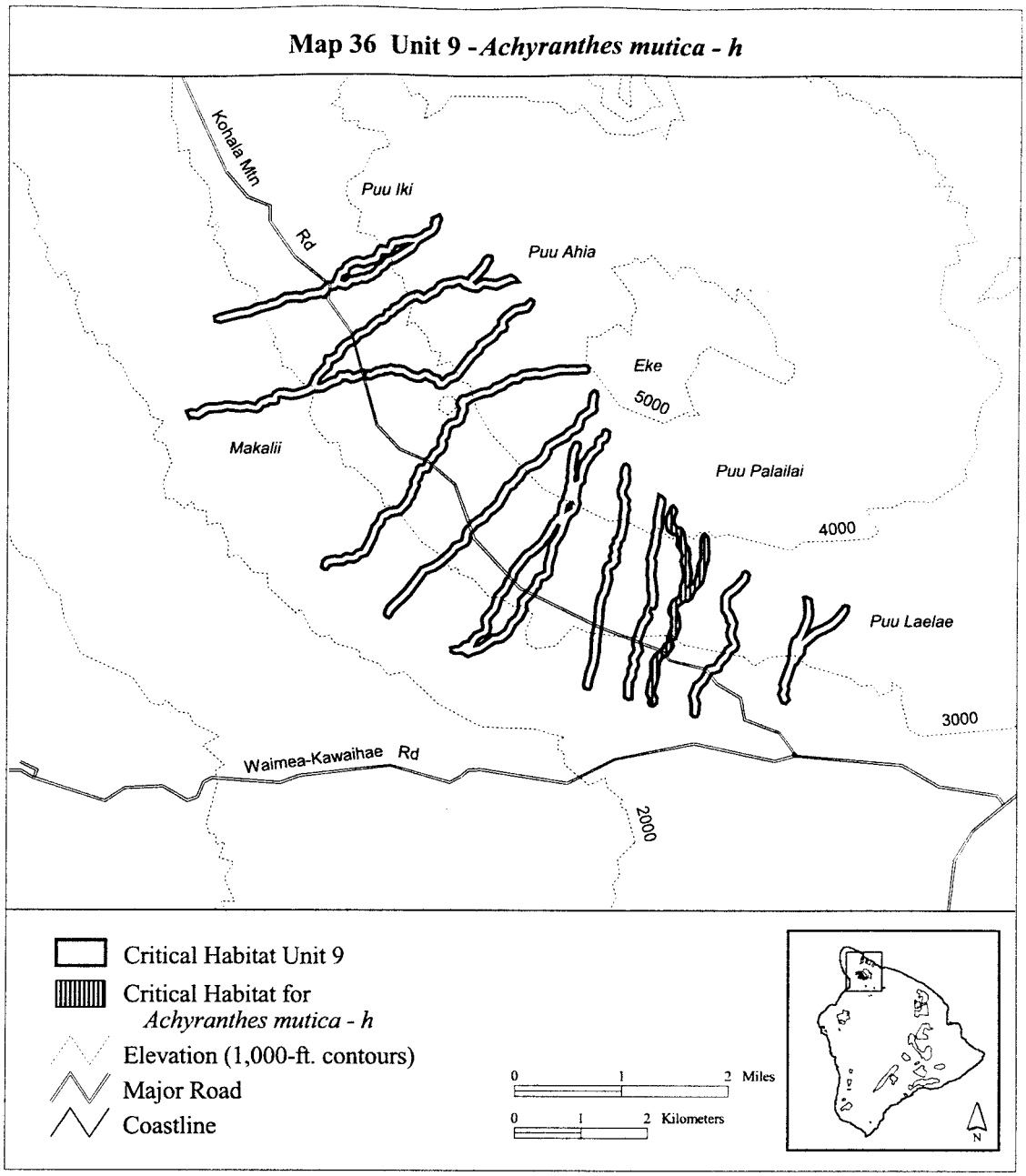
(ii) **Note:** Map 35 follows:



(36) Hawaii 9—*Achyranthes mutica*—h (51 ha, 127 ac)

(i) Unit consists of the following 89 boundary points: Start at 215734, 2220485; 215765, 2220497; 215804, 2220452; 215818, 2220397; 215784, 2220322; 215772, 2220245; 215817, 2220179; 215889, 2220150; 215937, 2220077; 215955, 2219923; 215999, 2219846; 216021, 2219758; 216009, 2219647; 216048, 2219449; 216024, 2219367; 216031, 2219325; 216010, 2219282; 216053, 2219305; 216094, 2219364; 216137, 2219519; 216139, 2219583; 216177, 2219682; 216178, 2219953; 216194, 2220018; 216223, 2220058; 216259, 2220059; 216289, 2220016; 216301, 2219987; 216298, 2219945; 216308, 2219773; 216295, 2219664; 216254, 2219549; 216260, 2219498; 216212, 2219335; 216179, 2219277; 216099, 2219197; 216052, 2219098; 215990, 2219041; 215937, 2219032; 215843, 2218966; 215826, 2218898; 215861, 2218819; 215873, 2218650; 215805, 2218472; 215755, 2218447; 215775, 2218360; 215691, 2218233; 215604, 2218175; 215561, 2218121; 215555, 2217915; 215490, 2217671; 215528, 2217566; 215517, 2217489; 215481, 2217456; 215448, 2217452; 215415, 2217471; 215399, 2217507; 215407, 2217557; 215371, 2217647; 215391, 2217794; 215436, 2217930; 215438, 2218124; 215486, 2218223; 215604, 2218316; 215641, 2218385; 215687, 2218427; 215688, 2218503; 215752, 2218652; 215738, 2218734; 215745, 2218785; 215706, 2218864; 215704, 2218932; 215753, 2219051; 215835, 2219097; 215867, 2219146; 215875, 2219268; 215910, 2219348; 215926, 2219453; 215888, 2219641; 215902, 2219734; 215881, 2219806; 215827, 2219895; 215830, 2220023; 215804, 2220057; 215765, 2220062; 215684, 2220120; 215664, 2220161; 215649, 2220293; 215707, 2220428; return to starting point.

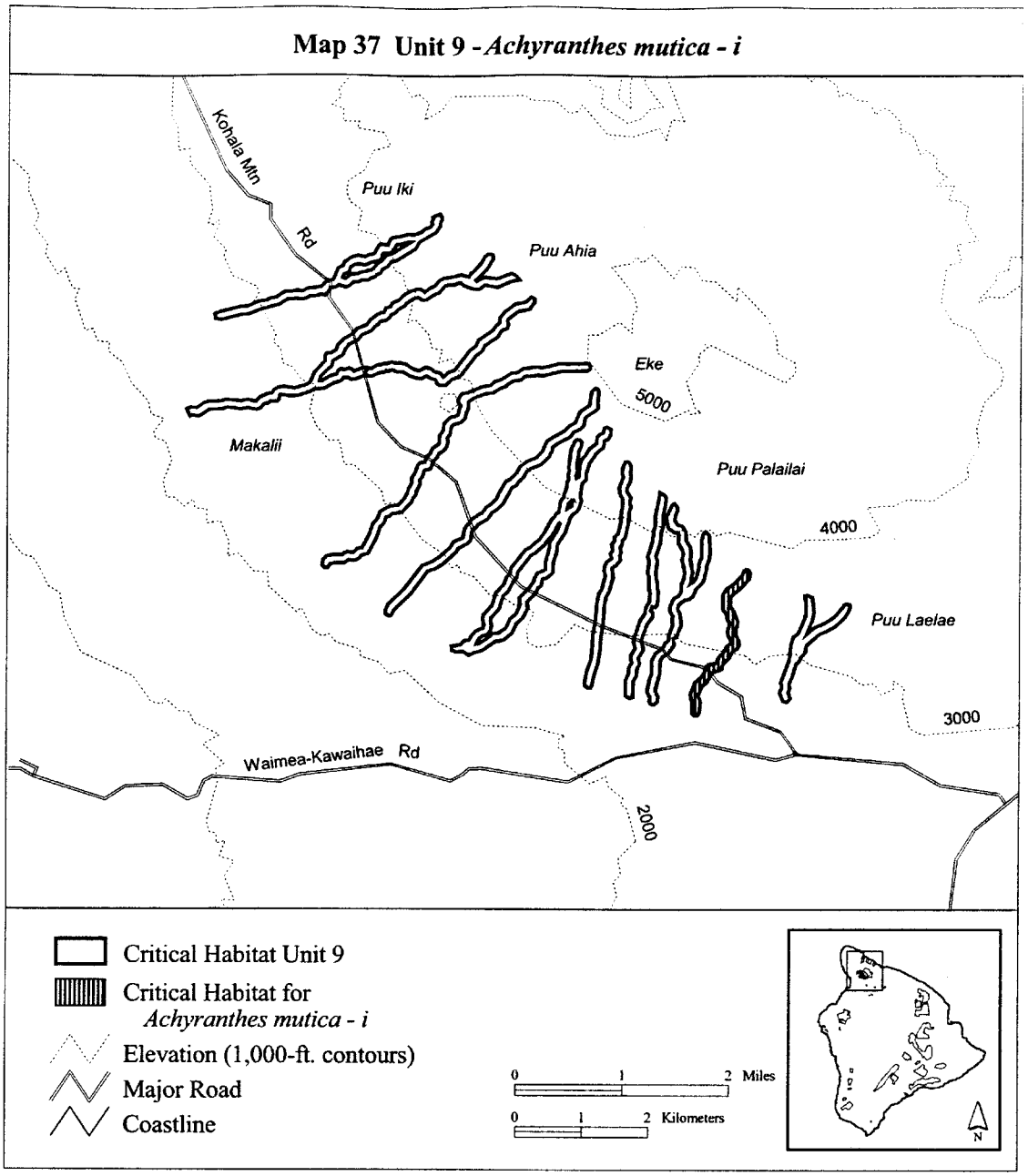
(ii) **Note:** Map 36 follows:



(37) Hawaii 9—*Achyranthes mutica*—i (31 ha, 76 ac)

(i) Unit consists of the following 54 boundary points: Start at 216834, 2219498; 216868, 2219502; 216901, 2219476; 216916, 2219442; 216903, 2219353; 216759, 2219197; 216646, 2219111; 216624, 2219076; 216621, 2218932; 216675, 2218863; 216728, 2218712; 216725, 2218649; 216696, 2218569; 216704, 2218501; 216752, 2218421; 216755, 2218361; 216727, 2218309; 216657, 2218257; 216603, 2218151; 216551, 2218112; 216511, 2218060; 216492, 2217991; 216451, 2217967; 216352, 2217946; 216275, 2217799; 216194, 2217733; 216138, 2217593; 216168, 2217500; 216154, 2217339; 216130, 2217288; 216078, 2217289; 216046, 2217330; 216047, 2217501; 216017, 2217608; 216088, 2217792; 216177, 2217870; 216230, 2217941; 216264, 2218034; 216303, 2218058; 216396, 2218077; 216458, 2218191; 216514, 2218232; 216562, 2218330; 216635, 2218388; 216586, 2218499; 216576, 2218561; 216609, 2218685; 216581, 2218726; 216562, 2218818; 216503, 2218897; 216504, 2219112; 216559, 2219201; 216683, 2219290; 216791, 2219410; return to starting point.

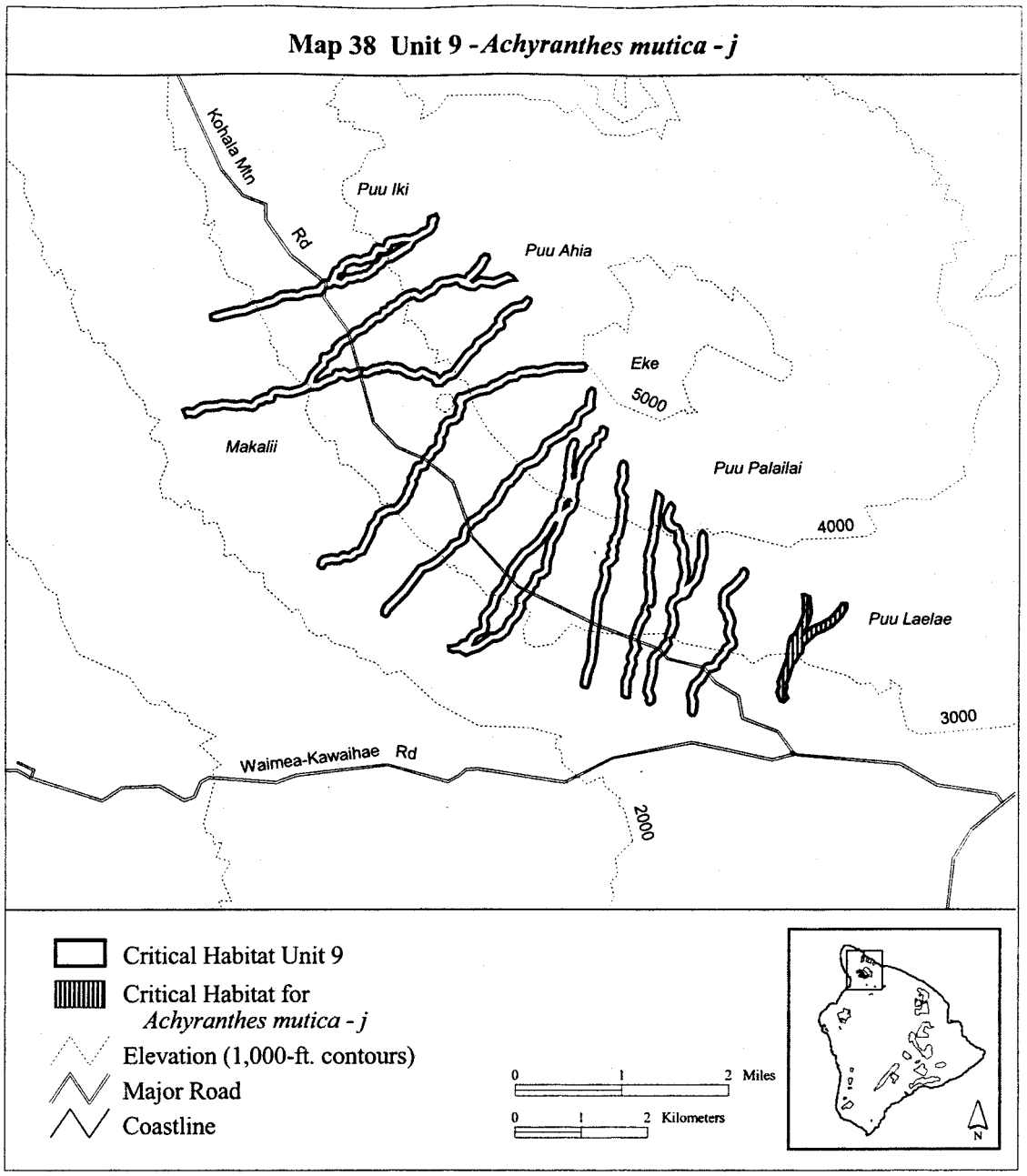
(ii) **Note:** Map 37 follows:



(38) Hawaii 9—*Achyranthes mutica*—j (33 ha, 81 ac)

(i) Unit consists of the following 45 boundary points: Start at 218342, 2218980; 218378, 2218973; 218407, 2218964; 218411, 2218929; 218400, 2218875; 218323, 2218752; 218189, 2218630; 218079, 2218566; 217956, 2218519; 217764, 2218345; 217745, 2218240; 217685, 2218167; 217657, 2218101; 217608, 2218068; 217537, 2217828; 217508, 2217776; 217518, 2217705; 217495, 2217636; 217530, 2217550; 217478, 2217497; 217416, 2217507; 217370, 2217634; 217398, 2217718; 217386, 2217786; 217509, 2218141; 217535, 2218373; 217570, 2218472; 217631, 2218518; 217662, 2218576; 217748, 2218779; 217756, 2218840; 217758, 2218986; 217738, 2219099; 217771, 2219108; 217806, 2219095; 217846, 2219075; 217869, 2218958; 217876, 2218841; 217861, 2218736; 217768, 2218520; 217898, 2218624; 218030, 2218675; 218152, 2218753; 218233, 2218832; 218305, 2218922; return to starting point.

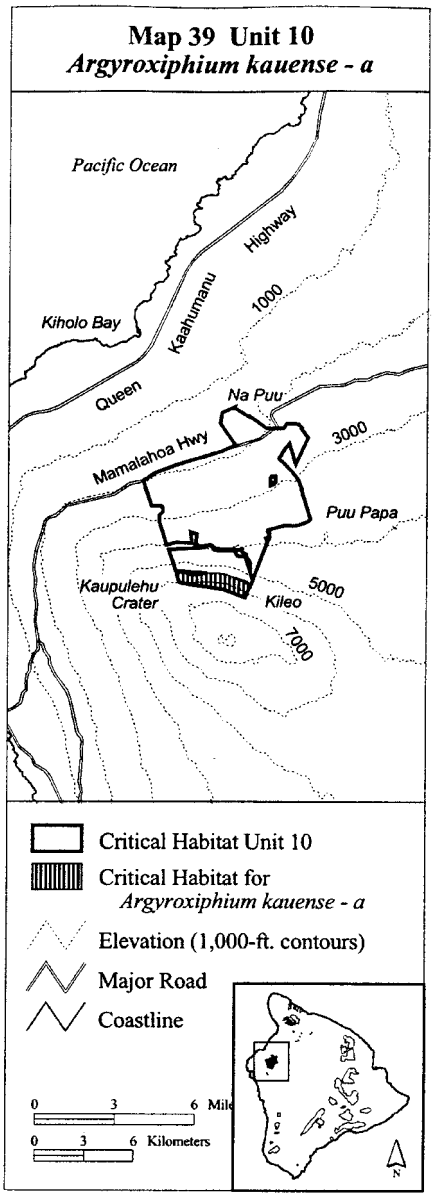
(ii) **Note:** Map 38 follows:


Map 38 Unit 9 - *Achyranthes mutica - j*
Kohala Mtn Rd
Puu Iki
Puu Ahia
Eke
5000
Makalii
Puu Palailai
4000
Puu Laelae
3000
Waimea-Kawaihae Rd
2000
Critical Habitat Unit 9
Critical Habitat for *Achyranthes mutica - j*
Elevation (1,000-ft. contours)
Major Road
Coastline
0 1 2 Miles
0 1 2 Kilometers
N

(39) Hawaii 10—*Argyroxiphium kauense*—a (349 ha, 861 ac)

(i) Unit consists of the following 22 boundary points: Start at 196364, 2183671; 196588, 2183730; 197040, 2183678; 197248, 2183609; 197370, 2183522; 197891, 2183644; 198395, 2183678; 198917, 2183661; 199421, 2183574; 199838, 2183400; 200064, 2183261; 200498, 2183174; 200689, 2183053; 200869, 2183009; 200548, 2182197; 199189, 2182675; 199188, 2182675; 198920, 2182722; 197323, 2182971; 196589, 2183108; 196526, 2183207; 196397, 2183572; return to starting point.

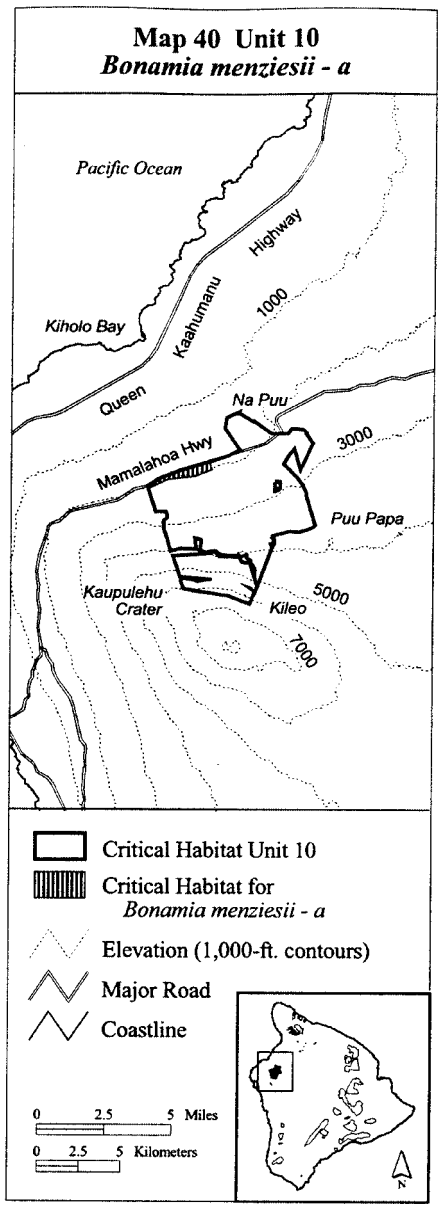
(ii) **Note:** Map 39 follows:



(40) Hawaii 10—*Bonamia menziesii*—a (163 ha, 402 ac)

(i) Unit consists of the following 12 boundary points: Start at 194344, 2189312; 194345, 2189312; 195096, 2189814; 195763, 2190048; 196316, 2190285; 198038, 2190803; 198120, 2190635; 198240, 2190325; 197169, 2189897; 195603, 2189733; 194504, 2189243; 194375, 2189221; return to starting point.

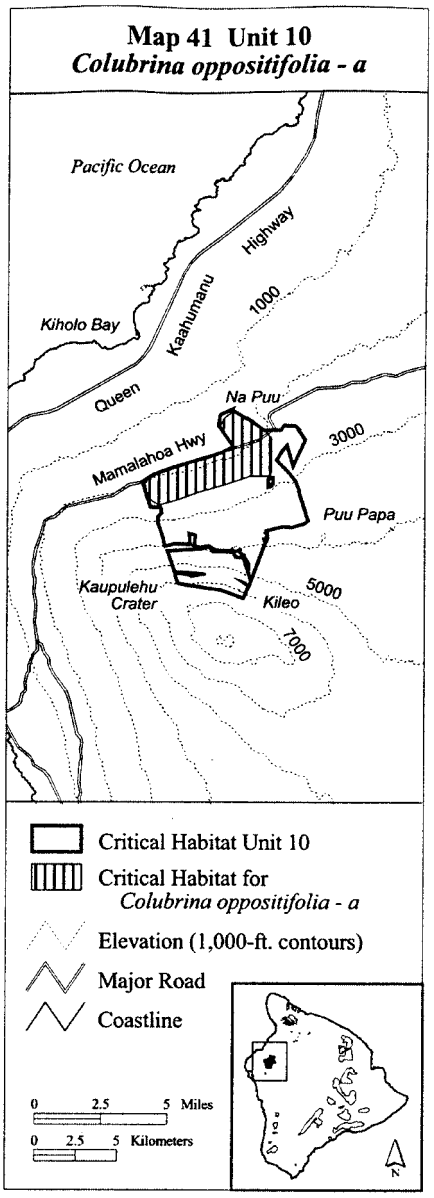
(ii) **Note:** Map 40 follows:



(41) Hawaii 10—*Colubrina oppositifolia*—a (1,918 ha, 4,740 ac)

(i) Unit consists of the following 23 boundary points: Start at 194733, 2188289; 194501, 2189318; 195028, 2189765; 196242, 2190221; 199593, 2191274; 200077, 2191445; 199462, 2192171; 199079, 2192786; 199311, 2193260; 199926, 2193724; 200763, 2193240; 201809, 2192548; 202245, 2192040; 202231, 2191144; 202231, 2190040; 202215, 2189832; 202071, 2189709; 200959, 2189699; 199966, 2189369; 199139, 2189093; 197714, 2188688; 196629, 2188284; 195353, 2187919; return to starting point.

(ii) **Note:** Map 41 follows:

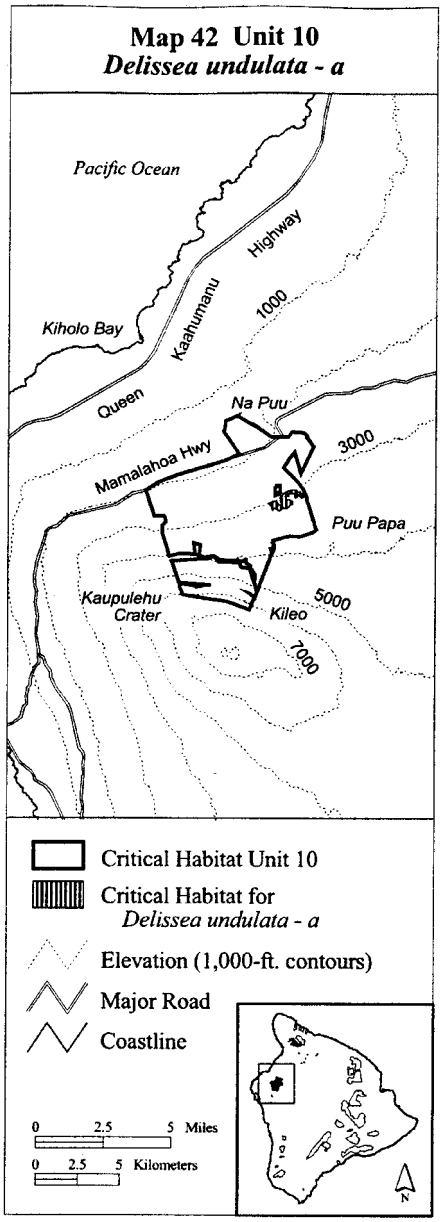


(42) Hawaii 10—*Delissea undulata*—a (92 ha, 227 ac)

(i) Unit consists of the following 50 boundary points: Start at 201717, 2188574; 201906, 2188644; 202144, 2188700; 202144, 2188602; 202284, 2188434; 202305, 2188399; 202452, 2188462; 202347, 2188728; 202326, 2188868; 202389, 2188952; 202459, 2189036; 202543, 2189120; 202683, 2189204; 202781, 2189288; 202922, 2189330; 203132, 2189365; 203279, 2189365; 203279, 2189260; 203454, 2189225; 203650, 2189113; 203776, 2188959; 203629, 2188868; 203419, 2189043; 203342, 2188910; 203258,

2188868; 203202, 2188945; 203272, 2189113; 203104, 2189120; 202886, 2189162; 202830, 2189099; 202865, 2189001; 202641, 2188966; 202711, 2188798; 202915, 2188742; 203041, 2188672; 203097, 2188602; 203041, 2188490; 202915, 2188497; 202901, 2188420; 202851, 2188322; 202627, 2188210; 202550, 2188280; 202382, 2188147; 202242, 2188070; 202095, 2188217; 201983, 2188231; 201913, 2188119; 201822, 2188224; 201850, 2188343; 201668, 2188553; return to starting point.

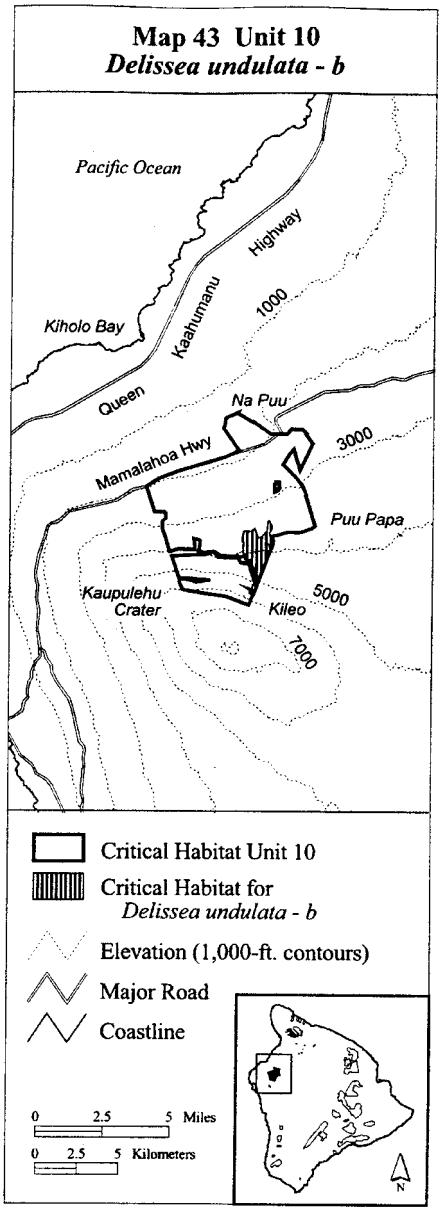
(ii) **Note:** Map 42 follows:



(43) Hawaii 10—*Delissea undulata*—b (379 ha, 938 ac)

(i) Unit consists of the following 46 boundary points: Start at 200358, 2186648; 200652, 2186613; 200897, 2186774; 201009, 2186431; 201114, 2186199; 201409, 2186389; 201640, 2186683; 201675, 2187187; 201738, 2187292; 201892, 2186998; 201913, 2186767; 201843, 2186571; 201780, 2186522; 201808, 2186312; 201913, 2186347; 201969, 2186227; 201899, 2186178; 201997, 2186038; 201934, 2185947; 201987, 2185871; 201923, 2185703; 201864, 2185800; 201794, 2185800; 201857, 2185569; 201871, 2185564; 200825, 2182788; 200596, 2182893; 200701, 2183146; 200785, 2183391; 200890, 2183440; 200841, 2183566; 200848, 2183755; 200806, 2183860; 200855, 2183958; 200862, 2184287; 200596, 2184708; 200596, 2184820; 200351, 2184974; 200316, 2185219; 200197, 2185261; 200183, 2185695; 200204, 2185919; 200092, 2186010; 200113, 2186199; 200169, 2186375; 200211, 2186634; return to starting point.

(ii) **Note:** Map 43 follows:



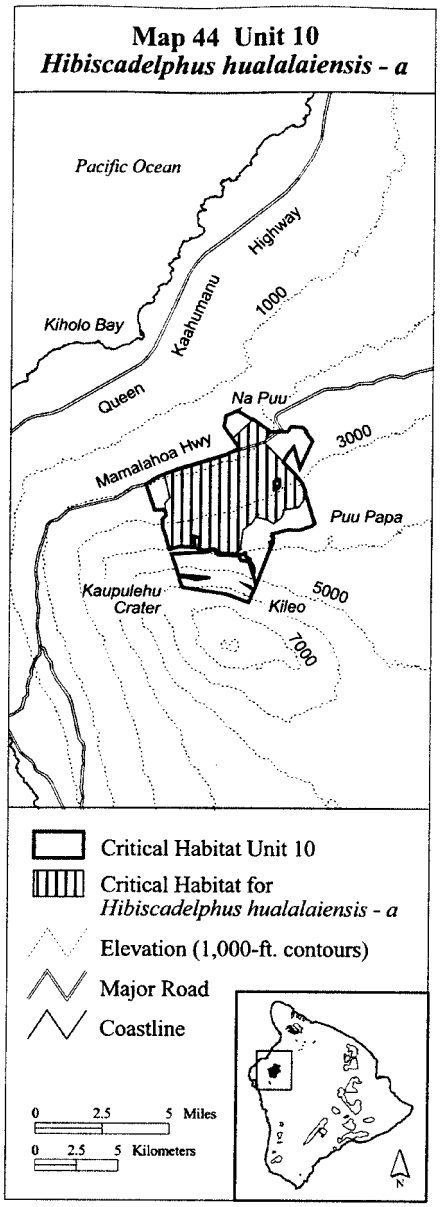
(44) Hawaii 10—*Hibiscadelphus hualalaiensis*—a (3,979 ha, 9,831 ac)

(i) Unit consists of the following 38 boundary points: Start at 195782, 2185368; 195522, 2186168; 195315, 2186796; 195326, 2187196; 195544, 2187388; 195469, 2188155; 195786, 2188492; 195432, 2189916; 199124, 2191069; 199983, 2191543; 199508, 2192106; 200761, 2193288; 201812, 2192545; 201404, 2191895; 203343, 2189879; 203681, 2189439; 203918, 2188866; 203785, 2188371; 203480, 2187932; 202574, 2187761; 202584, 2187526; 202456, 2187271; 201998, 2186930; 201572, 2187207; 200965, 2187345; 200731, 2186962; 200177, 2186557; 200011, 2185340; 199774, 2185089; 198932, 2185139; 198670, 2185243; 198391, 2185428; 198036, 2185330; 197566, 2185385; 197604,

2186079; 197221, 2186183; 197270, 2185549; 196319, 2185538; return to starting point.

(ii) Excluding one area bounded by the following 12 points (15 ha, 38 ac): Start at 202034, 2189562; 202141, 2189566; 202153, 2189649; 202308, 2189645; 202298, 2189564; 202339, 2189548; 202329, 2189219; 202193, 2189187; 202230, 2189088; 202042, 2189024; 202020, 2189151; 202024, 2189554; return to starting point.

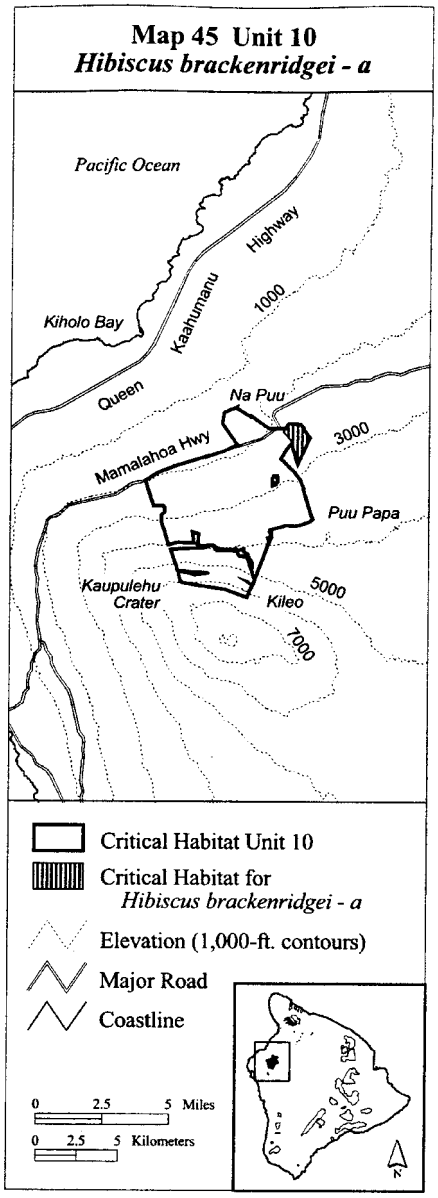
(iii) **Note:** Map 44 follows:



(45) Hawaii 10—*Hibiscus brackenridgei*—a (196 ha, 485 ac)

(i) Unit consists of the following six boundary points: Start at 202687, 2192346; 203014, 2192842; 203739, 2192737; 204306, 2191983; 203553, 2190355; 203111, 2191829; return to starting point.

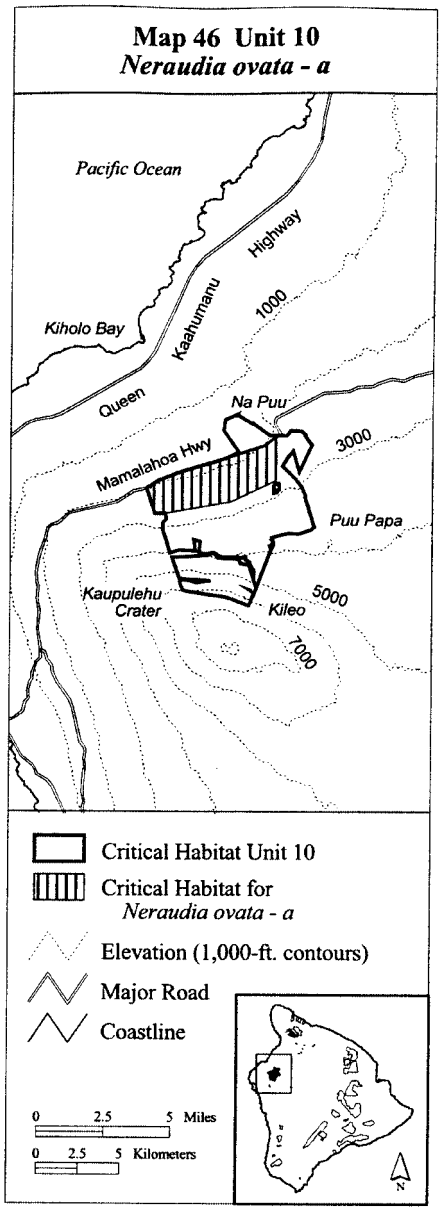
(ii) **Note:** Map 45 follows:



(46) Hawaii 10—*Neraudia ovata*—a (1,859 ha, 4,593 ac)

(i) Unit consists of the following 15 boundary points: Start at 194344, 2189314; 194343, 2189318; 194355, 2189326; 195020, 2189752; 195454, 2189938; 196227, 2190232; 199076, 2191106; 201428, 2191880; 202171, 2192469; 202165, 2191079; 202163, 2189814; 199428, 2188470; 195418, 2187770; 194855, 2187783; 194588, 2188581; return to starting point.

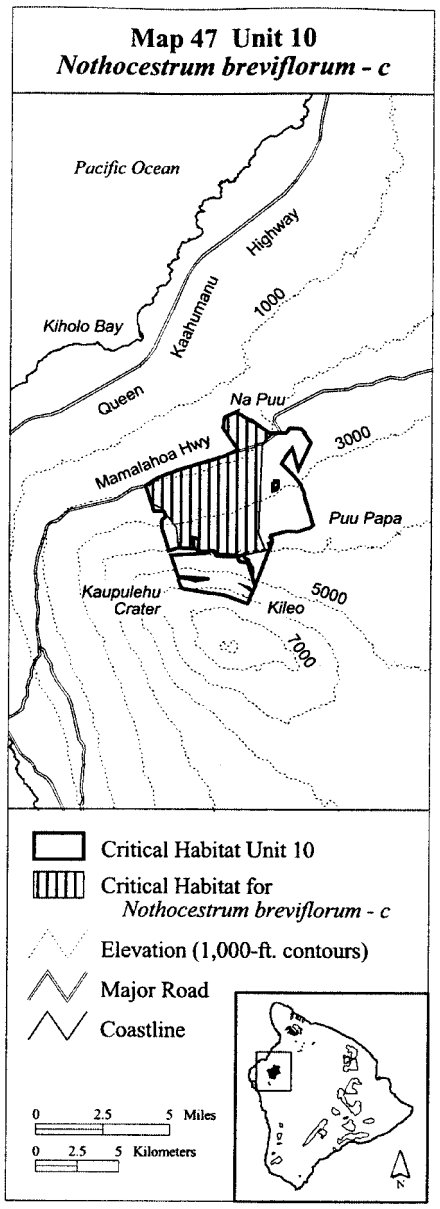
(ii) **Note:** Map 46 follows:

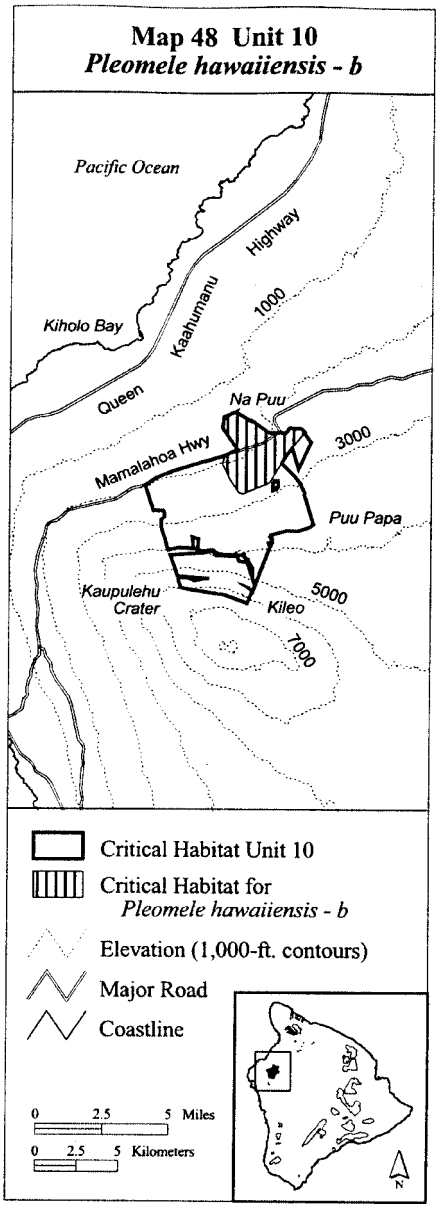


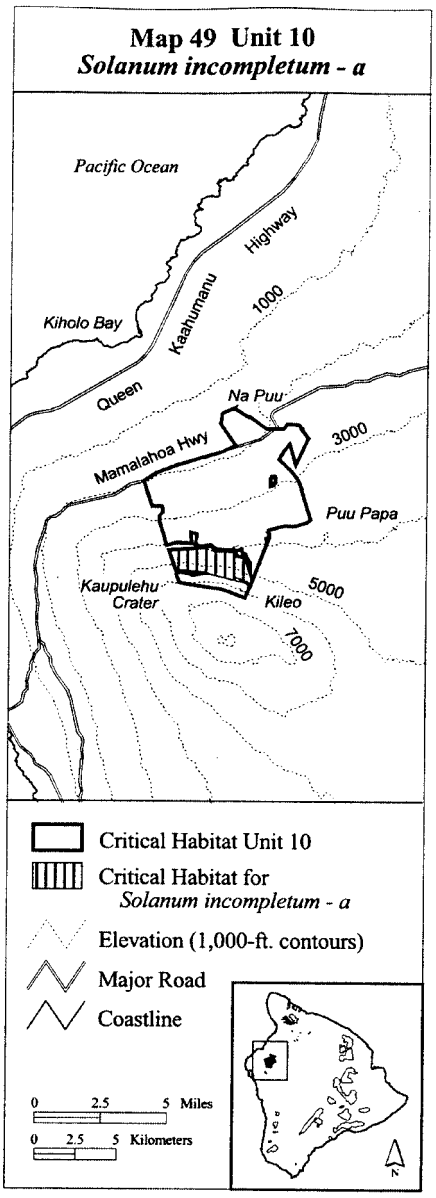
(47) Hawaii 10—*Nothocestrum breviflorum*—c (3,627 ha, 8,964 ac)

(i) Unit consists of the following 29 boundary points: Start at 194693, 2188269; 194383, 2189286; 195034, 2189776; 195460, 2189937; 196240, 2190194; 199103, 2191128; 199891, 2191533; 198991, 2192862; 199103, 2193492; 199824, 2193830; 199804, 2193770; 200696, 2193256; 201895, 2192456; 201355, 2191804; 201174, 2186424; 201586, 2185393; 199915, 2185040; 199838, 2185152; 198796, 2185246; 198417, 2185384; 197754, 2185341; 197538, 2185442; 197616, 2186073; 197228, 2186185; 197289, 2185505; 196333, 2185522; 196200, 2186785; 195323, 2187943; 194697, 2188256; return to starting point.

(ii) **Note:** Map 47 follows:







(48) Hawaii 10—*Pleomele hawaiiensis*—b (1,338 ha, 3,306 ac)

(i) Unit consists of the following 19 boundary points: Start at 199227, 2191119; 199931, 2191535; 199427, 2192287; 198994, 2192926; 199211, 2193518; 199835, 2193778; 201804, 2192540; 202800, 2192542; 203018, 2192863; 203684, 2192822; 203919, 2192569; 203588, 2192149; 202916, 2191296; 201823, 2189505; 200231, 2188809; 200012, 2188896; 199513, 2189670; 199023, 2190652; 199126, 2191046; return to starting point.

(ii) **Note:** Map 48 follows:

(49) Hawaii 10—*Solanum incompletum*—a (705 ha, 1,741 ac)

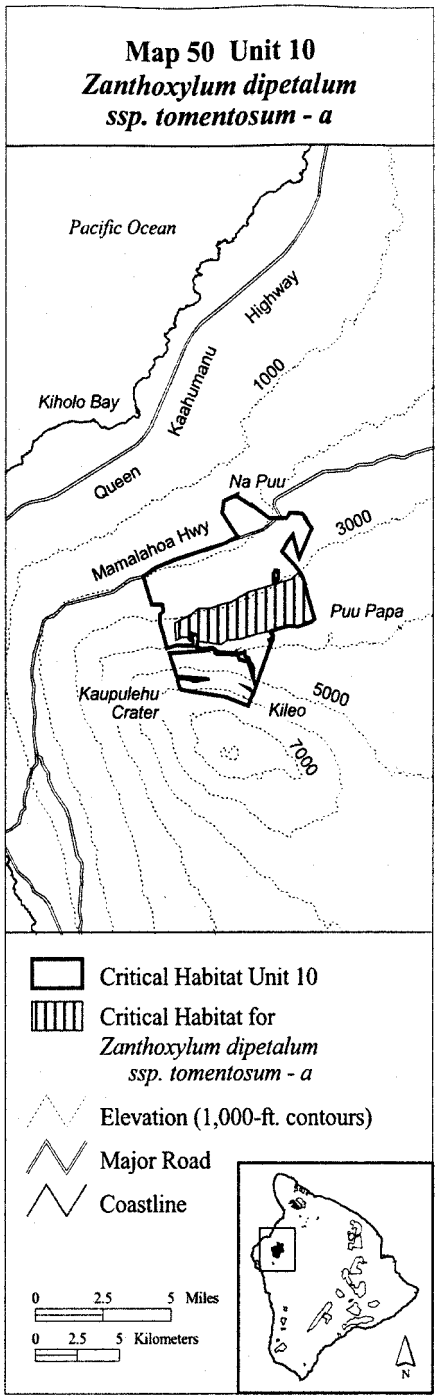
(i) Unit consists of the following 14 boundary points: Start at 200840, 2183071; 200105, 2183211; 198217, 2183674; 196354, 2183822; 195904, 2185079; 198074, 2185218; 198313, 2185355; 198524, 2185294; 198681, 2185062; 199717, 2185030; 199911, 2185024; 200028, 2184733; 200540, 2184657; 200956, 2183332; return to starting point.

(ii) **Note:** Map 49 follows:

(50) Hawaii 10—*Zanthoxylum dipetalum* ssp. *tomentosum*—a (1,685 ha, 4,164 ac)

(i) Unit consists of the following 30 boundary points: Start at 204490, 2186961; 204259, 2186791; 203663, 2186586; 203502, 2186552; 202908, 2186594; 202064, 2186341; 200938, 2186115; 200094, 2185862; 199277, 2185806; 198968, 2185581; 197898, 2185721; 197620, 2185755; 197630, 2186116; 197213, 2186192; 197260, 2185765; 197082, 2185778; 196970, 2185975; 196660, 2185975; 196294, 2185806; 196217, 2186760; 197251, 2187269; 197645, 2187579; 198321, 2187579; 199334, 2187860; 199503, 2187860; 200544, 2188451; 203129, 2189150; 203527, 2189491; 203802, 2189055; 203972, 2188619; return to starting point.

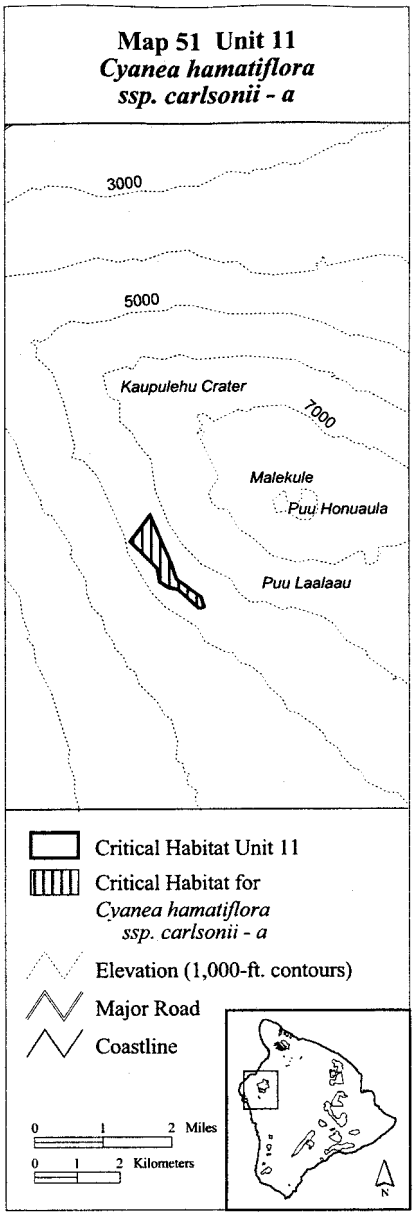
(ii) **Note:** Map 50 follows:



(51) Hawaii 11—*Cyanea hamatiflora* ssp. *carlsonii*—a (92 ha, 227 ac)

(i) Unit consists of the following 11 boundary points: Start at 197174, 2177104; 196674, 2177566; 196458, 2177613; 196239, 2177751; 196187, 2178067; 195553, 2178701; 196028, 2179334; 196530, 2178147; 196637, 2177811; 197221, 2177377; 197278, 2177142; return to starting point.

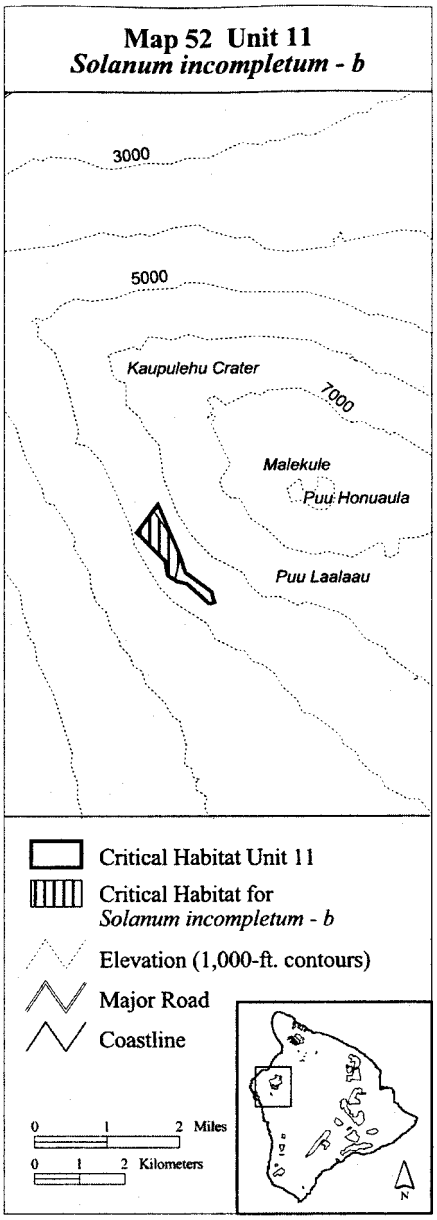
(ii) **Note:** Map 51 follows:



(52) Hawaii 11—*Solanum incompletum*—b (57 ha, 141 ac)

(i) Unit consists of the following seven boundary points: Start at 195939, 2179184; 196289, 2178679; 196513, 2178138; 196403, 2177670; 196252, 2177759; 196204, 2178081; 195581, 2178700; return to starting point.

(ii) **Note:** Map 52 follows:



(53) [Reserved]

(54) [Reserved]

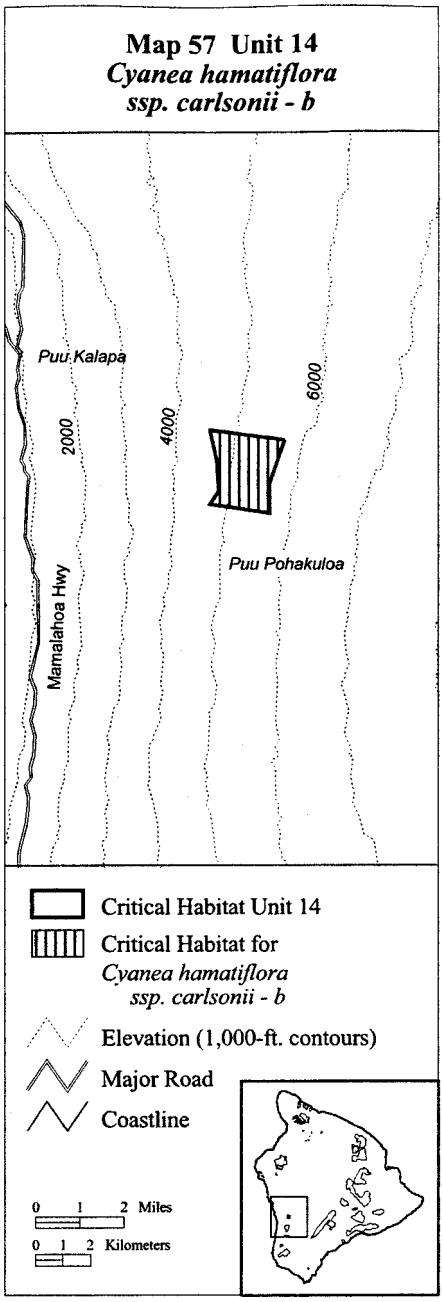
(55) [Reserved]

(56) [Reserved]

(57) Hawaii 14—*Cyanea hamatiflora* ssp. *carlsonii*—b (597 ha, 1,475 ac)

(i) Unit consists of the following 10 boundary points: Start at 207156, 2146304; 207134, 2146239; 206598, 2144681; 206598, 2143570; 204429, 2143915; 204728, 2144393; 204674, 2145490; 204674, 2145491; 204426, 2146629; 204425, 2146649; return to starting point.

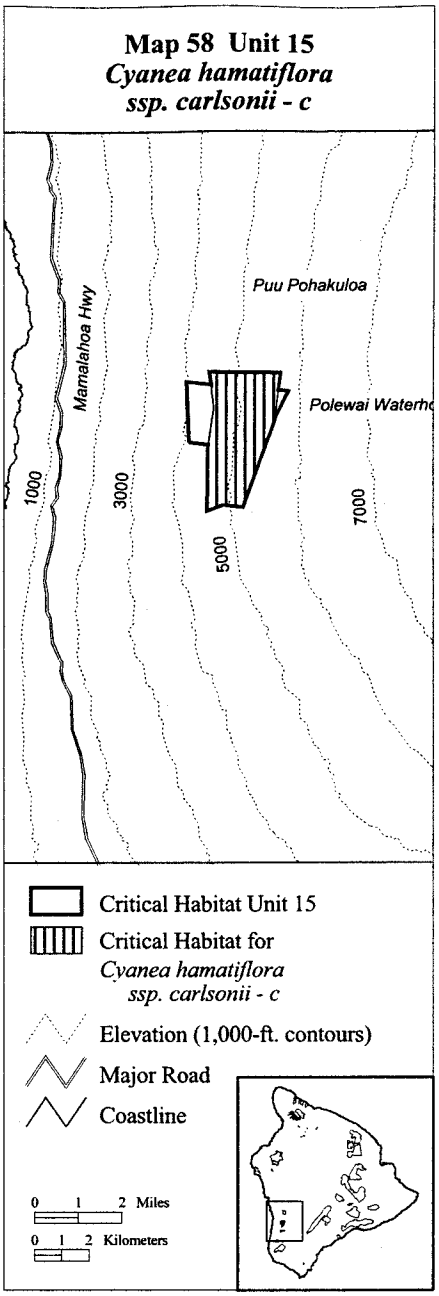
(ii) **Note:** Map 57 follows:



(58) Hawaii 15—*Cyanea hamatiflora* ssp. *carlsonii*—c (1,045 ha, 2,583 ac)

(i) Unit consists of the following eight boundary points: Start at 205937, 2136720; 204747, 2133469; 204039, 2133547; 203420, 2133302; 203440, 2135670; 203670, 2137181; 203517, 2138526; 206149, 2138468; return to starting point.

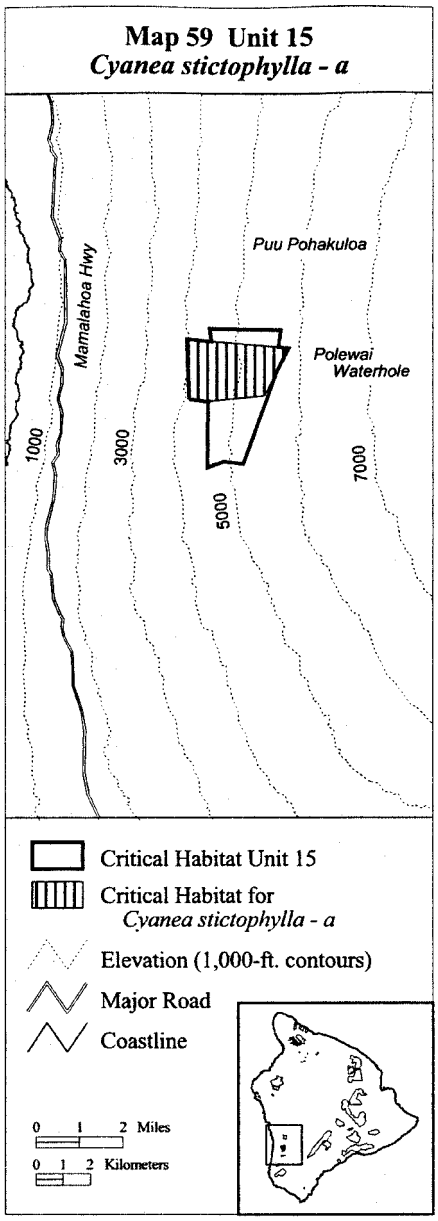
(ii) **Note:** Map 58 follows:



(59) Hawaii 15—*Cyanea stictophylla*—a (685 ha, 1,693 ac)

(i) Unit consists of the following five boundary points: Start at 202738, 2135888; 202669, 2138135; 206446, 2137807; 205568, 2136027; 203447, 2135810; return to starting point.

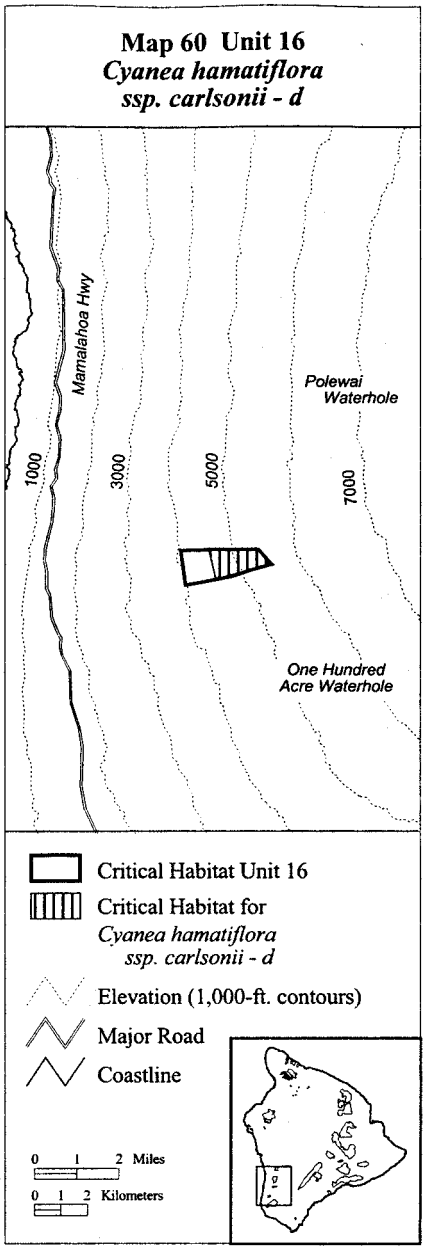
(ii) **Note:** Map 59 follows:



(60) Hawaii 16—*Cyanea hamatiflora* ssp. *carlsonii*—d (186 ha, 459 ac)

(i) Unit consists of the following four boundary points: Start at 203994, 2129916; 203715, 2131071; 205603, 2131073; 206118, 2130489; return to starting point.

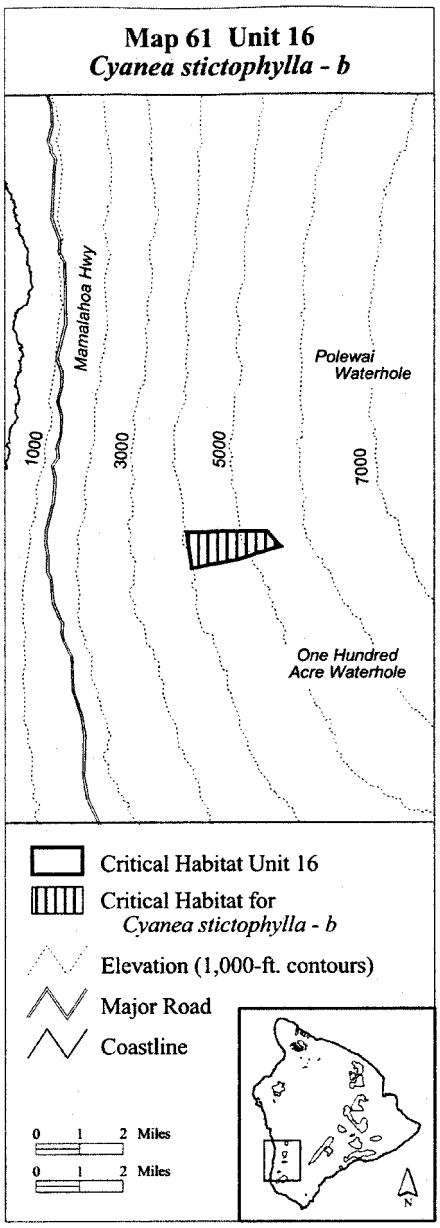
(ii) **Note:** Map 60 follows:



(61) Hawaii 16—*Cyanea stictophylla*—b (327 ha, 809 ac)

(i) Unit consists of the following five boundary points: Start at 206085, 2130525; 204548, 2130013; 202838, 2129682; 202649, 2131030; 205588, 2131077; return to starting point.

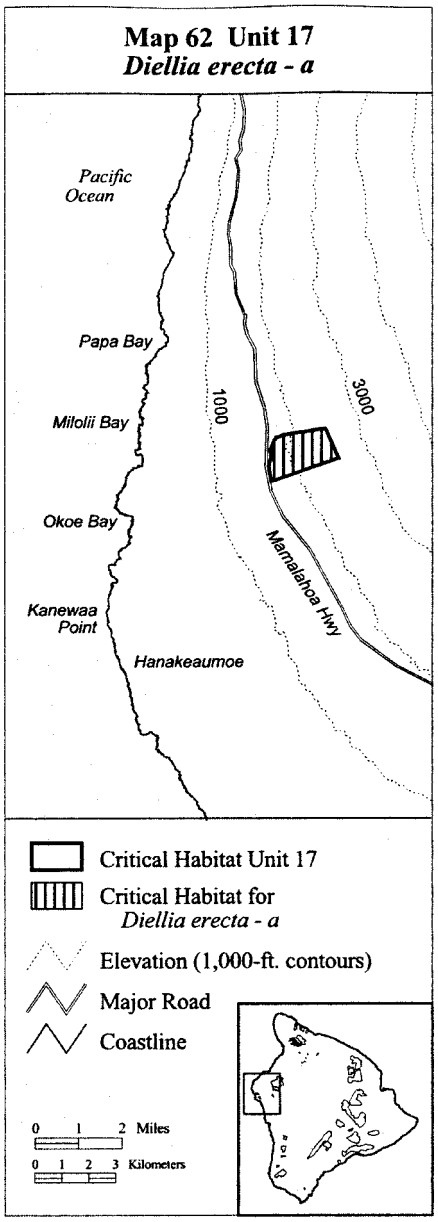
(ii) **Note:** Map 61 follows:



(62) Hawaii 17—*Diellia erecta*—a (329 ha, 814 ac)

(i) Unit consists of the following nine boundary points: Start at 199021, 2121439; 198916, 2122019; 199049, 2122319; 199008, 2122707; 199063, 2122847; 199186, 2123092; 199520, 2123204; 201031, 2123446; 201505, 2122323; return to starting point.

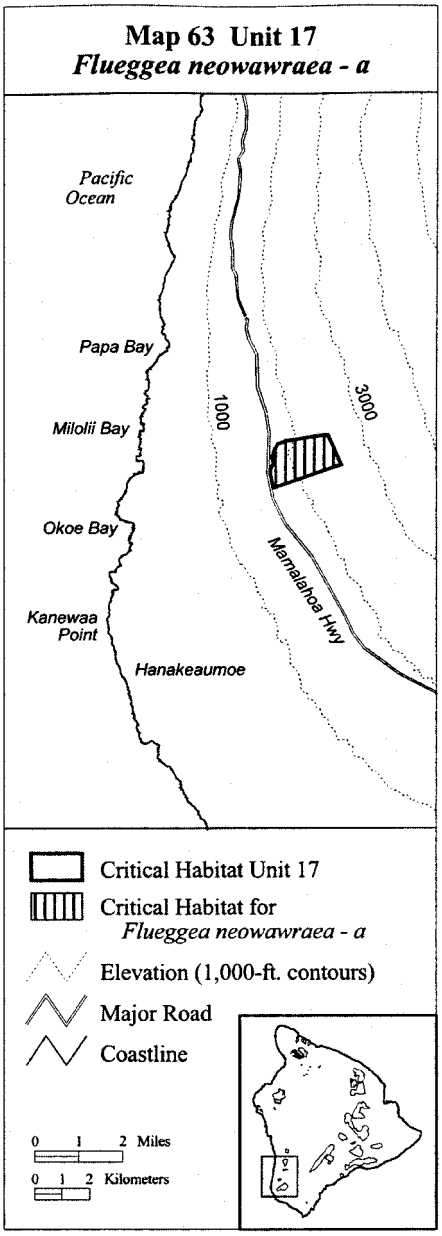
(ii) **Note:** Map 62 follows:



(63) Hawaii 17—*Flueggea neowawraea*—a (327 ha, 807 ac)

(i) Unit consists of the following eight boundary points: Start at 199031, 2121453; 198919, 2122094; 199007, 2122357; 198981, 2122641; 199188, 2123085; 199474, 2123194; 201018, 2123445; 201491, 2122325; return to starting point.

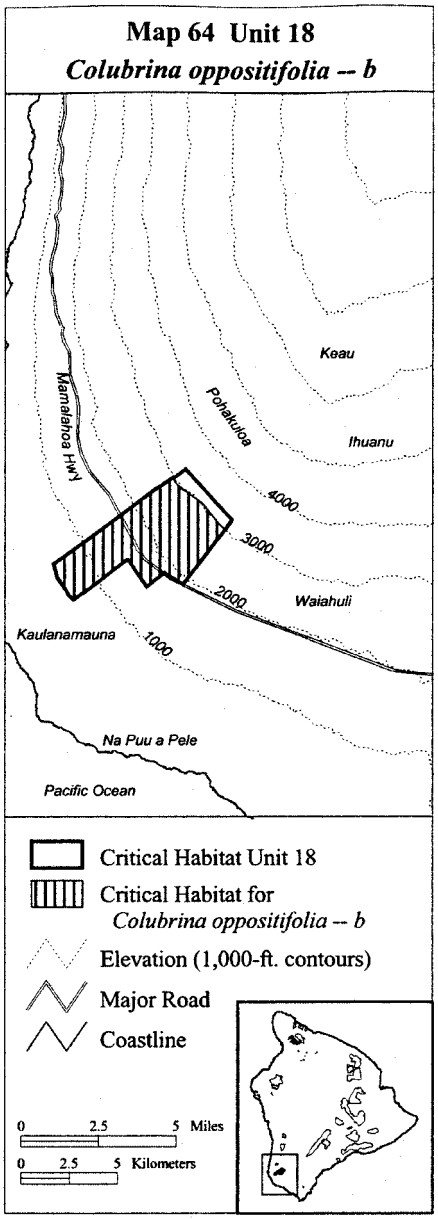
(ii) **Note:** Map 63 follows:



(64) Hawaii 18—*Colubrina oppositifolia*—b (2,717 ha, 6,713 ac)

(i) Unit consists of the following 15 boundary points: Start at 198394, 2113625; 198223, 2113930; 197796, 2114535; 197583, 2115280; 203752, 2119808; 203928, 2119514; 204315, 2119167; 205315, 2118433; 206212, 2117332; 206446, 2117067; 204284, 2114251; 203373, 2114863; 202434, 2114094; 201438, 2115531; 198636, 2113397; return to starting point.

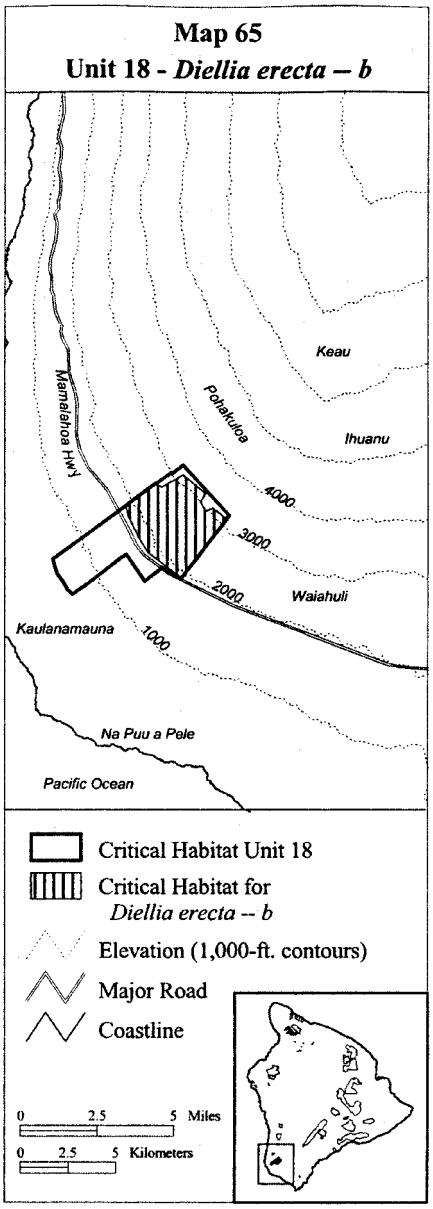
(ii) **Note:** Map 64 follows:



(65) Hawaii 18—*Diellia erecta*—b (1,615 ha, 3,992 ac)

(i) Unit consists of the following 13 boundary points: Start at 202997, 2119281; 203310, 2119053; 204449, 2119707; 205626, 2118736; 205346, 2118306; 205626, 2117783; 205999, 2117970; 206709, 2117375; 204354, 2114272; 202588, 2115599; 202097, 2116400; 201568, 2117511; 201401, 2118078; return to starting point.

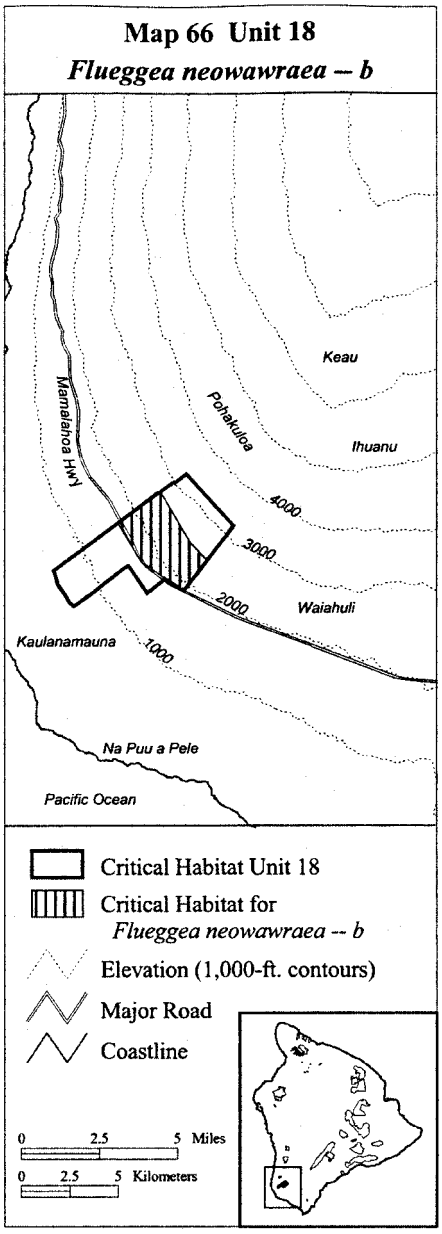
(ii) **Note:** Map 65 follows:



(66) Hawaii 18—*Flueggea neowawraea*—b (1,148 ha, 2,838 ac)

(i) Unit consists of the following six boundary points: Start at 203129, 2119316; 204604, 2116730; 205505, 2115780; 204286, 2114193; 202146, 2115653; 200912, 2117708; return to starting point.

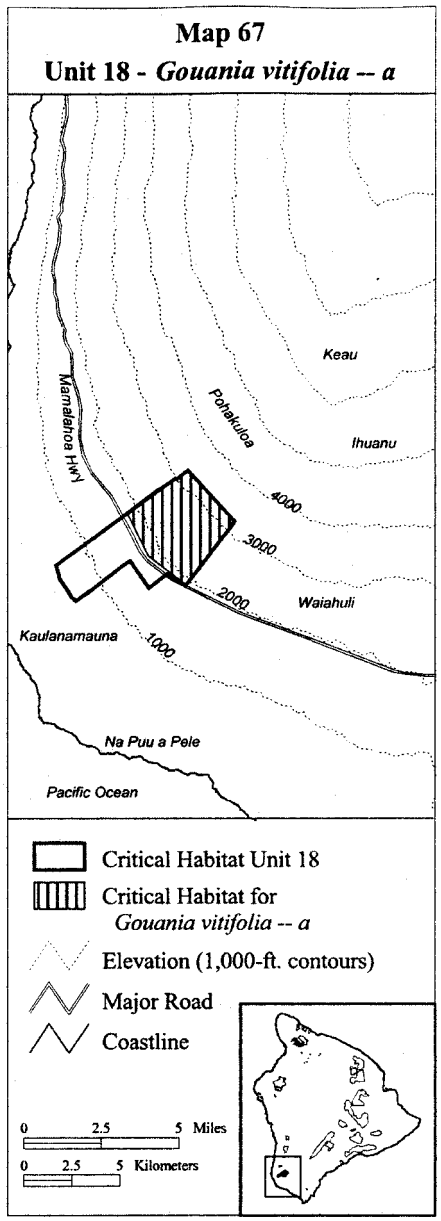
(ii) **Note:** Map 66 follows:



(67) Hawaii 18—*Gouania vitifolia*—a (1,785 ha, 4,412 ac)

(i) Unit consists of the following five boundary points: Start at 204444, 2120239; 206850, 2117574; 204309, 2114257; 202399, 2115771; 201311, 2117954; return to starting point.

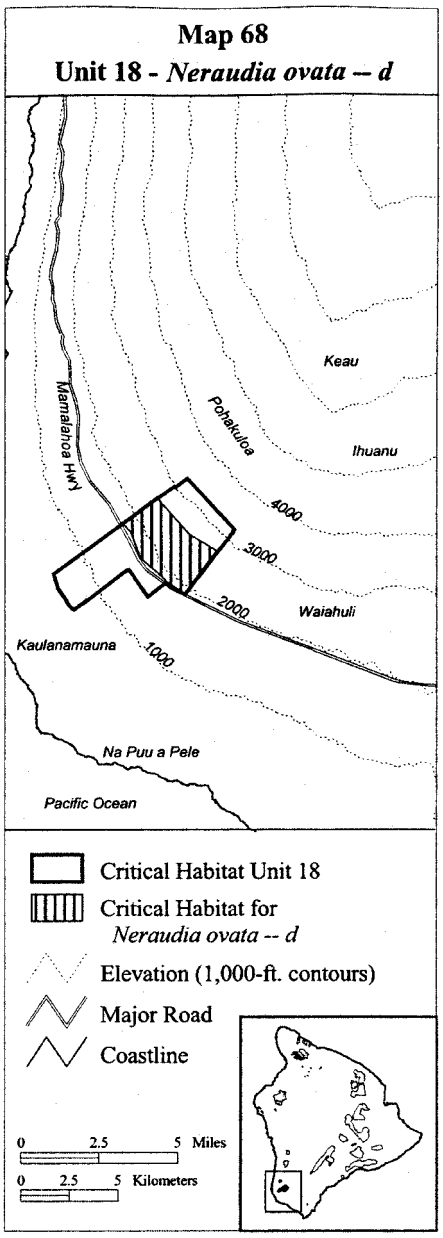
(ii) **Note:** Map 67 follows:



(68) Hawaii 18—*Neraudia ovata*—d (1,134 ha, 2,801 ac)

(i) Unit consists of the following 10 boundary points: Start at 201174, 2117843; 202959, 2119186; 204559, 2117309; 205954, 2116477; 204277, 2114280; 203399, 2114850; 202976, 2115309; 202698, 2115528; 202028, 2116090; 201532, 2117457; return to starting point.

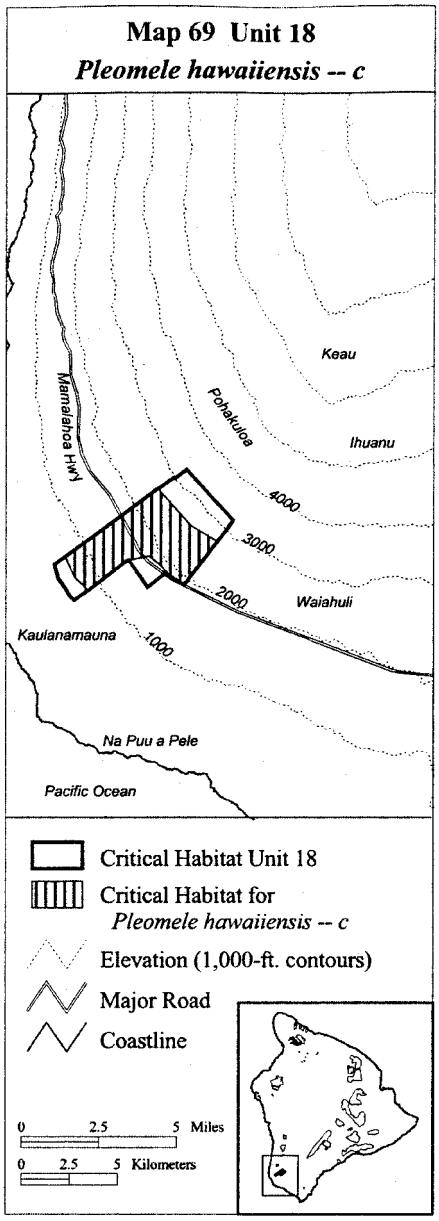
(ii) **Note:** Map 68 follows:



(69) Hawaii 18—*Pleomele hawaiiensis*—c (1,997 ha, 4,934 ac)

(i) Unit consists of the following 14 boundary points: Start at 202966, 2119257; 204672, 2117280; 206034, 2116476; 204325, 2114252; 203522, 2114753; 203049, 2115266; 202477, 2115720; 201375, 2115486; 199227, 2113813; 199190, 2114100; 198653, 2114587; 198378, 2115149; 198141, 2115661; 201104, 2117894; return to starting point.

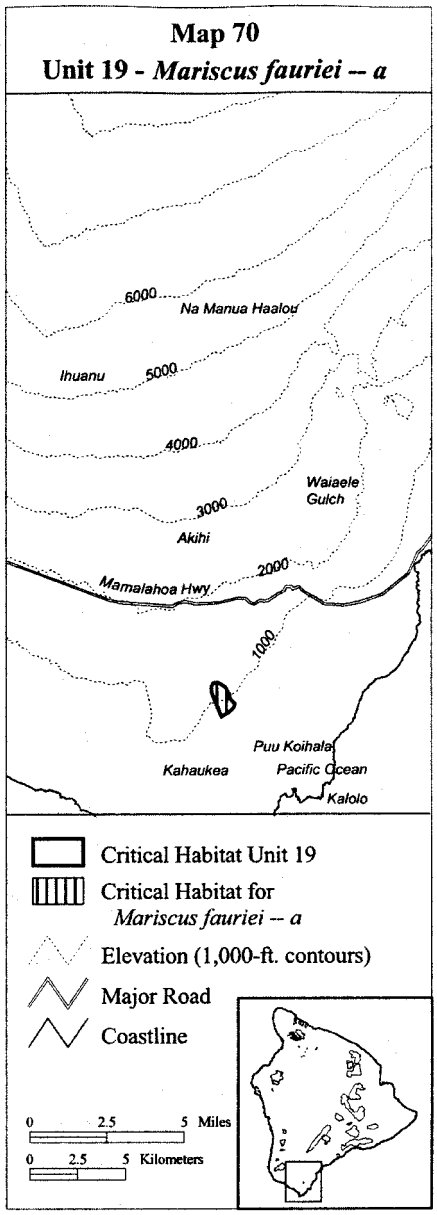
(ii) **Note:** Map 69 follows:



(70) Hawaii 19—*Mariscus fauriei*—a (127 ha, 313 ac)

(i) Unit consists of the following 14 boundary points: Start at 220519, 2105287; 220658, 2105408; 220821, 2105428; 221200, 2105198; 221467, 2104758; 221444, 2104588; 221445, 2104587; 221710, 2104303; 221694, 2104107; 221493, 2103896; 221254, 2103732; 221032, 2103615; 220535, 2104849; 220496, 2105093; return to starting point.

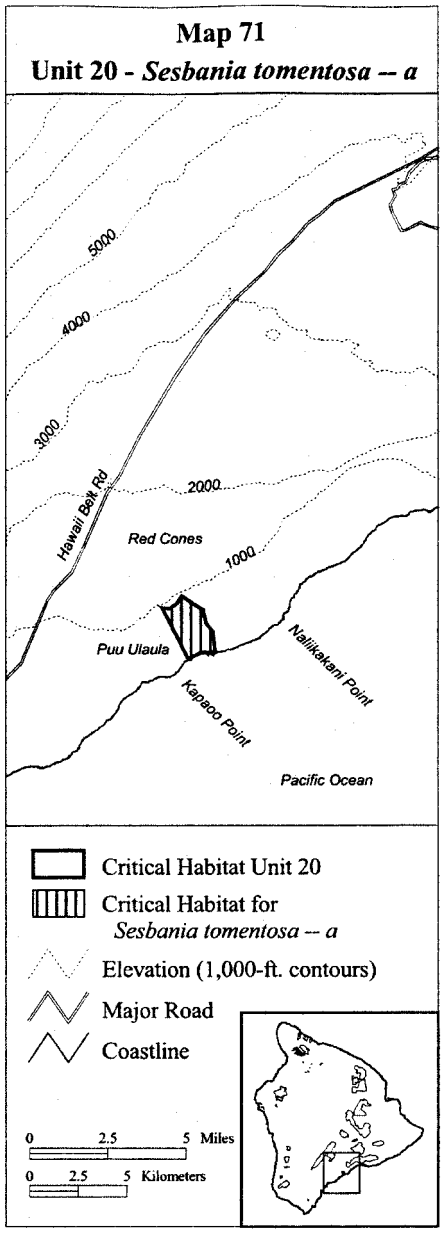
(ii) **Note:** Map 70 follows:



(71) Hawaii 20—*Sesbania tomentosa*—a (486 ha, 1,201 ac)

(i) Unit consists of the following nine boundary points: Coast; 249798, 2124556; 248451, 2124193; 247078, 2126859; 247458, 2126835; 247811, 2127062; 248104, 2127469; 249187, 2126745; 249330, 2126069; 249701, 2125632.

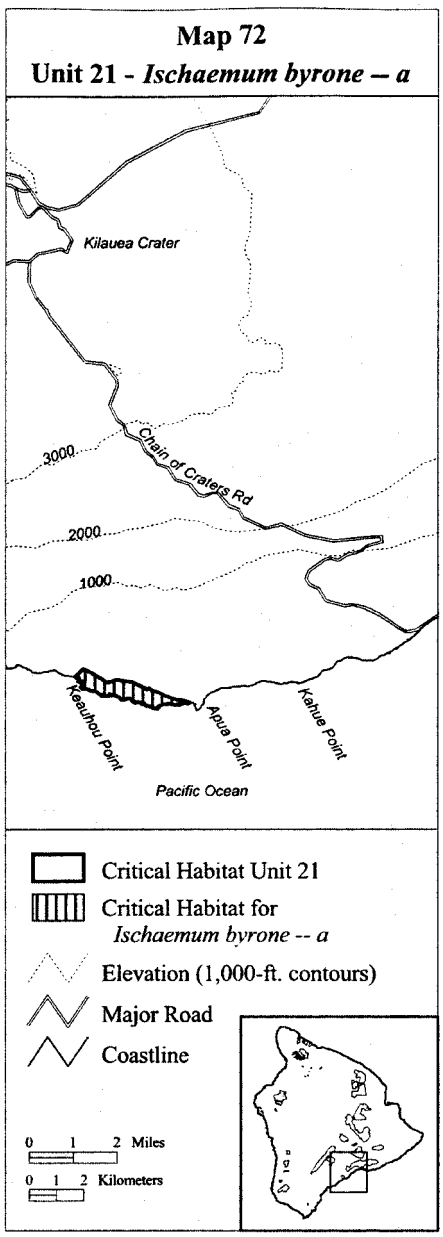
(ii) **Note:** Map 71 follows:



(72) Hawaii 21—*Ischaemum byrone*—a (206 ha, 510 ac)

(i) Unit consists of the following 16 boundary points: Start at 265058, 2131828; 265367, 2132139; 265624, 2132015; 265956, 2131806; 266250, 2131617; 266582, 2131721; 267180, 2131645; 267711, 2131370; 267789, 2131408; 267891, 2131332; 268138, 2131256; 268432, 2131114; 268755, 2131009; 269049, 2130962; 269248, 2130905; 269266, 2130849; return to starting point.

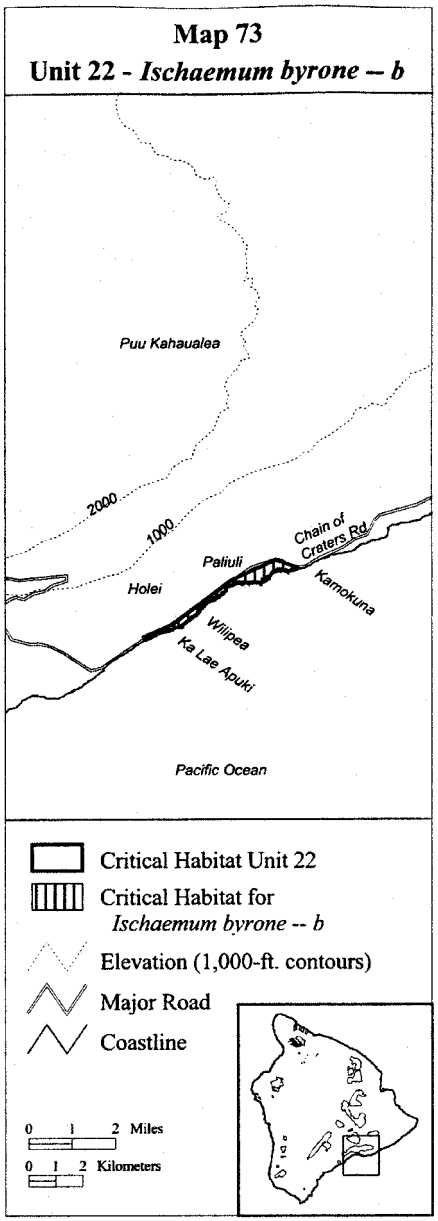
(ii) **Note:** Map 72 follows:



(73) Hawaii 22—*Ischaemum byrone*—b (159 ha, 393 ac)

(i) Unit consists of the following 11 boundary points: Coast; 284893, 2137276; 279221, 2134615; 279221, 2134615; 279175, 2134728; 280175, 2135157; 281315, 2136008; 282395, 2136841; 284061, 2137614; 284803, 2137355; 284850, 2137360; 284874, 2137349.

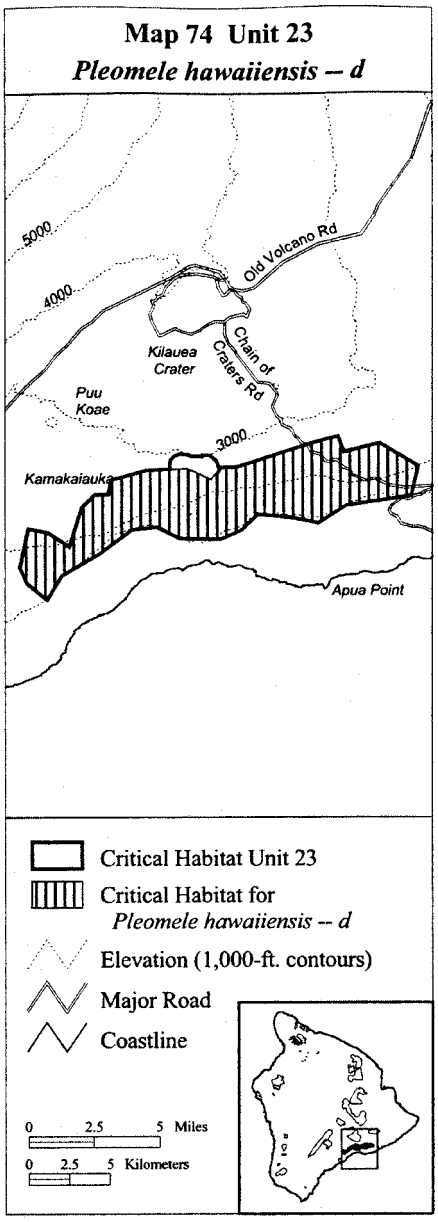
(ii) **Note:** Map 73 follows:



(74) Hawaii 23—*Pleomele hawaiiensis*—d (8,943 ha, 22,097 ac)

(i) Unit consists of the following 33 boundary points: Start at 274892, 2136370; 270874, 2135790; 269174, 2134697; 267700, 2135019; 265425, 2135256; 264383, 2134214; 263150, 2133692; 260638, 2133740; 259217, 2134451; 257700, 2134309; 255757, 2132839; 253387, 2131465; 252487, 2129948; 251241, 2130960; 250795, 2131956; 251310, 2134361; 252547, 2134120; 253852, 2133261; 254607, 2135700; 255437, 2136482; 256222, 2136490; 256394, 2137383; 258592, 2138001; 261132, 2138090; 262576, 2137383; 263163, 2138161; 264146, 2138195; 268506, 2139617; 269645, 2139914; 270342, 2140091; 270763, 2139124; 272917, 2139676; 275306, 2138240; return to starting point.

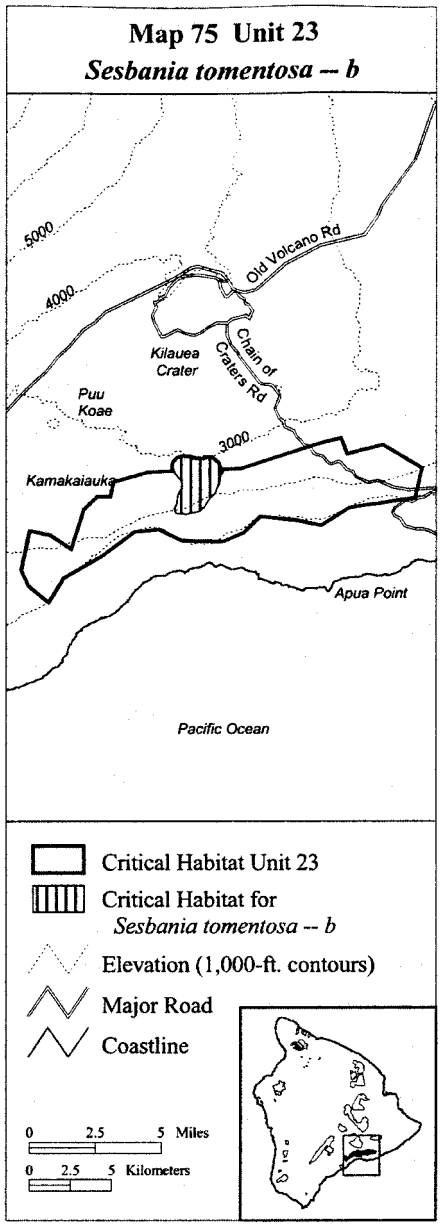
(ii) **Note:** Map 74 follows:

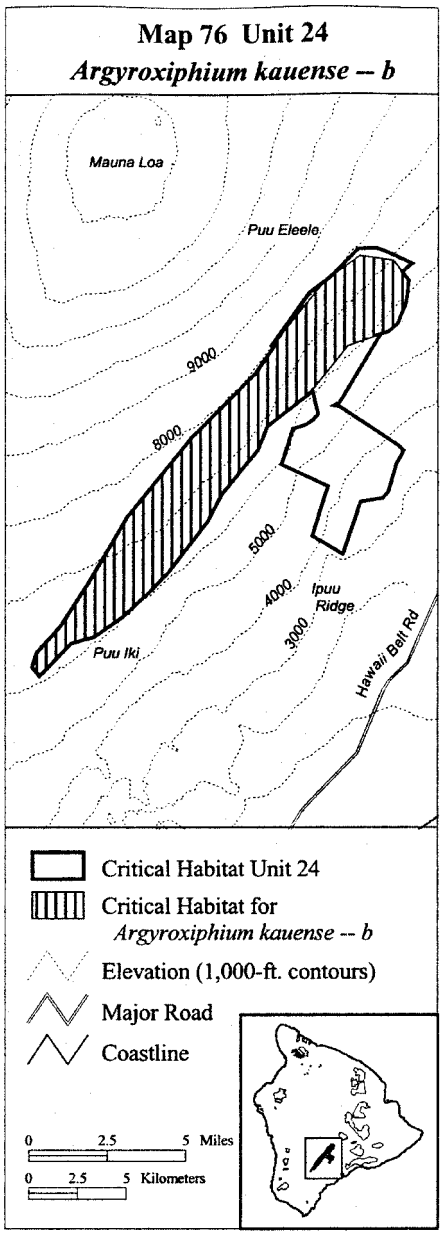


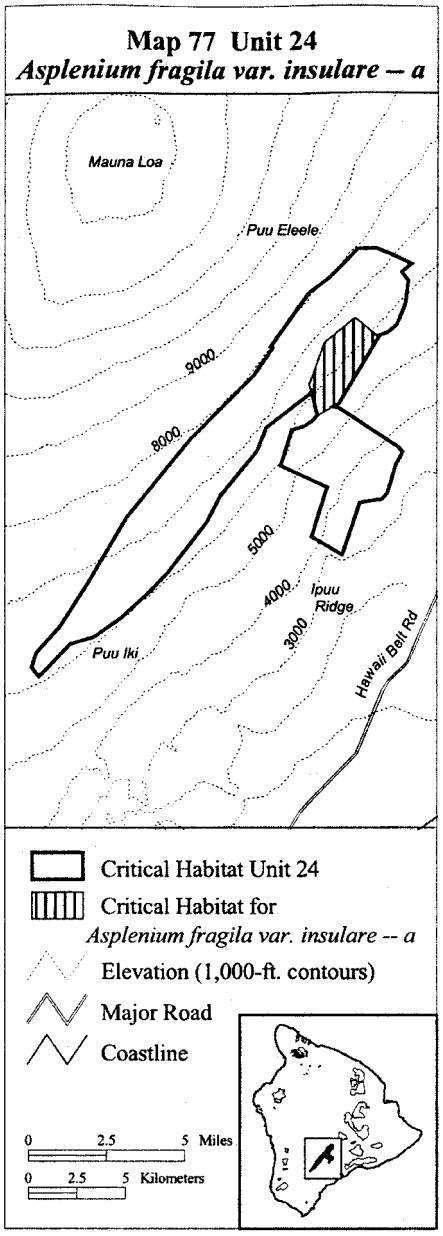
(75) Hawaii 23—*Sesbania tomentosa*—b (803 ha, 1,984 ac)

(i) Unit consists of the following 27 boundary points: Start at 260007, 2138277; 260064, 2138614; 260288, 2138861; 260620, 2139007; 260945, 2138979; 261187, 2138985; 261288, 2138856; 261541, 2138867; 261945, 2138822; 262013, 2138945; 262440, 2138951; 262861, 2138592; 263063, 2138125; 262940, 2137446; 262614, 2136665; 262294, 2136266; 262007, 2135817; 261704, 2135564; 260951, 2135401; 260255, 2135424; 260176, 2135727; 260316, 2136075; 260361, 2136524; 260608, 2137002; 260580, 2137440; 260153, 2137906; 260058, 2138064; return to starting point.

(ii) **Note:** Map 75 follows:







(76) Hawaii 24—*Argyroxiphium kauense*—b (7,795 ha, 19,261 ac)

(i) Unit consists of the following 27 boundary points: Start at 241932, 2146263; 241417, 2145847; 239409, 2145112; 237401, 2142639; 235247, 2140949; 234781, 2139725; 232871, 2137399; 232161, 2136003; 230227, 2133432; 229223, 2132403; 227778, 2131032; 226357, 2130052; 225133, 2129685; 223541, 2127995; 223150, 2128461; 223394, 2129220; 224594, 2130542; 226039, 2132819; 227998, 2136174; 231377, 2140386; 234659, 2143741; 236177, 2145945; 238210, 2148467; 239997, 2149789; 241711, 2149544; 242495, 2148491; 242372, 2147341; return to starting point.

(ii) **Note:** Map 76 follows:

(77) Hawaii 24—*Asplenium fragile* var. *insulare*—a (907 ha, 2,241 ac)

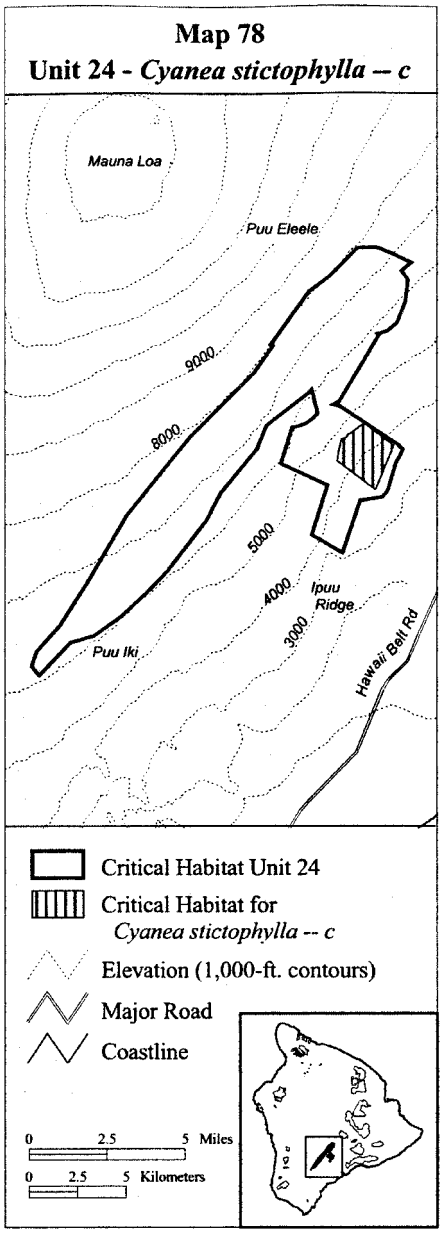
(i) Unit consists of the following six boundary points: Start at 239781, 2146615; 241003, 2145626; 238959, 2142183; 237893, 2141565; 237452, 2143181; 238209, 2145335; return to starting point.

(ii) **Note:** Map 77 follows:

(78) Hawaii 24—*Cyanea stictophylla*—c (584 ha, 1,443 ac)

(i) Unit consists of the following nine boundary points: Start at 240250, 2141066; 241783, 2139920; 240835, 2137607; 238868, 2139097; 238947, 2139692; 239116, 2140248; 239332, 2140329; 239455, 2140496; 239602, 2140570; return to starting point.

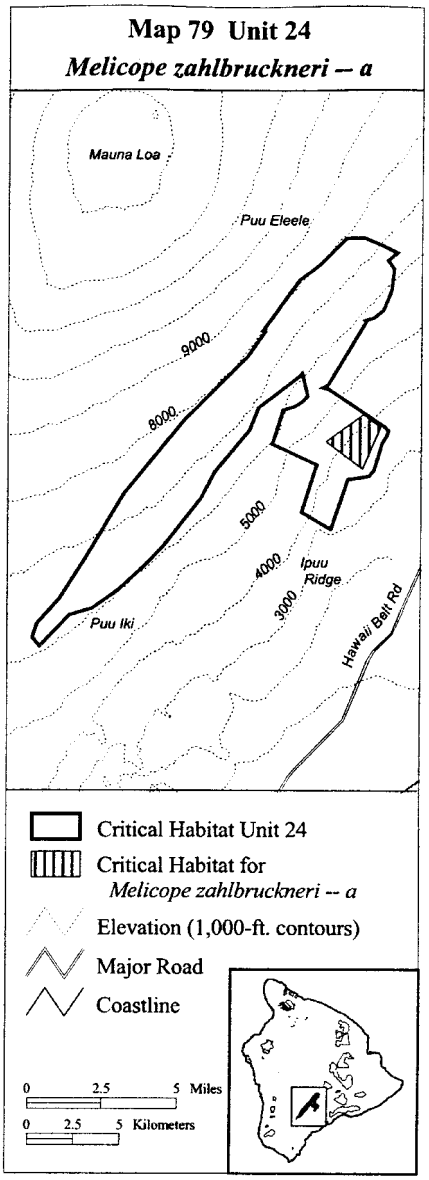
(ii) **Note:** Map 78 follows:



(79) Hawaii 24—*Melicope zahlbruckneri*—a (434 ha, 1,072 ac)

(i) Unit consists of the following four boundary points: Start at 238867, 2139105; 240894, 2140601; 241788, 2139910; 240819, 2137611; return to starting point.

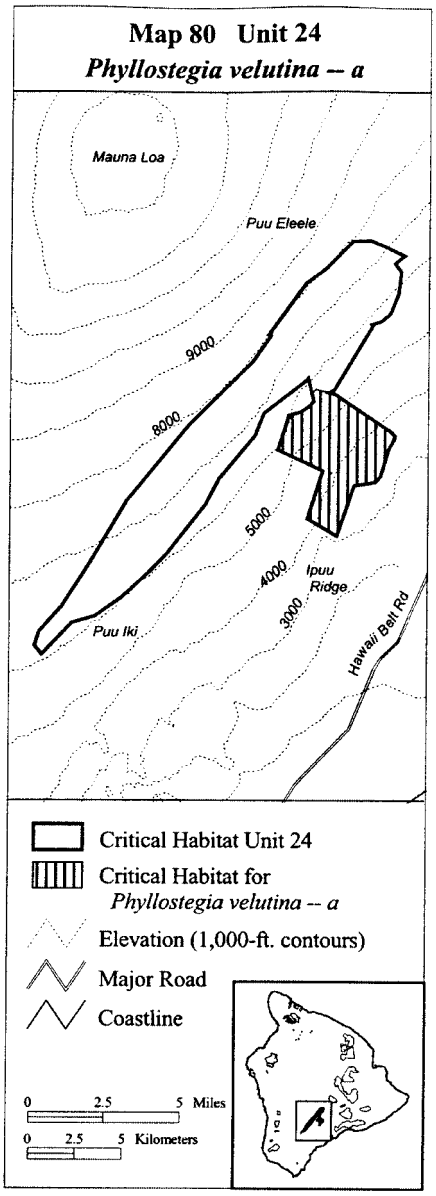
(ii) **Note:** Map 79 follows:



(80) Hawaii 24—*Phyllostegia velutina*—a (2,466 ha, 6,093 ac)

(i) Unit consists of the following 18 boundary points: Start at 238962, 2141970; 242007, 2139925; 242207, 2139714; 242118, 2139436; 241893, 2139030; 241440, 2137533; 241162, 2137224; 240062, 2137024; 239123, 2134346; 237550, 2135268; 238350, 2137847; 235994, 2138947; 236552, 2140823; 237172, 2141003; 237594, 2141281; 237850, 2141570; 237828, 2142070; 238005, 2142204; return to starting point.

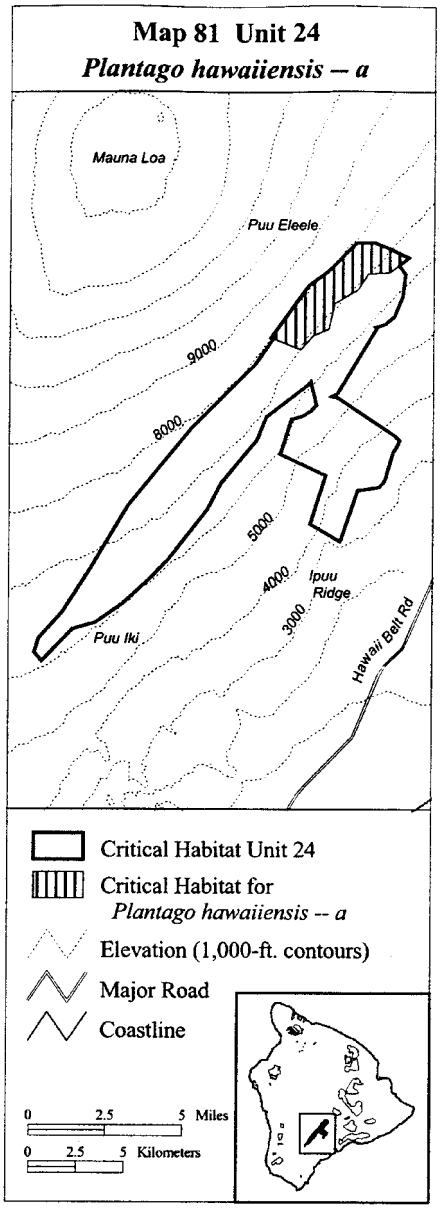
(ii) **Note:** Map 80 follows:



(81) Hawaii 24—*Plantago hawaiensis*—a (1,348 ha, 3,330 ac)

(i) Unit consists of the following 14 boundary points: Start at 239891, 2150141; 240843, 2150153; 241675, 2149824; 242668, 2149348; 241709, 2148593; 240533, 2148496; 240027, 2147666; 238765, 2146944; 238485, 2145606; 237676, 2145240; 237021, 2144491; 235459, 2145119; 237410, 2147869; 238480, 2148664; return to starting point.

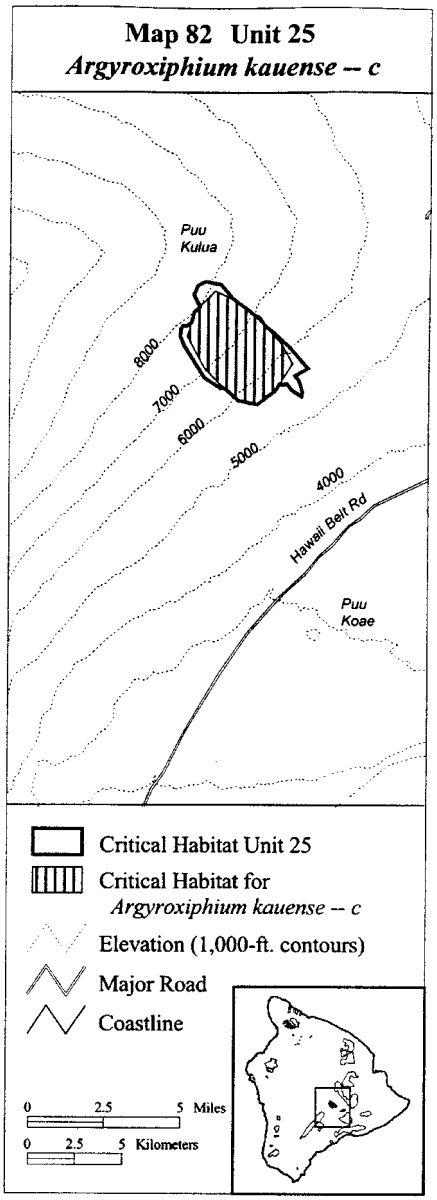
(ii) **Note:** Map 81 follows:



(82) Hawaii 25—*Argyroxiphium kauense*—c (2,006 ha, 4,957 ac)

(i) Unit consists of the following 13 boundary points: Start at 250289, 2157327; 251003, 2156578; 251595, 2155516; 250654, 2154088; 249731, 2153374; 248704, 2153565; 247907, 2154271; 246893, 2155307; 245987, 2156978; 246353, 2158267; 247468, 2159347; 248478, 2158877; 249279, 2158302; return to starting point.

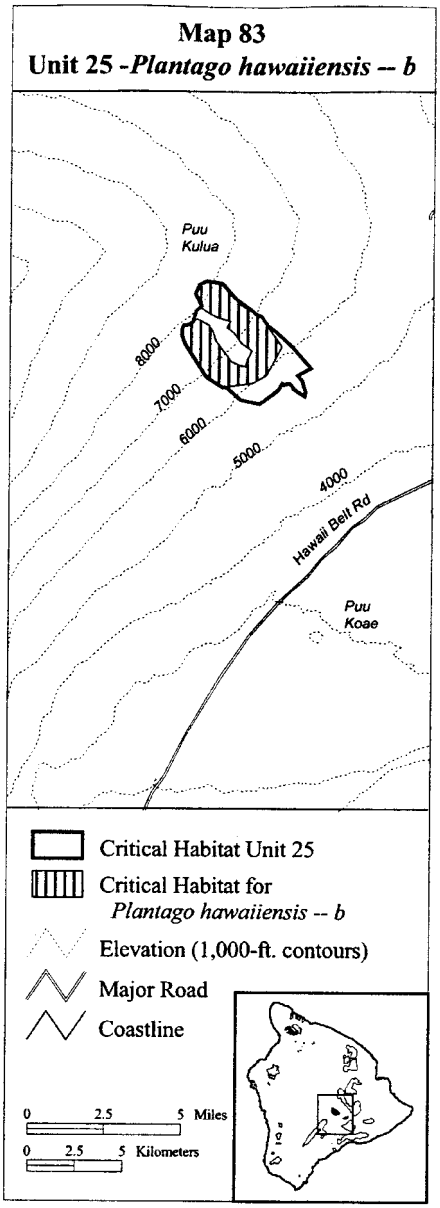
(ii) **Note:** Map 82 follows:



(83) Hawaii 25—*Plantago hawaiensis*—b (1,522 ha, 3,762 ac)

(i) Unit consists of the following 35 boundary points: Start at 250884, 2156394; 250042, 2154844; 249371, 2154454; 247769, 2154222; 246915, 2154794; 245791, 2156465; 245586, 2156984; 245636, 2157360; 245710, 2157517; 245929, 2157517; 246442, 2157846; 247040, 2157529; 247235, 2157212; 247369, 2156711; 247784, 2156175; 248224, 2155589; 248639, 2155406; 248980, 2155320; 249005, 2155564; 249285, 2156187; 248773, 2156528; 248358, 2157090; 247967, 2157383; 248175, 2157737; 247528, 2157895; 246991, 2158164; 246649, 2158418; 246674, 2158444; 246320, 2159164; 246527, 2159640; 246918, 2159860; 247369, 2159775; 247723, 2159701; 248761, 2158530; 249786, 2157944; return to starting point.

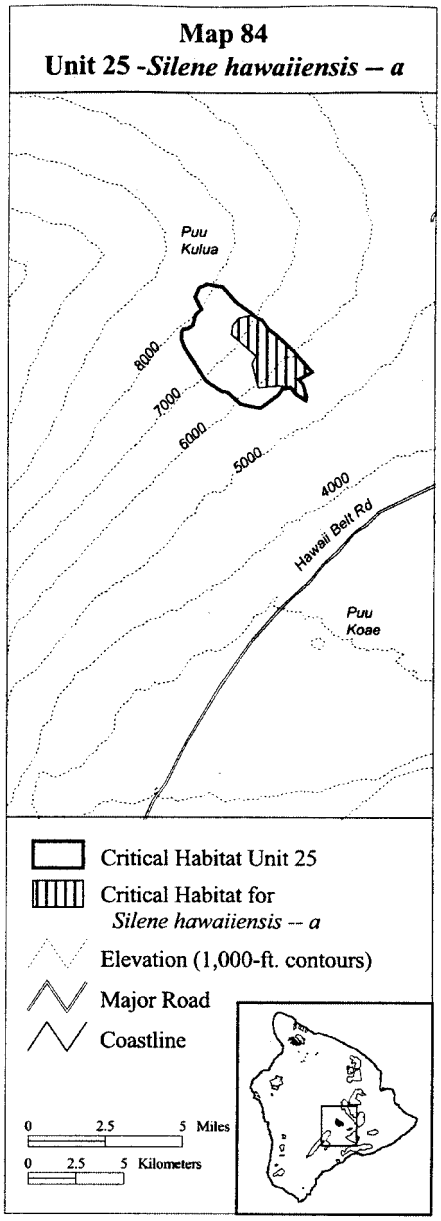
(ii) **Note:** Map 83 follows:



(84) Hawaii 25—*Silene hawaiiensis*—a (854 ha, 2,110 ac)

(i) Unit consists of the following 20 boundary points: Start at 249605, 2154443; 249282, 2155670; 249489, 2156083; 248205, 2157211; 248257, 2157694; 248587, 2158073; 249179, 2158214; 249790, 2157993; 250127, 2157482; 250559, 2157202; 251403, 2156390; 252371, 2155266; 251701, 2154870; 251902, 2154637; 252099, 2154017; 252071, 2153773; 251517, 2154149; 251301, 2154449; 250993, 2154406; 250728, 2154562; return to starting point.

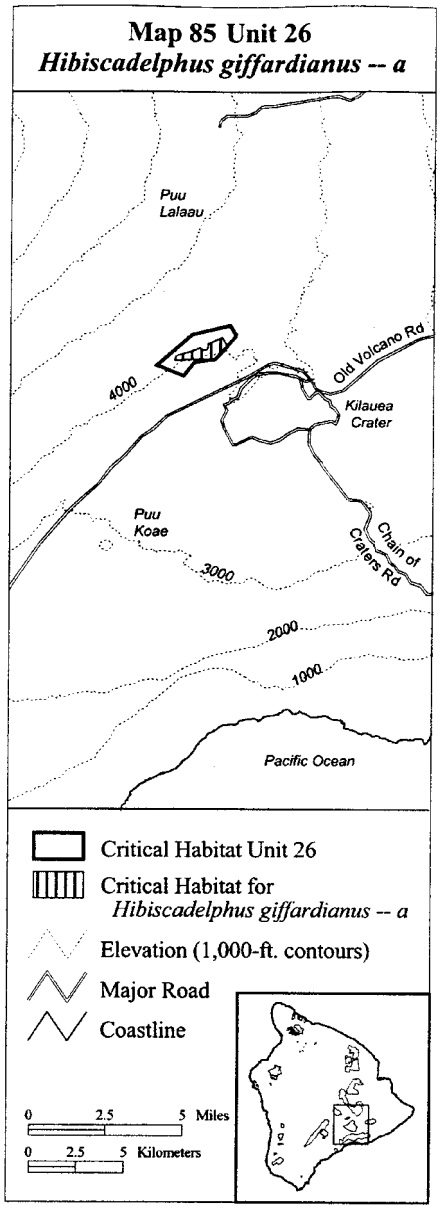
(ii) **Note:** Map 84 follows:



(85) Hawaii 26—*Hibiscadelphus giffardianus*—a (149 ha, 367 ac)

(i) Unit consists of the following 18 boundary points: Start at 256349, 2151035; 256516, 2151138; 256717, 2151196; 257064, 2151279; 257624, 2151506; 257795, 2151400; 258009, 2151416; 258048, 2151718; 258777, 2152045; 258966, 2151770; 259051, 2151582; 258433, 2150898; 258430, 2150898; 257945, 2150909; 257790, 2150915; 257034, 2150898; 256769, 2150857; 256333, 2150857; return to starting point.

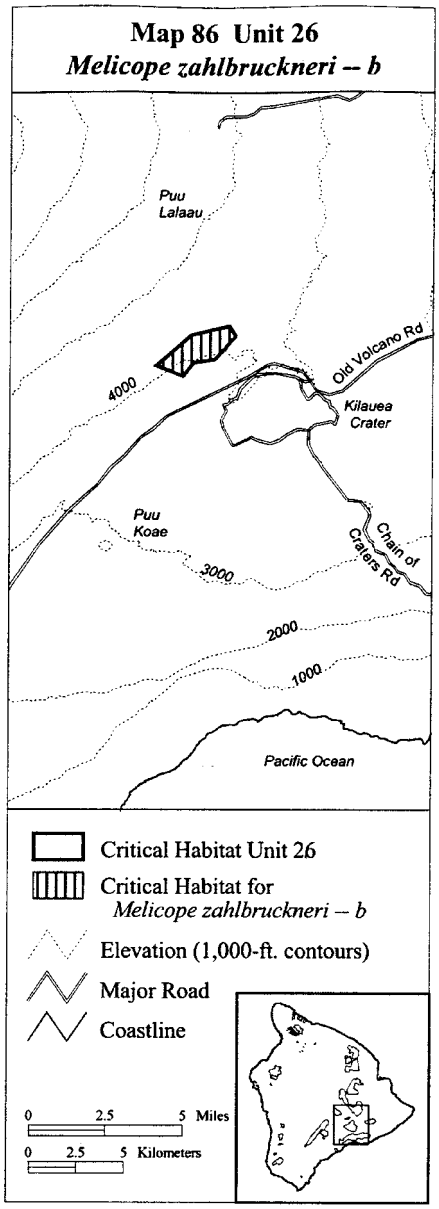
(ii) **Note:** Map 85 follows:



(86) Hawaii 26—*Melicope zahlbruckneri*—b (495 ha, 1,224 ac)

(i) Unit consists of the following seven boundary points: Start at 259520, 2152124; 258420, 2150913; 257324, 2150755; 256781, 2150023; 255379, 2150583; 257220, 2152206; 259198, 2152680; return to starting point.

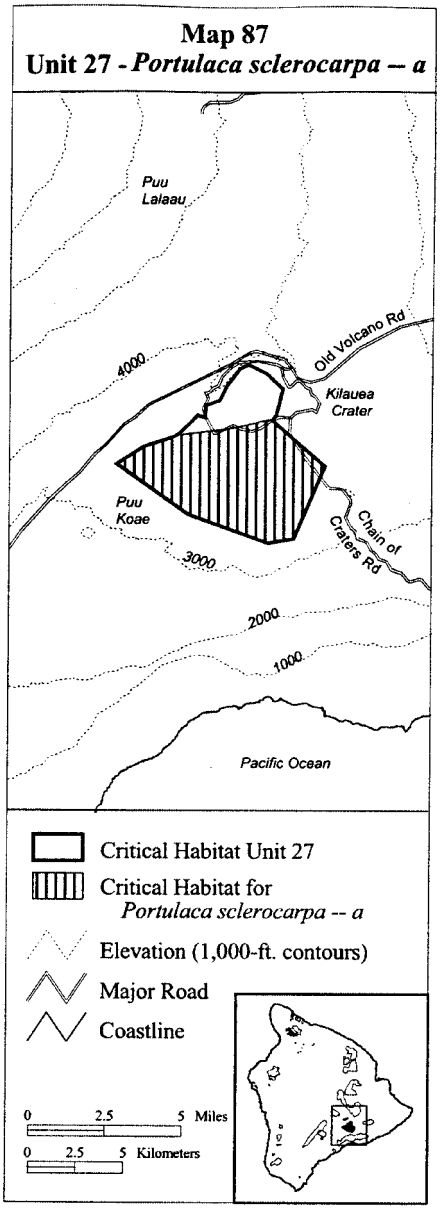
(ii) **Note:** Map 86 follows:



(87) Hawaii 27—*Portulaca sclerocarpa*—a (4,390 ha, 10,848 ac)

(i) Unit consists of the following nine boundary points: Start at 263596, 2140748; 262234, 2140517; 258055, 2142041; 254269, 2144742; 255668, 2145679; 257593, 2146289; 260387, 2146659; 262395, 2147120; 265212, 2144650; return to starting point.

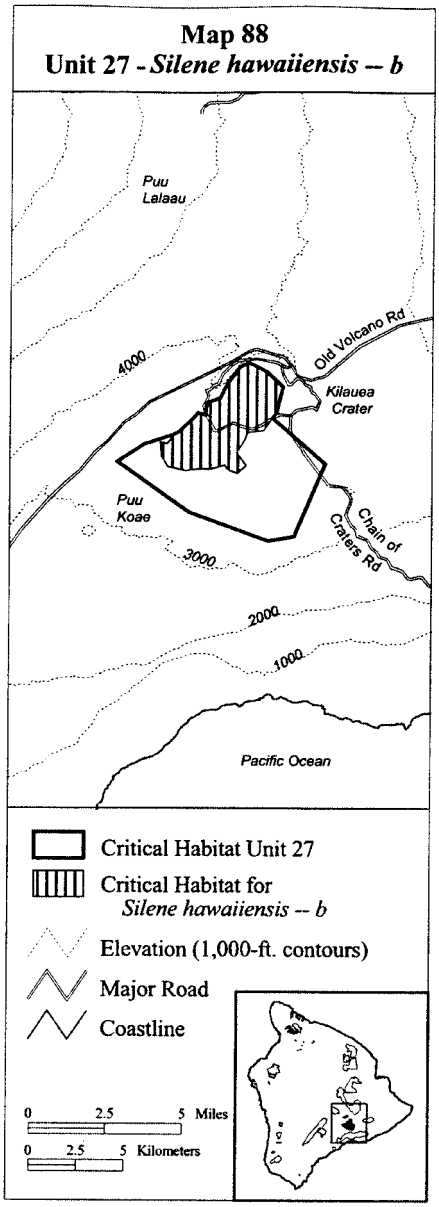
(ii) **Note:** Map 87 follows:



(88) Hawaii 27—*Silene hawaiiensis*—b (1,942 ha, 4,798 ac)

(i) Unit consists of the following 28 boundary points: Start at 261207, 2150002; 262152, 2149529; 262966, 2148732; 262640, 2147357; 261953, 2146398; 261102, 2146308; 260976, 2145910; 260541, 2145204; 261048, 2144534; 260596, 2144100; 260125, 2144299; 259890, 2144552; 259220, 2144335; 258515, 2144335; 257845, 2144263; 256922, 2144462; 256560, 2145059; 256506, 2145801; 256886, 2145710; 257239, 2146201; 257501, 2146344; 258279, 2147086; 258496, 2147337; 258877, 2147212; 258949, 2147864; 259637, 2148117; 260035, 2148895; 260704, 2149800; return to starting point.

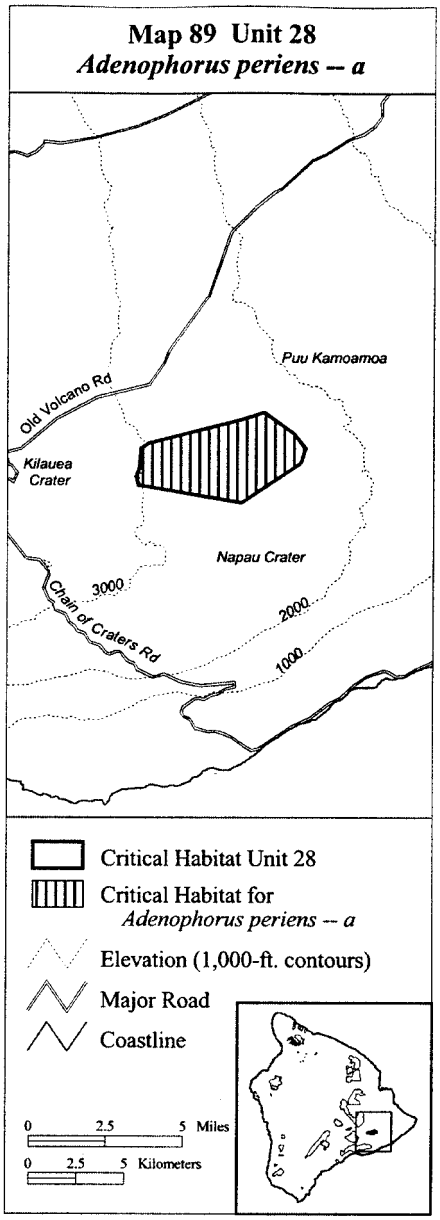
(ii) **Note:** Map 88 follows:



(89) Hawaii 28—*Adenophorus periens*—a (2,733 ha, 6,754 ac)

(i) Unit consists of the following 11 boundary points: Start at 279712, 2148510; 276648, 2146439; 271250, 2147346; 271140, 2147797; 271319, 2148257; 271361, 2149267; 271770, 2149568; 276751, 2150845; 277839, 2151215; 279362, 2150061; 279952, 2149315; return to starting point.

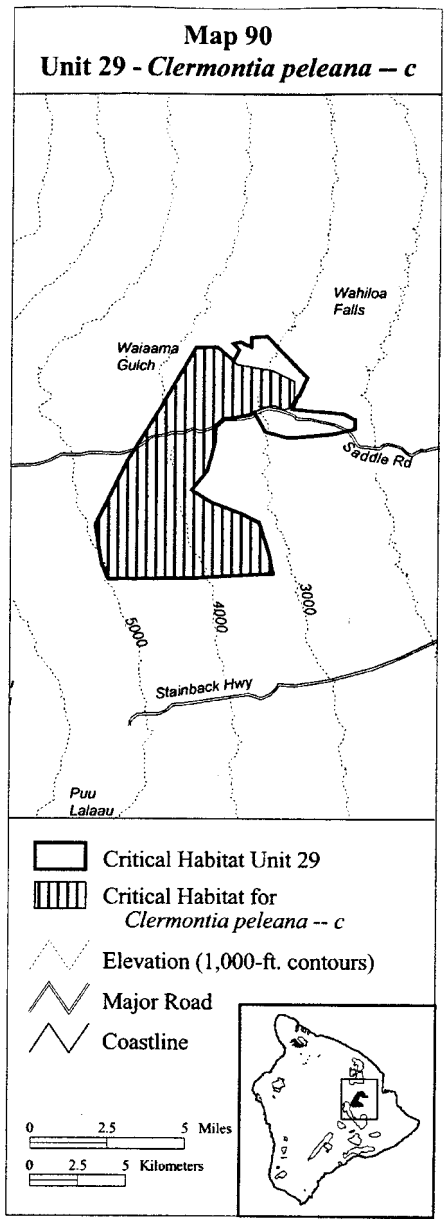
(ii) **Note:** Map 89 follows:



(90) Hawaii 29—*Clermontia peleana*—c (6,845 ha, 16,914 ac)

(i) Unit consists of the following 29 boundary points: Start at 256704, 2173629; 258341, 2177012; 260142, 2179904; 261881, 2182923; 262993, 2182963; 264053, 2182050; 265872, 2181759; 266999, 2181195; 267018, 2180286; 266781, 2179777; 266454, 2179686; 265993, 2179903; 265443, 2179855; 264701, 2179425; 264030, 2179281; 263288, 2179209; 262953, 2178826; 262905, 2178084; 262761, 2177461; 262498, 2176480; 261708, 2175450; 262666, 2174828; 264380, 2174192; 265235, 2173756; 265744, 2172137; 265944, 2171082; 261670, 2170827; 257377, 2170773; 257013, 2171646; return to starting point.

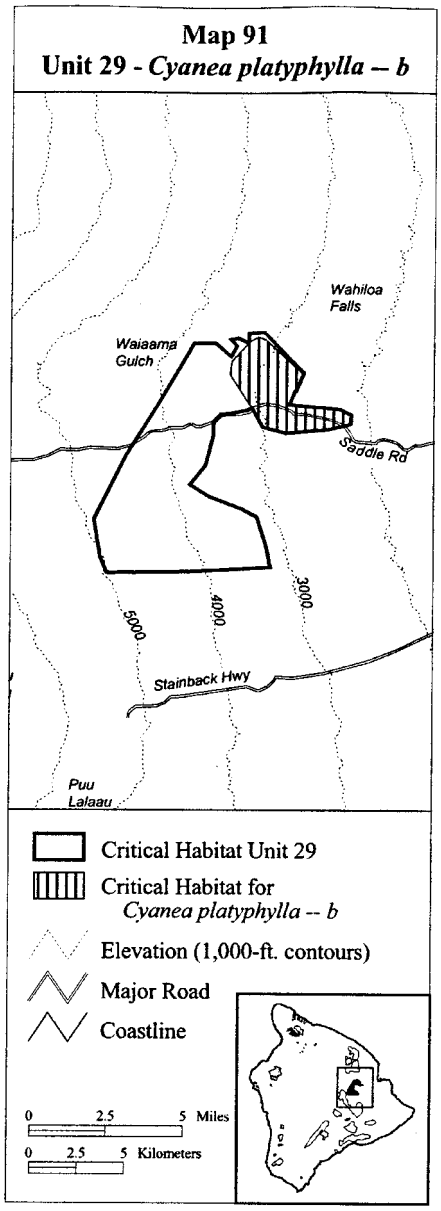
(ii) **Note:** Map 90 follows:



(91) Hawaii 29—*Cyanea platyphylla*—b (1,524 ha, 3,767 ac)

(i) Unit consists of the following 15 boundary points: Start at 270137, 2179182; 270117, 2178705; 269049, 2178426; 266707, 2178218; 265505, 2178550; 264852, 2179669; 264237, 2180565; 263774, 2181296; 263878, 2181980; 264821, 2183016; 265256, 2183296; 265629, 2183151; 267567, 2181379; 266904, 2179742; 269567, 2179503; return to starting point.

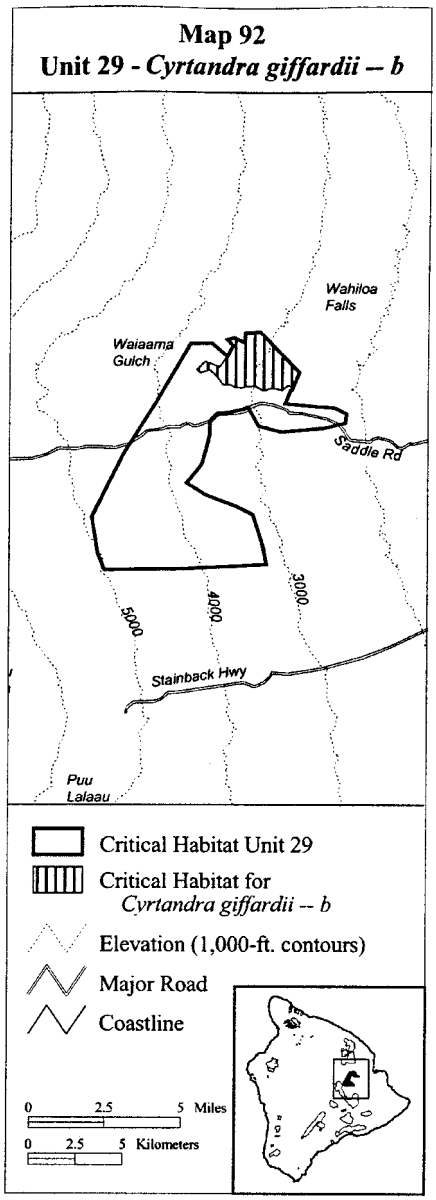
(ii) **Note:** Map 91 follows:



(92) Hawaii 29—*Cyrtandra giffardii*—b (938 ha, 2,319 ac)

(i) Unit consists of the following 28 boundary points: Start at 262416, 2181378; 262234, 2181545; 262682, 2181990; 263440, 2181695; 263960, 2182446; 264133, 2182822; 263843, 2183142; 264177, 2183241; 264755, 2182952; 264784, 2183472; 265594, 2183524; 267656, 2181395; 267302, 2180559; 267067, 2180712; 266763, 2180438; 266546, 2180496; 266214, 2180553; 265752, 2180423; 265275, 2180683; 264856, 2180640; 264596, 2180553; 264191, 2180611; 264018, 2180727; 263642, 2180727; 263367, 2181102; 263122, 2181334; 262891, 2181536; 262486, 2181377; return to starting point.

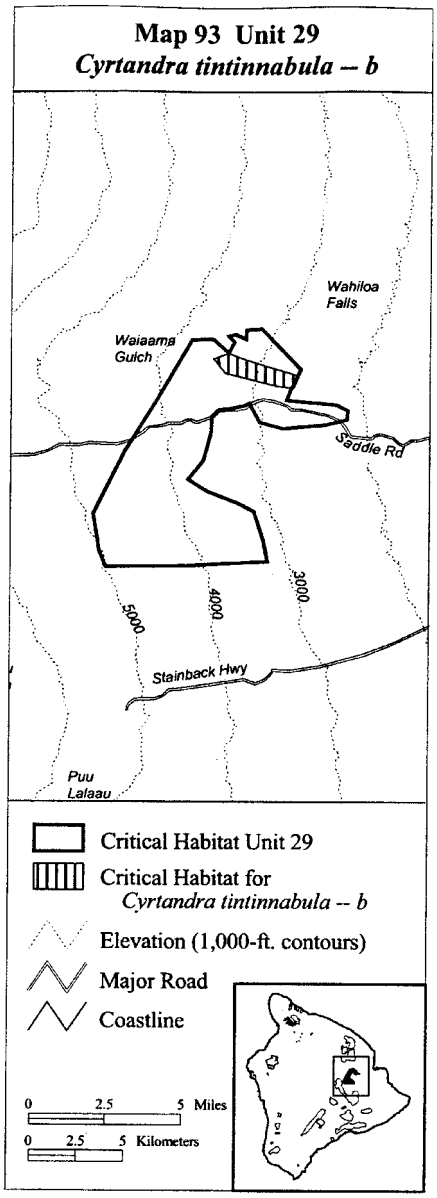
(ii) **Note:** Map 92 follows:



(93) Hawaii 29—*Cyrtandra tintinnabula*—b (378 ha, 934 ac)

(i) Unit consists of the following eight boundary points: Start at 267234, 2180396; 266451, 2180468; 263662, 2181160; 263032, 2181914; 263831, 2182224; 264610, 2181934; 265290, 2181716; 267462, 2181056; return to starting point.

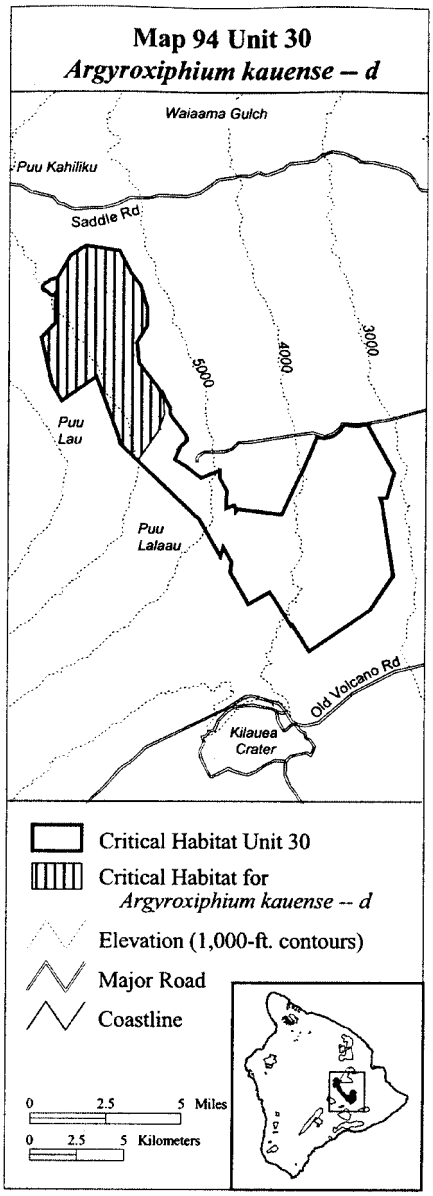
(ii) **Note:** Map 93 follows:



(94) Hawaii 30—*Argyroxiphium kauense*—d (4,281 ha, 10,578 ac)

(i) Unit consists of the following 35 boundary points: Start at 251376, 2166456; 250829, 2167375; 250254, 2169847; 250992, 2170628; 251020, 2172877; 251769, 2174236; 252605, 2174758; 254398, 2174497; 255008, 2173313; 255513, 2172668; 255879, 2171502; 255879, 2170492; 255339, 2169604; 255451, 2168509; 256441, 2167275; 256753, 2166610; 256810, 2165770; 256453, 2164780; 255495, 2163352; 255306, 2163361; 254541, 2164098; 254498, 2164137; 254481, 2164182; 254455, 2164255; 254449, 2164271; 254374, 2164589; 254004, 2165599; 253287, 2167525; 253238, 2167661; 253194, 2167785; 253194, 2167786; 253193, 2167786; 253192, 2167786; 253191, 2167786; 253146, 2167752; return to starting point.

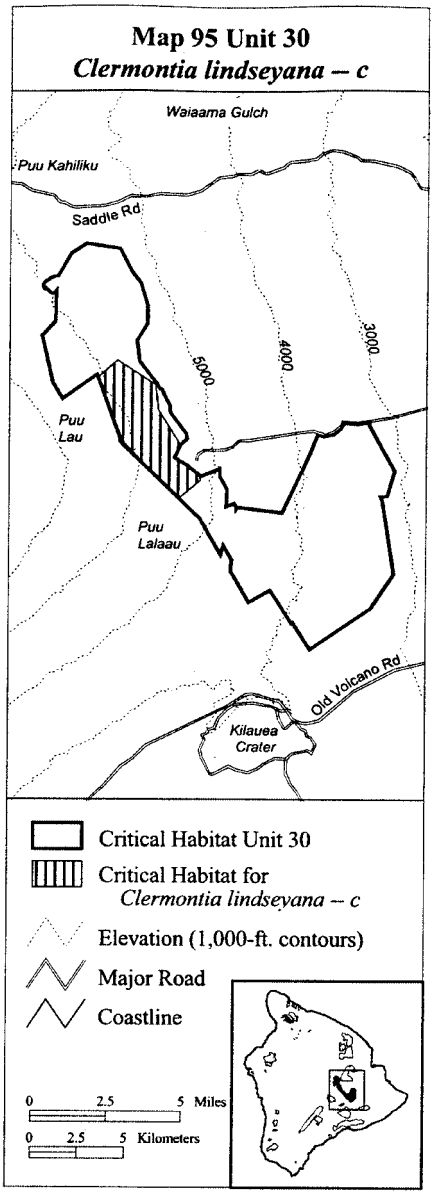
(ii) **Note:** Map 94 follows:



(95) Hawaii 30—*Clermontia lindseyana*—c (1,634 ha, 4,037 ac)

(i) Unit consists of the following 13 boundary points: Start at 254584, 2164181; 253305, 2167650; 254302, 2168554; 256320, 2167251; 256487, 2165898; 257687, 2164037; 257302, 2163331; 258133, 2162854; 258725, 2162386; 258756, 2162085; 257655, 2161172; 256263, 2162480; 255102, 2163686; return to starting point.

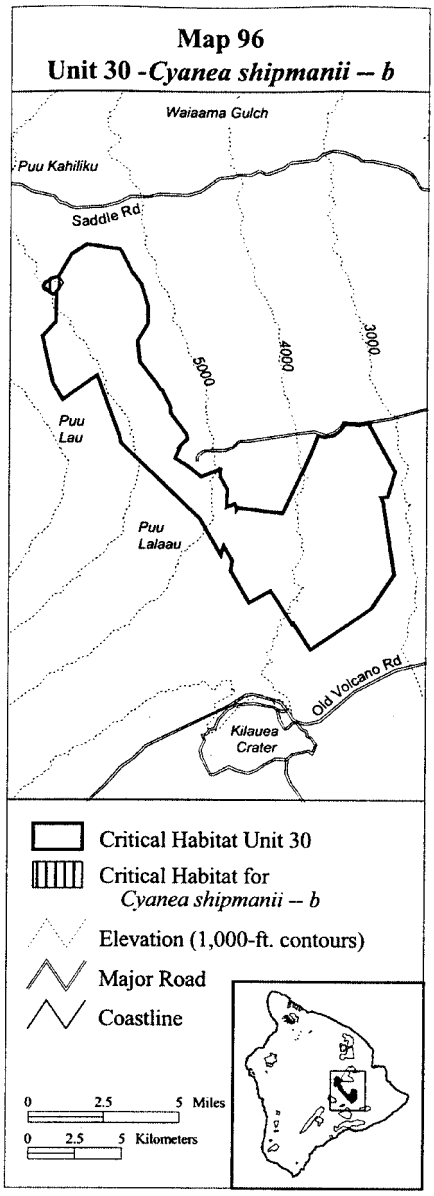
(ii) **Note:** Map 95 follows:



(96) Hawaii 30—*Cyanea shipmanii*—b (62 ha, 152 ac)

(i) Unit consists of the following 17 boundary points: Start at 250385, 2172716; 250588, 2172812; 250726, 2172919; 250993, 2173015; 251162, 2173040; 251356, 2172692; 251292, 2172620; 251217, 2172460; 251121, 2172321; 251014, 2172236; 250918, 2172140; 250790, 2172086; 250673, 2172161; 250545, 2172300; 250385, 2172332; 250300, 2172449; 250310, 2172535; return to starting point.

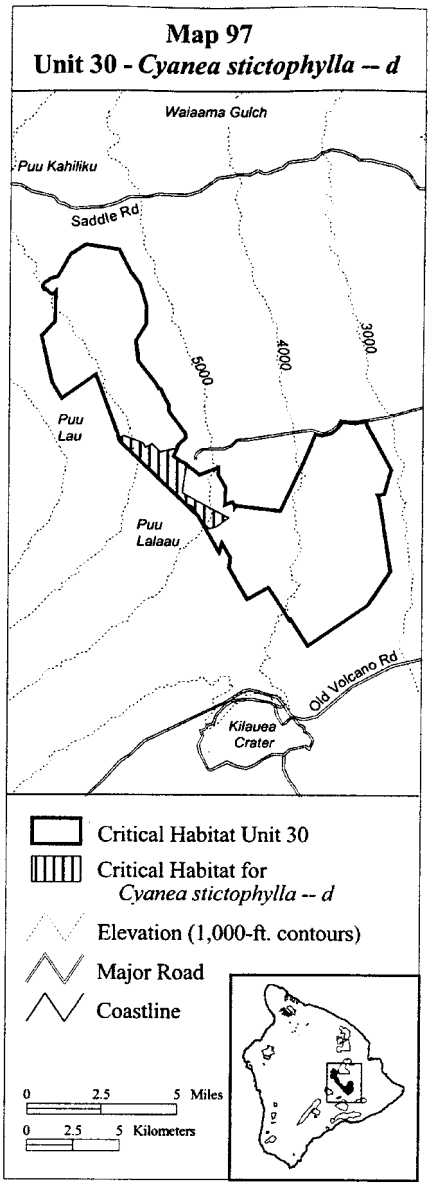
(ii) **Note:** Map 96 follows:



(97) Hawaii 30—*Cyanea shipmanii*—c (825 ha, 2,038 ac)

(i) Unit consists of the following 17 boundary points: Start at 254374, 2164589; 254004, 2165599; 253236, 2167756; 253128, 2168010; 254193, 2168432; 254246, 2168296; 254470, 2167400; 254649, 2167176; 255481, 2167289; 256666, 2167013; 256799, 2166728; 257113, 2166101; 257113, 2164936; 256396, 2164757; 255321, 2165116; 254559, 2165295; 254649, 2164623; return to starting point.

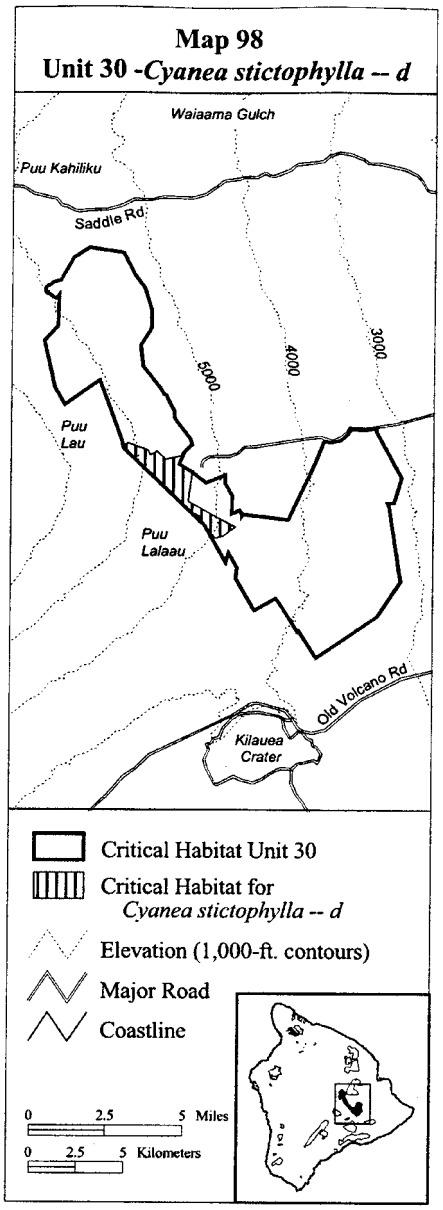
(ii) **Note:** Map 97 follows:



(98) Hawaii 30—*Cyanea stictophylla*—d (623 ha, 1,539 ac)

(i) Unit consists of the following 27 boundary points: Start at 254498, 2164341; 254727, 2164444; 255743, 2164078; 255868, 2163816; 256222, 2164021; 256656, 2163576; 257560, 2163785; 257352, 2163331; 258066, 2162902; 257844, 2161395; 257900, 2161317; 259249, 2160573; 260356, 2159979; 259695, 2159517; 259319, 2159380; 258898, 2159773; 258849, 2159861; 258810, 2159929; 258784, 2159981; 258755, 2160036; 258715, 2160077; 258688, 2160104; 258437, 2160584; 258243, 2160676; 258167, 2160673; 256128, 2162630; 254574, 2164116; return to starting point.

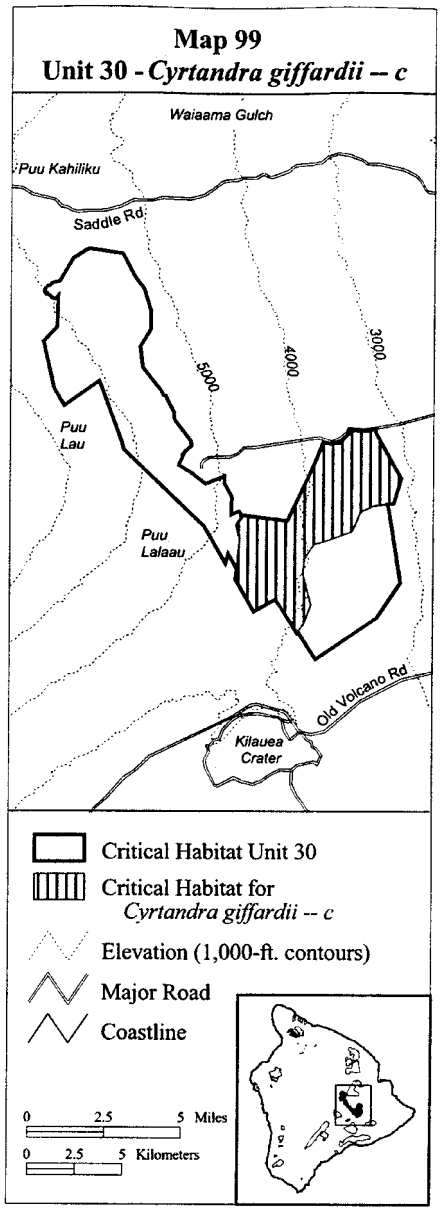
(ii) **Note:** Map 98 follows:



(99) Hawaii 30—*Cyrtandra giffardii*—c (3,872 ha, 9,567 ac)

(i) Unit consists of the following 28 boundary points: Start at 266492, 2165136; 267184, 2165097; 267638, 2165195; 269069, 2162612; 268669, 2161281; 267615, 2161161; 266924, 2160825; 266490, 2159798; 265048, 2159265; 264495, 2159127; 264001, 2158357; 263902, 2157567; 264357, 2155927; 263981, 2154960; 263634, 2154426; 262793, 2155728; 262477, 2156217; 261337, 2155564; 260360, 2157263; 260584, 2159423; 260367, 2160114; 260734, 2160659; 263088, 2160361; 264090, 2162500; 264176, 2162638; 264221, 2162790; 264951, 2164464; 265860, 2164445; return to starting point.

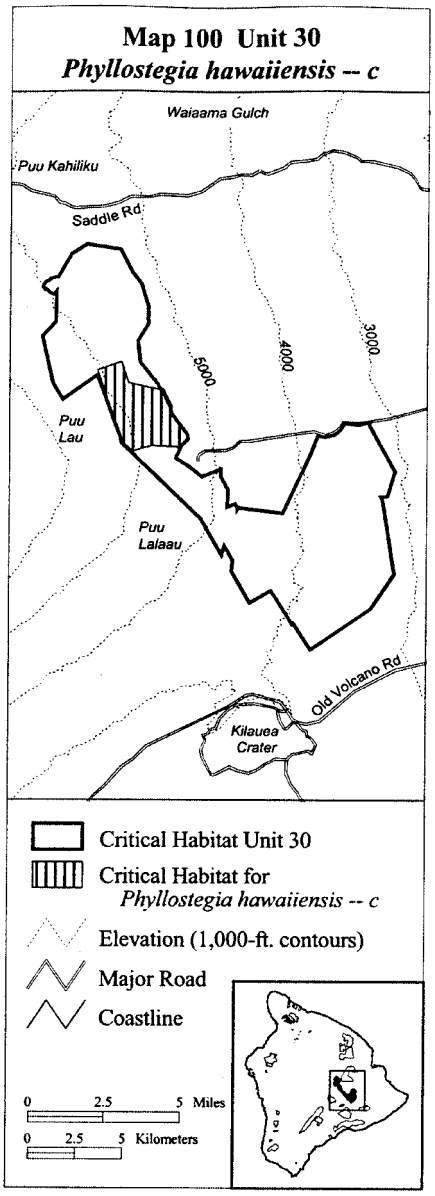
(ii) **Note:** Map 99 follows:



(100) Hawaii 30—*Phyllostegia racemosa*—c (267 ha, 659 ac)

(i) Unit consists of the following 10 boundary points: Start at 255001, 2163655; 256020, 2163968; 257634, 2163912; 257384, 2163319; 257871, 2163010; 257756, 2162804; 256542, 2162680; 256379, 2162447; 256238, 2162463; 256081, 2162615; return to starting point.

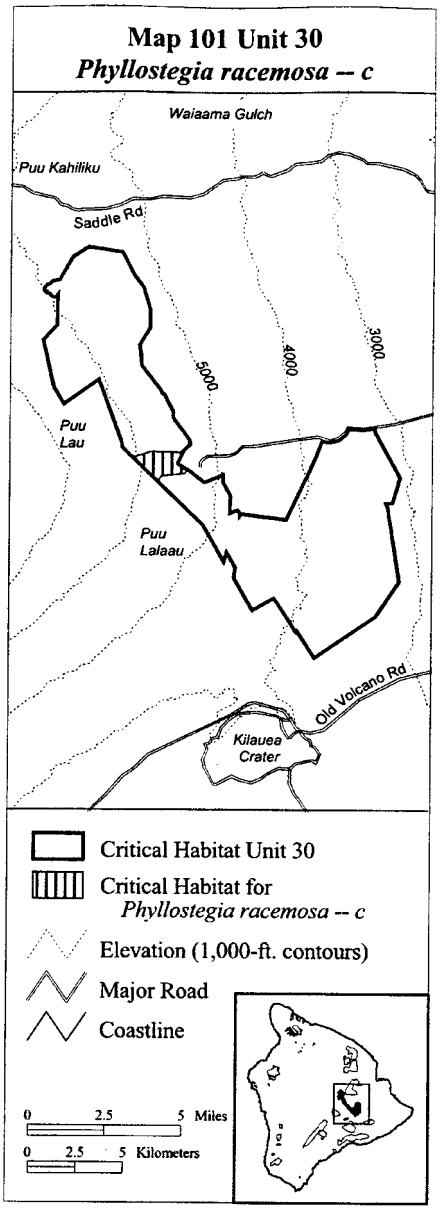
(ii) **Note:** Map 100 follows:



(101) Hawaii 30—*Phyllostegia velutina*—b (1,180 ha, 2,916 ac)

(i) Unit consists of the following 25 boundary points: Start at 255001, 2163655; 256020, 2163968; 257556, 2163812; 257342, 2163356; 258145, 2162834; 258761, 2162325; 259766, 2162727; 259792, 2162339; 260155, 2161636; 260142, 2160687; 260553, 2160880; 260676, 2160624; 260669, 2159628; 260010, 2158695; 259835, 2158111; 258895, 2159775; 258845, 2159864; 258808, 2159929; 258780, 2159981; 258748, 2160040; 258707, 2160080; 258644, 2160142; 258562, 2160221; 258544, 2160239; 256081, 2162615; return to starting point.

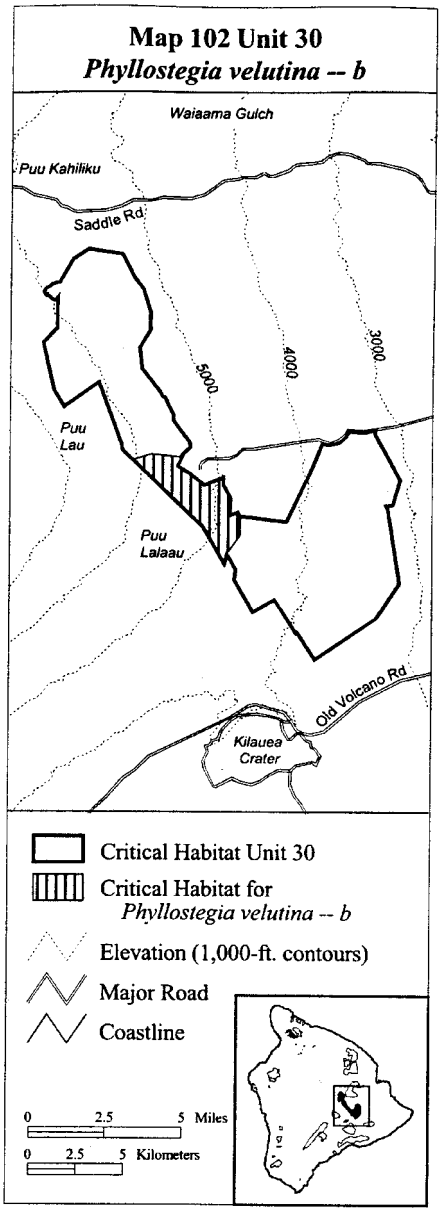
(ii) **Note:** Map 101 follows:

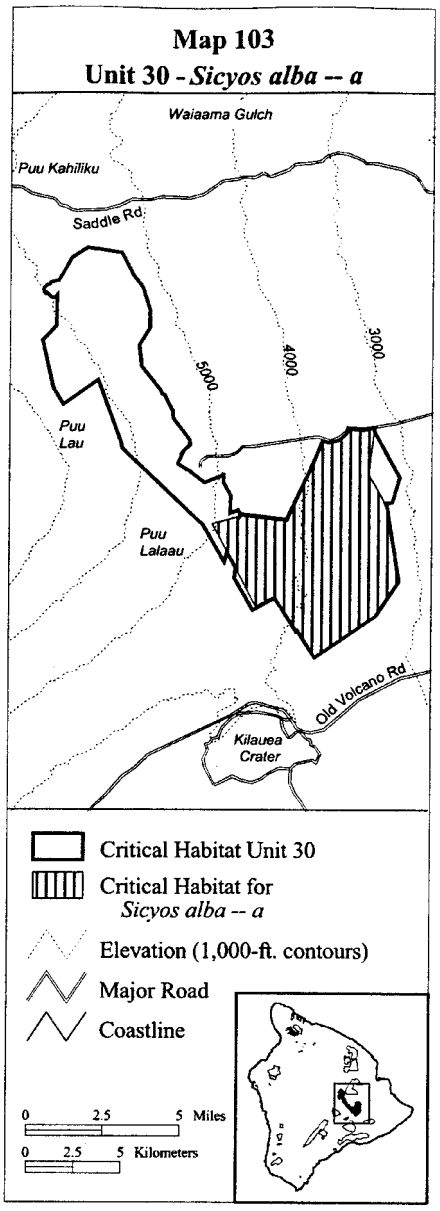


(102) Hawaii 30—*Plantago hawaiensis*—c (1,219 ha, 3,012 ac)

(i) Unit consists of the following 13 boundary points: Start at 254476, 2168522; 254473, 2168510; 254874, 2167383; 256572, 2166997; 257174, 2165685; 257971, 2164620; 258044, 2164337; 257576, 2163925; 256125, 2164018; 255434, 2163788; 255099, 2163685; 254488, 2164250; 253207, 2168032; return to starting point.

(ii) **Note:** Map 102 follows:





(103) Hawaii 30—*Sicyos alba*—a (6,266 ha, 15,483 ac)

(i) Unit consists of the following 18 boundary points: Start at 266388, 2165221; 267132, 2165147; 267709, 2165277; 267412, 2162783; 268417, 2161049; 269013, 2157105; 267821, 2155262; 264606, 2153076; 262507, 2156298; 261492, 2155783; 259208, 2160114; 260710, 2160549; 263148, 2160288; 264210, 2162671; 264954, 2164570; 265289, 2164477; 265811, 2164588; 266183, 2164886; return to starting point.

(ii) **Note:** Map 103 follows:

(104) Table of Protected Species Within Each Critical Habitat Unit for the Island of Hawaii

Unit name	Species occupied	Species unoccupied
Hawaii 9—*Achyranthes mutica*—a		*Achyranthes mutica.*
Hawaii 9—*Achyranthes mutica*—b	*Achyranthes mutica.*	

(104) Table of Protected Species Within Each Critical Habitat Unit for the Island of Hawaii—Continued

Unit name	Species occupied	Species unoccupied
Hawaii 9—*Achyranthes mutica*—c	.....	*Achyranthes mutica.*
Hawaii 9—*Achyranthes mutica*—d	.....	*Achyranthes mutica.*
Hawaii 9—*Achyranthes mutica*—e	.....	*Achyranthes mutica.*
Hawaii 9—*Achyranthes mutica*—f	.....	*Achyranthes mutica.*
Hawaii 9—*Achyranthes mutica*—g	.....	*Achyranthes mutica.*
Hawaii 9—*Achyranthes mutica*—h	.....	*Achyranthes mutica.*
Hawaii 9—*Achyranthes mutica*—i	.....	*Achyranthes mutica.*
Hawaii 9—*Achyranthes mutica*—j	.....	*Achyranthes mutica.*
Hawaii 28—*Adenophorus periens*—a	*Adenophorus periens*.	
Hawaii 10—*Argyroxiphium kauense*—a	.....	*Argyroxiphium kauense.*
Hawaii 24—*Argyroxiphium kauense*—b	*Argyroxiphium kauense*.	
Hawaii 25—*Argyroxiphium kauense*—c	*Argyroxiphium kauense*.	
Hawaii 30—*Argyroxiphium kauense*—d	*Argyroxiphium kauense*.	
Hawaii 24—*Asplenium fragile* var. *insulare*—a	*Asplenium fragile* var. *insulare*.	
Hawaii 10—*Bonamia menziesii*—a	.....	*Bonamia menziesii.*
Hawaii 8—*Clermontia drepanomorpha*—a	*Clermontia drepanomorpha*.	
Hawaii 1—*Clermontia lindseyana*—a	*Clermontia lindseyana*.	
Hawaii 2—*Clermontia lindseyana*—b	*Clermontia lindseyana*.	
Hawaii 30—*Clermontia lindseyana*—c	*Clermontia lindseyana*.	
Hawaii 1—*Clermontia peleana*—a	*Clermontia peleana*.	
Hawaii 3—*Clermontia peleana*—b	*Clermontia peleana*.	
Hawaii 29—*Clermontia peleana*—c	*Clermontia peleana*.	
Hawaii 1—*Clermontia pyrularia*—a	.....	*Clermontia pyrularia.*
Hawaii 2—*Clermontia pyrularia*—b	*Clermontia pyrularia*.	
Hawaii 10—*Colubrina oppositifolia*—a	*Colubrina oppositifolia*.	
Hawaii 18—*Colubrina oppositifolia*—b	*Colubrina oppositifolia*.	
Hawaii 11—*Cyanea hamatiflora* ssp. *carlsonii*—a.	*Cyanea hamatiflora* ssp. *carlsonii*.	
Hawaii 14—*Cyanea hamatiflora* ssp. *carlsonii*—b.	.....	*Cyanea hamatiflora* ssp. *carlsonii.*
Hawaii 15—*Cyanea hamatiflora* ssp. *carlsonii*—c.	.....	*Cyanea hamatiflora* ssp. *carlsonii.*
Hawaii 16—*Cyanea hamatiflora* ssp. *carlsonii*—d.	*Cyanea hamatiflora* ssp. *carlsonii*.	
Hawaii 3—*Cyanea platyphylla*—a	*Cyanea platyphylla*.	
Hawaii 29—*Cyanea platyphylla*—b	*Cyanea platyphylla*.	
Hawaii 1—*Cyanea shipmanii*—a	*Cyanea shipmanii*.	
Hawaii 30—*Cyanea shipmanii*—b	*Cyanea shipmanii*.	
Hawaii 30—*Cyanea shipmanii*—c	.....	*Cyanea shipmanii.*
Hawaii 15—*Cyanea stictophylla*—a	*Cyanea stictophylla*.	
Hawaii 16—*Cyanea stictophylla*—b	*Cyanea stictophylla*.	
Hawaii 24—*Cyanea stictophylla*—c	.....	*Cyanea stictophylla.*
Hawaii 30—*Cyanea stictophylla*—d	.....	*Cyanea stictophylla.*
Hawaii 3—*Cyrtandra giffardii*—a	*Cyrtandra giffardii*.	
Hawaii 29—*Cyrtandra giffardii*—b	.....	*Cyrtandra giffardii.*
Hawaii 30—*Cyrtandra giffardii*—c	*Cyrtandra giffardii*.	
Hawaii 3—*Cyrtandra tintinnabula*—a	*Cyrtandra tintinnabula*.	
Hawaii 29—*Cyrtandra tintinnabula*—b	.....	*Cyrtandra tintinnabula.*
Hawaii 10—*Delissea undulata*—a	.....	*Delissea undulata.*
Hawaii 10—*Delissea undulata*—b	*Delissea undulata*.	
Hawaii 17—*Diellia erecta*—a	*Diellia erecta*.	
Hawaii 18—*Diellia erecta*—b	*Diellia erecta*.	
Hawaii 17—*Flueggea neowawraea*—a	*Flueggea neowawraea*.	
Hawaii 18—*Flueggea neowawraea*—b	*Flueggea neowawraea*.	
Hawaii 18—*Gouania vitifolia*—a	*Gouania vitifolia*.	
Hawaii 26—*Hibiscadelphus giffardianus*—a	*Hibiscadelphus giffardianus*.	
Hawaii 10—*Hibiscadelphus hualalaiensis*—a	*Hibiscadelphus hualalaiensis*.	
Hawaii 10—*Hibiscus brackenridgei*—a	*Hibiscus brackenridgei*.	
Hawaii 21—*Ischaemum byrone*—a	.....	*Ischaemum byrone.*
Hawaii 22—*Ischaemum byrone*—b	*Ischaemum byrone*.	
Hawaii 4—*Isodendrion hosakae*—a	.....	*Isodendrion hosakae.*
Hawaii 4—*Isodendrion hosakae*—b	.....	*Isodendrion hosakae.*
Hawaii 4—*Isodendrion hosakae*—c	.....	*Isodendrion hosakae.*
Hawaii 4—*Isodendrion hosakae*—d	.....	*Isodendrion hosakae.*
Hawaii 4—*Isodendrion hosakae*—e	.....	*Isodendrion hosakae.*
Hawaii 4—*Isodendrion hosakae*—f	*Isodendrion hosakae*.	
Hawaii 19—*Mariscus fauriei*—a	*Mariscus fauriei*.	
Hawaii 24—*Melicope zahlbruckneri*—a	.....	*Melicope zahlbruckneri.*
Hawaii 26—*Melicope zahlbruckneri*—b	*Melicope zahlbruckneri*.	
Hawaii 10—*Neraudia ovata*—a	.....	*Neraudia ovata.*
Hawaii 18—*Neraudia ovata*—d	*Neraudia ovata*.	
Hawaii 5—*Nothocestrum breviflorum*—a	.....	*Nothocestrum breviflorum.*

(104) Table of Protected Species Within Each Critical Habitat Unit for the Island of Hawaii—Continued

Unit name	Species occupied	Species unoccupied
Hawaii 6—*Nothocestrum breviflorum*—b	*Nothocestrum breviflorum*.	
Hawaii 10—*Nothocestrum breviflorum*—c	*Nothocestrum breviflorum*.	
Hawaii 1—*Phyllostegia racemosa*—a	*Phyllostegia racemosa*.	
Hawaii 2—*Phyllostegia racemosa*—b	*Phyllostegia racemosa*.	
Hawaii 30—*Phyllostegia racemosa*—c	.....	*Phyllostegia racemosa*.
Hawaii 24—*Phyllostegia velutina*—a	*Phyllostegia velutina*.	
Hawaii 30—*Phyllostegia velutina*—b	*Phyllostegia velutina*.	
Hawaii 3—*Phyllostegia warshaueri*—a	*Phyllostegia warshaueri*.	
Hawaii 8—*Phyllostegia warshaueri*—b	*Phyllostegia warshaueri*.	
Hawaii 24—*Plantago hawaiensis*—a	*Plantago hawaiensis*.	
Hawaii 25—*Plantago hawaiensis*—b	*Plantago hawaiensis*.	
Hawaii 30—*Plantago hawaiensis*—c	*Plantago hawaiensis*.	
Hawaii 7—*Pleomele hawaiiensis*—a	*Pleomele hawaiiensis*.	
Hawaii 10—*Pleomele hawaiiensis*—b	*Pleomele hawaiiensis*.	
Hawaii 18—*Pleomele hawaiiensis*—c	*Pleomele hawaiiensis*.	
Hawaii 23—*Pleomele hawaiiensis*—d	*Pleomele hawaiiensis*.	
Hawaii 27—*Portulaca sclerocarpa*—a	*Portulaca sclerocarpa*.	
Hawaii 20—*Sesbania tomentosa*—a	*Sesbania tomentosa*.	
Hawaii 23—*Sesbania tomentosa*—b	*Sesbania tomentosa*.	
Hawaii 30—*Sicyos alba*—a	*Sicyos alba*.	
Hawaii 25—*Silene hawaiiensis*—a	*Silene hawaiiensis*.	
Hawaii 27—*Silene hawaiiensis*—b	*Silene hawaiiensis*.	
Hawaii 10—*Solanum incompletum*—a	.....	*Solanum incompletum*.
Hawaii 11—*Solanum incompletum*—b	.....	*Solanum incompletum*.
Hawaii 4—*Vigna o-wahuensis*—a	.....	*Vigna o-wahuensis*.
Hawaii 4—*Vigna o-wahuensis*—b	.....	*Vigna o-wahuensis*.
Hawaii 4—*Vigna o-wahuensis*—c	.....	*Vigna o-wahuensis*.
Hawaii 10—*Zanthoxylum dipetalum* ssp. *tomentosum*—a.	*Zanthoxylum dipetalum* ssp. *tomentosum*.	

(105) Critical habitat unit descriptions and maps, and a description of primary constituent elements, for Family Malvaceae: *Kokia drynariodes* on the island of Hawaii is provided in 50 CFR 17.96(a).

(l) *Plants on the island of Hawaii; Constituent elements.*

(1) *Flowering plants.*

Family Amaranthaceae: *Achyranthes mutica* (NCN)

Hawaii 9—*Achyranthes mutica*—a, Hawaii 9—*Achyranthes mutica*—b, Hawaii 9—*Achyranthes mutica*—c, Hawaii 9—*Achyranthes mutica*—d, Hawaii 9—*Achyranthes mutica*—e, Hawaii 9—*Achyranthes mutica*—f, Hawaii 9—*Achyranthes mutica*—g, Hawaii 9—*Achyranthes mutica*—h, Hawaii 9—*Achyranthes mutica*—i, Hawaii 9—*Achyranthes mutica*—j, identified in the legal descriptions in paragraph (k) of this section, constitute critical habitat for Achyranthes mutica on Hawaii. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) *Acacia koaia* lowland dry forest, primarily in gulches but also in remnant stands of forest, and containing one or more of the following associated native plant species: *Dodonaea viscosa, Erythrina sandwicensis, Metrosideros polymorpha, Myoporum sandwicense, Osteomeles anthyllidifolia, Nestegis sandwicensis, Santalum ellipticum,* or *Sophora chrysophylla;* and

(ii) Elevations between 646 and 1,509 m (2,120 and 4,949 ft).

Family Asteraceae: *Argyroxiphium kauense* (Mauna Loa silversword)

Hawaii 10—*Argyroxiphium kauense*—a, Hawaii 24—*Argyroxiphium kauense*—b, Hawaii 25—*Argyroxiphium kauense*—c, and Hawaii 30—*Argyroxiphium kauense*—d, identified in the legal descriptions in paragraph (k) of this section, constitute critical habitat for *Argyroxiphium kauense* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Moist, open forest; subalpine mesic shrubland; bogs; and weathered, old pahoehoe (smooth) or aa (rough) lava with well-developed pockets of soil, and containing one or more of the following associated native plant species: *Asplenium peruvianum* var. *insulare, Carex alligata, Carex* sp., *Coprosma ernodeoides, Coprosma montana, Deschampsia nubigena, Dodonaea viscosa, Dubautia ciliolata, Gahnia gahniiformis, Geranium cuneatum, Leptecophylla tameiameiae, Metrosideros polymorpha, Plantago hawaiensis, Rhynchospora chinensis, Silene hawaiiensis,* or *Vaccinium reticulatum;* and

(ii) Elevations between 1,583 and 2,246 m (5,193 and 8,024 ft).

Family Campanulaceae: *Clermontia drepanomorpha* (oha wai)

Hawaii 8—*Clermontia drepanomorpha*—a, identified in the legal description in paragraph (k) of this section, constitutes critical habitat for *Clermontia drepanomorpha* on Hawaii. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) *Metrosideros polymorpha, Cheirodendron trigynum,* and *Cibotium glaucum* dominated montane wet forests, containing one or more of the following native plant species: *Astelia menziesiana, Carex alligata, Coprosma* sp., *Cyanea pilosa, Leptecophylla tameiameiae, Melicope clusiifolia,* and *Rubus hawaiiensis,* or *sphagnum moss;* and

(ii) Elevations between 1,106 and 1,676 m (3,627 and 5,459 ft).

Family Campanulaceae: *Clermontia lindseyana* (oha wai)

Hawaii 1—*Clermontia lindseyana*—a, Hawaii 2—*Clermontia lindseyana*—b, and Hawaii 30—*Clermontia lindseyana*—c, identified in the legal descriptions in paragraph (k) of this

section, constitute critical habitat for *Clermontia lindseyana* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Slightly open forest cover in wet and mesic *Metrosideros polymorpha-Acacia koa* forest, *M. polymorpha* forest, and mixed montane mesic *M. polymorpha-Acacia koa* forest and containing one or more of the following associated native plant species: *Athyrium* sp., *Cheirodendron trigynum, Coprosma* sp., *Leptecophylla tameiameiae, Peperomia* sp., or *Rubus hawaiiensis;* and

(ii) Elevations between 1,495 and 1,953 m (4,906 and 6,407 ft).

Family Campanulaceae: *Clermontia peleana* (oha wai)

Hawaii 1—*Clermontia peleana*—a, Hawaii 3—*Clermontia peleana*—b, and Hawaii 29—*Clermontia peleana*—c, identified in the legal descriptions in paragraph (k) of this section, constitute critical habitat for *Clermontia peleana* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Montane, wet *Metrosideros-Cibotium* forest containing one or more of the following associated native plant species: *Cheirodendron trigynum, Cibotium chamissoi, Cibotium menziesii, Clermontia hawaiiensis, Coprosma pubens, Cyrtandra platyphylla, Ilex anomala,* or *Sadleria* spp.; and

(ii) Elevations between 663 and 1,622 m (2,175 and 5,321 ft).

Family Campanulaceae: *Clermontia pyrularia* (oha wai)

Hawaii 1—*Clermontia pyrularia*—a and Hawaii 2—*Clermontia pyrularia*—b, identified in the legal descriptions in paragraph (k) of this section, constitute critical habitat for *Clermontia pyrularia* on Hawaii. 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 and mesic montane forest dominated by *Acacia koa* or *Metrosideros polymorpha,* and subalpine dry forest dominated by *M. polymorpha,* and containing one or more of the following associated native plant species: *Coprosma* sp., *Dryopteris wallichiana, Hedyotis* sp., or *Rubus hawaiensis;* and

(ii) Elevations between 1,652 and 2,026 m (5,416 to 6,646 ft).

Family Campanulaceae: *Cyanea hamatiflora* ssp. *carlsonii* (haha)

Hawaii 11—*Cyanea hamatiflora* ssp. *carlsonii*—a, Hawaii 14—*Cyanea hamatiflora* ssp. *carlsonii*—b, Hawaii 15—*Cyanea hamatiflora* ssp. *carlsonii*—c, and Hawaii 16—*Cyanea hamatiflora* ssp. *carlsonii*—d, identified in the legal descriptions in paragraph (k) of this section, constitute critical habitat for *Cyanea hamatiflora* ssp. *carlsonii* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Mesic montane forest dominated by *Acacia koa* or *Metrosideros polymorpha,* and containing one or more of the following associated native plant species: *Athyrium* sp., *Cibotium* spp., *Clermontia clermontioides, Coprosma* sp., *Dryopteris* sp., *Hedyotis* sp., *Ilex anomala, Myoporum sandwicense,* or *Sophora chrysophylla;* and

(ii) Elevations between 1,366 and 1,755 m (4,482 and 5,759 ft).

Family Campanulaceae: *Cyanea platyphylla* (haha)

Hawaii 3—*Cyanea platyphylla*—a and Hawaii 29—*Cyanea platyphylla*—b, identified in the legal descriptions in paragraph (k) of this section, constitute critical habitat for *Cyanea platyphylla* on Hawaii. 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-Acacia koa* lowland and montane wet forests, containing one or more of the following associated native plant species: *Antidesma platyphyllum, Cibotium* sp., *Clermontia* spp., *Coprosma* sp., *Cyrtandra* spp., *Hedyotis* sp., *Perrottetia sandwicensis, Psychotria hawaiiensis,* or *Scaevola* spp.; and

(ii) Elevations between 615 and 1,082 m (2,017 and 3,551 ft).

Family Campanulaceae: *Cyanea shipmanii* (haha)

Hawaii 1—*Cyanea shipmanii*—a, Hawaii 30—*Cyanea shipmanii*—b, and Hawaii 30—*Cyanea shipmanii*—c, identified in the legal descriptions in paragraph (k) of this section, constitute critical habitat for *Cyanea shipmanii* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Montane mesic forest dominated by *Acacia koa-Metrosideros polymorpha* and containing one or more of the following associated native plant species: *Cheirodendron trigynum, Ilex anomala,* or *Myrsine lessertiana;* and

(ii) Elevations between 1,629 and 2,025 m (5,345 and 6,645 ft).

Family Campanulaceae: *Cyanea stictophylla* (haha)

Hawaii 15—*Cyanea stictophylla*—a, Hawaii 16—*Cyanea stictophylla*—b, Hawaii 24—*Cyanea stictophylla*—c, and Hawaii 30—*Cyanea stictophylla*—d, identified in the legal descriptions in paragraph (k) of this section, constitute critical habitat for *Cyanea stictophylla* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) *Acacia koa* or wet *Metrosideros polymorpha* forests, containing one or more of the following associated native plant species: *Cibotium* sp., *Melicope* spp., or *Urera glabra;* and

(ii) Between elevations of 1,056 and 1,917 m (3,466 and 6,288 ft).

Family Campanulaceae: *Delissea undulata* (NCN)

Hawaii 10—*Delissea undulata*—a and Hawaii 10—*Delissea undulata*—b, identified in the legal descriptions in paragraph (k) of this section, constitute critical habitat for *Delissea undulata* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Dry cinder cones and open *Metrosideros polymorpha* and *Sophora chrysophylla* forest, and containing one or more of the following associated native plant species: *Acacia koa, Diospyros sandwicensis, Dodonaea viscosa, Nothocestrum breviflorum, Psychotria* spp., *Santalum paniculatum,* or *Sophora chrysophylla;* and

(ii) Elevations between 893 to 1,734 m (2,928 to 5,690 ft).

Family Caryophyllaceae: *Silene hawaiiensis* (NCN)

Hawaii 25—*Silene hawaiiensis*—a and Hawaii 27—*Silene hawaiiensis*—b, identified in the legal descriptions in paragraph (k) of this section, constitute critical habitat for *Silene hawaiiensis* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Weathered lava or variously aged lava flows and cinder substrates in montane and subalpine dry shrubland containing one or more of the following

associated native plant species: *Dodonaea viscosa, Leptecophylla tameiameiae, Metrosideros polymorpha, Rumex giganteus, Sophora chrysophylla,* or *Vaccinium reticulatum;* and

(ii) Elevations between 1,022 and 2,413 m (3,352 and 7,915 ft).

Family Convolvulaceae: *Bonamia menziesii* (NCN)

Hawaii 10—*Bonamia menziesii*—a, identified in the legal description in paragraph (k) of this section, constitutes critical habitat for *Bonamia menziesii* on Hawaii. 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 forest, containing one or more of the following associated native plant species: *Argemone glauca, Canavalia hawaiiensis, Chenopodium oahuense, Diospyros sandwicensis, Dodonaea viscosa, Erythrina sandwicensis, Metrosideros polymorpha, Myrsine lanaiensis, Nototrichium sandwicense, Osteomeles anthyllidifolia, Peperomia blanda* var. *floribunda, Pouteria sandwicensis, Psilotum nudum, Santalum paniculatum, Sapindus saponaria, Senna gaudichaudii, Sida fallax, Sophora chrysophylla,* or *Xylosma hawaiiense;* and

(ii) Elevations between 492 and 697 m (1,614 and 2,285 ft).

Family Cucurbitaceae: *Sicyos alba* (anunu)

Hawaii 30—*Sicyos alba*—a, identified in the legal description in paragraph (k) of this section, constitutes critical habitat for *Sicyos alba* on Hawaii. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) *Metrosideros polymorpha-Cibotium glaucum* dominated montane wet forests, containing one or more of the following associated native plant species: *Astelia menziesiana, Athyrium microphyllum* and other ferns, *Broussaisia arguta, Cheirodendron trigynum, Coprosma* sp., *Cyanea tritomantha, Cyrtandra lysiosepala, Perrottetia sandwicensis, Platydesma spathulata, Pritchardia beccariana, Psychotria* sp., or *Stenogyne* sp.; and

(ii) Elevations between 966 and 1,546 m (3,170 and 5,072 ft).

Family Cyperaceae: *Mariscus fauriei* (NCN)

Hawaii 19—*Mariscus fauriei*—a, identified in the legal description in paragraph (k) of this section, constitutes critical habitat for *Mariscus fauriei* on Hawaii. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) *Diospyros sandwicensis-Metrosideros polymorpha-Sapindus saponaria* dominated lowland dry forests, often on a lava substrate, and containing one or more of the following associated native plant species: *Myoporum sandwicense, Osteomeles anthyllidifolia, Peperomia blanda* var. *floribunda, Psydrax odorata, Rauvolfia sandwicensis,* or *Sophora chrysophylla;* and

(ii) Elevations between 278 and 342 m (913 and 1,123 ft).

Family Euphorbiaceae: *Flueggea neowawraea* (mehamehame)

Hawaii 17—*Flueggea neowawraea*—a and Hawaii 18—*Flueggea neowawraea*—b, identified in the legal descriptions in paragraph (k) of this section, constitute critical habitat for *Flueggea neowawraea* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Mesic *Metrosideros polymorpha* forest, containing one or more of the following associated native plant species: *Antidesma platyphyllum, Antidesma pulvinatum, Diospyros sandwicensis, Nephrolepis* spp., *Nestegis sandwicensis, Pipturus albidus, Pisonia* spp., *Pittosporum hosmeri, Psychotria hawaiiensis,* or *Psydrax odorata;* and

(ii) Elevations between 499 and 818 m (1,637 and 2,684 ft).

Family Fabaceae: *Sesbania tomentosa* (ohai)

Hawaii 20—*Sesbania tomentosa*—a and Hawaii 23—*Sesbania tomentosa*—b, identified in the legal descriptions in paragraph (k) of this section, constitute critical habitat for *Sesbania tomentosa* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Open, dry *Metrosideros polymorpha* forest with mixed native grasses, *Scaevola taccada* coastal dry shrubland on windswept slopes, and weathered basaltic slopes, and containing one or more of the following associated native plant species: *Dodonaea viscosa, Fimbristylis hawaiiensis, Ipomoea pes-caprae, Jacquemontia ovalifolia* ssp. *sandwicensis, Leptecophylla tameiameiae, Melanthera integrifolia, Myoporum sandwicense, Sida fallax, Sporobolus virginicus,* or *Waltheria indica;* and

(ii) Elevations between sea level and 922 m (0 and 3,025 ft).

Family Fabaceae: *Vigna o-wahuensis* (NCN)

Hawaii 4—*Vigna o-wahuensis*—a, Hawaii 4—*Vigna o-wahuensis*—b, and Hawaii 4—*Vigna o-wahuensis*—c, identified in the legal descriptions in paragraph (k) of this section, constitute critical habitat for *Vigna o-wahuensis* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) *Dodonaea viscosa* lowland dry shrubland, containing one or more of the following associated native plant species: *Chenopodium oahuense, Dodonaea viscosa, Osteomeles anthyllidifolia, Sida fallax,* or *Wikstroemia* sp.; and

(ii) Elevations between 717 and 993 m (2,352 and 3,259 ft).

Family Gesneriaceae: *Cyrtandra giffardii* (haiwale)

Hawaii 3—*Cyrtandra giffardii*—a, Hawaii 29—*Cyrtandra giffardii*—b, and Hawaii 30—*Cyrtandra giffardii*—c, identified in the legal descriptions in paragraph (k) of this section, constitute critical habitat for *Cyrtandra giffardii* on Hawaii. 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 montane forest dominated by *Cibotium* sp. or *Metrosideros polymorpha,* and *Metrosideros polymorpha-Acacia koa* lowland wet forests, and containing one or more of the following associated native plant species: *Astelia menziesiana, Diplazium sandwichianum, Hedyotis terminalis, Perrottetia sandwicensis,* or other species of *Cyrtandra;* and

(ii) Between elevations of 654 and 1,440 m (2,146 and 4,723 ft).

Family Gesneriaceae: *Cyrtandra tintinnabula* (haiwale)

Hawaii 3—*Cyrtandra tintinnabula*—a and Hawaii 29—*Cyrtandra tintinnabula*—b, identified in the legal descriptions in paragraph (k) of this section, constitute critical habitat for *Cyrtandra tintinnabula* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Lowland wet forest dominated by dense *Acacia koa, Metrosideros polymorpha,* and *Cibotium* spp. and

containing one or more of the following associated native plant species: *Cyrtandra* spp. or *Hedyotis* spp.; and

(ii) Between elevations 641 and 1,391 m (2,102 and 4,565 ft).

Family Lamiaceae: *Phyllostegia racemosa* (kiponapona)

Hawaii 1—*Phyllostegia racemosa*—a, Hawaii 2—*Phyllostegia racemosa*—b, and Hawaii 30—*Phyllostegia racemosa*—c, identified in the legal descriptions in paragraph (k) of this section, constitute critical habitat for *Phyllostegia racemosa* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Tree trunks in *Acacia koa, Metrosideros polymorpha,* and *Cibotium* sp. dominated montane mesic or wet forests and containing one or more of the following associated native plant species: *Dryopteris wallichiana, Rubus hawaiiensis,* or *Vaccinium calycinum;* and

(ii) Elevations between 1,371 and 1,935 m (4,498 and 6,349 ft).

Family Lamiaceae: *Phyllostegia velutina* (NCN)

Hawaii 24—*Phyllostegia velutina*—a and Hawaii 30—*Phyllostegia velutina*—b, identified in the legal descriptions in paragraph (k) of this section, constitute critical habitat for *Phyllostegia velutina* on Hawaii. 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-Acacia koa* dominated montane mesic and wet forests containing one or more of the following native plant species: *Athyrium microphyllum* and other native wet forest terrestrial ferns, *Cheirodendron trigynum, Cibotium* spp., *Coprosma* sp., *Dryopteris wallichiana, Ilex anomala, Myrsine lessertiana, Pipturus albidus, Rubus hawaiiensis,* or *Vaccinium calycinum;* and

(ii) Elevations between 966 and 1,881 m (3,168 and 6,170 ft).

Family Lamiaceae: *Phyllostegia warshaueri* (NCN)

Hawaii 3—*Phyllostegia warshaueri*—a and Hawaii 8—*Phyllostegia warshaueri*—b, identified in the legal descriptions in paragraph (k) of this section, constitute critical habitat for *Phyllostegia warshaueri* on Hawaii. 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* and *Cibotium* montane and lowland wet forest, in which *Acacia koa* or *Cheirodendron trigynum* may co-dominate, and containing one or more of the following associated native plant species: *Antidesma platyphyllum, Athyrium sandwicensis, Broussaisia arguta, Clermontia parviflora, Coprosma* sp., *Cyanea pilosa, Cyanea* spp., *Hedyotis* sp., *Machaerina angustifolia, Pipturus albidus, Psychotria hawaiiensis,* or *Sadleria pallida;* and

(ii) Elevations between 681 and 1,411 m (2,234 and 4,629 ft).

Family Liliaceae: *Pleomele hawaiiensis* (hala pepe)

Hawaii 7—*Pleomele hawaiiensis*—a, Hawaii 10—*Pleomele hawaiiensis*—b, Hawaii 18—*Pleomele hawaiiensis*—c, and Hawaii 23—*Pleomele hawaiiensis*—d, identified in the legal descriptions in paragraph (k) of this section, constitute critical habitat for *Pleomele hawaiiensis* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Open aa lava in diverse lowland dry forests and *Metrosideros-Diospyros* lowland dry forest, and containing one or more of the following associated native plant species: *Bidens micrantha* ssp. *ctenophylla, Bobea timonioides, Caesalpinia kavaiensis, Cocculus trilobus, Colubrina oppositifolia, Diospyros sandwicensis, Dodonaea viscosa, Erythrina sandwicensis, Kokia drynarioides, Metrosideros polymorpha, Myoporum sandwicense, Neraudia ovata, Nestegis sandwicensis, Nothocestrum breviflorum, Nototrichium sandwicense, Osteomeles anthyllidifolia, Psydrax odorata, Reynoldsia sandwicensis, Santalum paniculatum, Sida fallax,* or *Sophora chrysophylla;* and

(ii) Elevations between 86 and 892 m (281 and 2,925 ft).

Family Malvaceae: *Hibiscadelphus giffardianus* (hau kuahiwi)

Hawaii 26—*Hibiscadelphus giffardianus*—a, identified in the legal description in paragraph (k) of this section, constitutes critical habitat for *Hibiscadelphus giffardianus* on Hawaii. 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 montane mesic forest containing one or more of the following native plant species: *Acacia koa, Coprosma rhynchocarpa, Dodonaea viscosa, Melicope* spp., *Metrosideros polymorpha, Myoporum sandwicense, Nestegis sandwicensis, Pipturus albidus, Psychotria* sp., or *Sapindus saponaria*; and

(ii) Elevations between 1,193 and 1,274 m (3,914 and 4,181 ft).

Family Malvaceae: *Hibiscadelphus hualalaiensis* (hau kuahiwi)

Hawaii 10—*Hibiscadelphus hualalaiensis*— a, identified in the legal description in paragraph (k) of this section, constitutes critical habitat for *Hibiscadelphus hualalaiensis* on Hawaii. 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-mesic to dry *Metrosideros* forest on rocky substrate in deep soils and containing one or more of the following native plant species: *Acacia koa, Coprosma rhynchocarpa, Dodonaea viscosa, Melicope* spp., *Metrosideros polymorpha, Myoporum sandwicense, Nestegis sandwicensis, Pipturus albidus, Psychotria* sp., or *Sapindus saponaria*; and

(ii) Between elevations 512 and 1,223 m (1,679 and 4,012 ft).

Family Malvaceae: *Hibiscus brackenridgei* (mao hau hele)

Hawaii 10—*Hibiscus brackenridgei*—a, identified in the legal description in paragraph (k) of this section, constitutes critical habitat for *Hibiscus brackenridgei* on Hawaii. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) *Acacia koa* lowland mesic forest containing one or more of the following native plants species: *Reynoldsia sandwicensis* or *Sida fallax;* and

(ii) Elevations between 649 and 847 (2,130 and 2,779 ft).

Family Plantaginaceae: *Plantago hawaiensis* (laukahi kuahiwi)

Hawaii 24—*Plantago hawaiensis*—a, Hawaii 25—*Plantago hawaiensis*—b, and Hawaii 30—*Plantago hawaiensis*—c, identified in the legal descriptions in paragraph (k) of this section, constitute critical habitat for *Plantago hawaiensis* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Montane wet sedge land (often in damp cracks of pahoehoe lava) with mixed sedges and grasses, montane mesic forest, dry subalpine woodland, or *Metrosideros polymorpha* and native shrub, and containing one or more of the following associated native plant

species: *Acacia koa, Coprosma ernodeoides, Coprosma montana, Dodonaea viscosa, Leptecophylla tameiameiae, Metrosideros polymorpha*, or *Vaccinium reticulatum*; and

(ii) Elevations between 1,584 and 2,513 m (5,198 and 8,243 ft).

Family Poaceae: *Ischaemum byrone* (Hilo ischaemum)

Hawaii 21—*Ischaemum byrone*—a and Hawaii 22—*Ischaemum byrone*—b, identified in the legal descriptions in paragraph (k) of this section, constitute critical habitat for *Ischaemum byrone* on Hawaii. 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 wet to dry shrubland, near the ocean, rocks or pahoehoe lava in cracks and holes, and containing one or more of the following associated native plant species: *Fimbristylis cymosa*, or *Scaevola taccada*; and

(ii) Elevations between sea level and 28 m (0 and 91 ft).

Family Portulacaceae: *Portulaca sclerocarpa* (poe)

Hawaii 27—*Portulaca sclerocarpa*—a, identified in the legal description in paragraph (k) of this section, constitutes critical habitat for *Portulaca sclerocarpa* on Hawaii. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Weathered Mauna Kea soils, cinder cones, or geologically young lavas, in montane dry shrubland, often on bare cinder, near steam vents, or in open *Metrosideros polymorpha* dominated woodlands, and containing one or more of the following associated native plant species: *Dodonaea viscosa*, *Melanthera venosa*, or *Sophora chrysophylla*; and

(ii) Elevations between 941 and 1,634 m (3,087 to 5,360 ft).

Family Rhamnaceae: *Colubrina oppositifolia* (kauila)

Hawaii 10—*Colubrina oppositifolia*—a and Hawaii 18—*Colubrina oppositifolia*—b, identified in the legal descriptions in paragraph (k) of this section, constitute critical habitat for *Colubrina oppositifolia* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Lowland dry and mesic forests dominated by *Diospyros sandwicensis* or *Metrosideros polymorpha* and containing one or more of the following associated native plant species: *Bobea timonioides, Erythrina sandwicensis, Leptecophylla tameiameiae, Nestegis sandwicensis, Nothocestrum breviflorum, Nototrichium sandwicense, Peperomia* sp., *Pleomele hawaiiensis, Psydrax odorata, Rauvolfia sandwicensis, Reynoldsia sandwicensis*, or *Sophora chrysophylla*; and

(ii) Elevations between 177 and 927 m (580 and 3,042 ft).

Family Rhamnaceae: *Gouania vitifolia* (NCN)

Hawaii 18—*Gouania vitifolia*—a, identified in the legal description in paragraph (k) of this section, constitutes critical habitat for *Gouania vitifolia* on Hawaii. 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, rocky ridges and slopes in dry shrubland or dry to mesic *Nestegis-Metrosideros* forests on old substrate kipuka and containing one or more of the following associated native plant species: *Nephrolepis* spp., *Nestegis sandwicensis, Pipturus albidus, Wikstroemia phillyreifolia*, or *W. sandwicensis*; and

(ii) Elevations between 536 and 1,020 m (1,757 and 3,346 ft).

Family Rubiaceae: *Melicope zahlbruckneri* (alani)

Hawaii 24—*Melicope zahlbruckneri*—a and Hawaii 26—*Melicope zahlbruckneri*—b, identified in the legal descriptions in paragraph (k) of this section, constitute critical habitat for *Melicope zahlbruckneri* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) *Acacia koa-Metrosideros polymorpha* dominated montane mesic forest containing one or more of the following associated native plant species: *Coprosma rhynchocarpa, Melicope* spp., *Myoporum sandwicense, Nestegis sandwicensis, Pipturus albidus, Pisonia brunoniana, Psychotria hawaiiensis, Sapindus saponaria,* or *Zanthoxylum dipetalum;* and

(ii) Elevations between 1,060 and 1,336 m (3,476 and 4,383 ft).

Family Rutaceae: *Zanthoxylum dipetalum* var. *tomentosum* (ae)

Hawaii 10—*Zanthoxylum dipetalum* ssp. *tomentosum*—a, identified in the legal description in paragraph (k) of this section, constitutes critical habitat for *Zanthoxylum dipetalum* var. *tomentosum* on Hawaii. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) *Metrosideros polymorpha* dominated montane mesic forest, often on aa lava, and containing one or more of the following associated native plant species: *Diospyros sandwicensis, Myrsine* sp., *Pouteria sandwicensis, Psychotria* sp., *Reynoldsia sandwicensis, Santalum paniculatum,* or *Sophora chrysophylla;* and

(ii) Elevations between 874 and 1,208 m (2,867 and 3,964 ft).

Family Solanaceae: *Nothocestrum breviflorum* (aiea)

Hawaii 5—*Nothocestrum breviflorum*—a, Hawaii 6—*Nothocestrum breviflorum*—b, and Hawaii 10—*Nothocestrum breviflorum*—c, identified in the legal descriptions in paragraph (k) of this section, constitute critical habitat for *Nothocestrum breviflorum* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Lowland dry forest, montane dry forest, or montane mesic forest dominated by *Acacia koa, Diospyros sandwicensis,* or *Metrosideros polymorpha* on aa lava substrates, and containing one or more of the following associated native plant species: *Bidens micrantha* ssp. *ctenophylla, Caesalpinia kavaiensis, Colubrina oppositifolia, Delissea undulata, Dodonaea viscosa, Erythrina sandwicensis, Hibiscadelphus hualalaiensis, Kokia drynarioides, Myoporum sandwicense, Osteomeles anthyllidifolia, Psydrax odorata, Reynoldsia sandwicensis, Santalum ellipticum, Santalum paniculatum,* or *Sophora chrysophylla;* and

(ii) Elevations between 45 and 1,236 m (146 and 4,055 ft).

Family Solanaceae: *Solanum incompletum* (popolo ku mai)

Hawaii 10—*Solanum incompletum*—a and Hawaii 11—*Solanum incompletum*—b, identified in the legal descriptions in paragraph (k) of this section, constitute critical habitat for *Solanum incompletum* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Dry to mesic forest, diverse mesic forest, or subalpine forest, and containing one or more of the following associated native plant species: *Myoporum sandwicense, Myrsine lanaiensis,* or *Sophora chrysophylla;* and

(ii) Elevations between 1,185 and 2,169 m (3,887 and 7,115 ft).

Family Urticaceae: *Neraudia ovata* (NCN)

Hawaii 10—*Neraudia ovata*—a and Hawaii 18—*Neraudia ovata*—d, identified in the legal descriptions in paragraph (k) of this section, constitute critical habitat for *Neraudia ovata* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Open *Metrosideros polymorpha-Sophora chrysophylla* dominated lowlands, montane dry forests, or *Metrosideros*-shrub woodland, and containing one or more of the following associated native plant species: *Bidens micrantha* ssp. *ctenophylla, Capparis sandwichiana, Cocculus orbiculatus, Fimbristylis hawaiiensis, Myoporum sandwicense, Myrsine lanaiensis, Myrsine lessertiana, Nothocestrum breviflorum, Pleomele hawaiiensis, or Reynoldsia sandwicensis;* and

(ii) Elevations between 28 and 1,526 m (93 to 5,005 ft).

Family Violaceae: *Isodendrion hosakae* (aupaka)

Hawaii 4—*Isodendrion hosakae*—a, Hawaii 4—*Isodendrion hosakae*—b, Hawaii 4—*Isodendrion hosakae*—c, Hawaii 4—*Isodendrion hosakae*—d, Hawaii 4—*Isodendrion hosakae*—e, and Hawaii 4—*Isodendrion hosakae*—f, identified in the legal descriptions in paragraph (k) of this section, constitute critical habitat for *Isodendrion hosakae* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Cinder cones with montane dry shrubland and containing one or more of the following associated native plant species: *Bidens menziesii, Dodonaea viscosa, Dubautia linearis, Leptecophylla tameiameiae, Melanthera venosa, Osteomeles anthyllidifolia, Santalum ellipticum, Sophora chrysophylla,* or *Wikstroemia pulcherrima;* and

(ii) Elevations between 717 and 1,242 m (2,352 and 4,074 ft).

Family Violaceae: *Isodendrion pyrifolium* (wahine noho kula)

Hawaii 12—*Isodendrion pyrifolium*—a and Hawaii 13—*Isodendrion pyrifolium*—b, identified in the legal descriptions in paragraph (k) of this section, constitute critical habitat for *Isodendrion pyrifolium* on Hawaii. Within these unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Lowland dry forests containing one or more of the following native plant species: *Myoporum sandwicense, Psydrax odorata, Sida fallax, Sophora chrysophylla,* or *Waltheria indica;* and

(ii) Elevations between 29 and 128 m (94 and 420 ft).

(2) *Ferns and allies.*

Family Aspleniaceae: *Asplenium fragile* var. *insulare* (NCN)

Hawaii 24—*Asplenium fragile* var. *insulare*—a, identified in the legal description in paragraph (k) of this section, constitutes critical habitat for *Asplenium fragile* var. *insulare* on Hawaii. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) *Metrosideros polymorpha* dry montane forest; *Dodonaea viscosa* dry montane shrubland; *Myoporum sandwicense-Sophora chrysophylla* dry montane forest; *Metrosideros polymorpha-Acacia koa* forest; or subalpine dry forest and shrubland with large, moist lava tubes (3.05 to 4.6 m (10 to 15 ft) in diameter), pits, deep cracks, and lava tree molds that have at least a moderate soil or ash accumulation or that are at the interface between younger aa lava flows and much older pahoehoe lava or ash deposits with a fairly consistent microhabitat (areas that are moist and dark); and containing one or more of the following associated native plant species: *Leptecophylla tameiameiae, Phyllostegia ambigua, Vaccinium reticulatum,* mosses, or liverworts; and

(ii) Elevations between 1,313 and 2,194 m (4,306 and 7,198 ft).

Family Aspleniaceae: *Diellia erecta* (asplenium-leaved diellia)

Hawaii 17—*Diellia erecta*—a and Hawaii 18—*Diellia erecta*—b, identified in the legal descriptions in paragraph (k) of this section, constitute critical habitat for *Diellia erecta* on Hawaii. 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-Nestegis sandwicensis* lowland mesic forest containing one or more of the following associated native plant species: *Antidesma platyphyllum, A. pulvinatum, Diospyros sandwicensis, Microlepia* sp., *Nephrolepis* spp. *Nestegis sandwicensis, Psydrax odorata, Wikstroemia phillyreifolia,* or *Wikstroemia sandwicensis;* and

(ii) Elevations between 510 and 981 m (1,672 and 3,217 ft).

Family Grammitidaceae: *Adenophorus periens* (pendent kihi fern)

Hawaii 28—*Adenophorus periens*—a, identified in the legal description in paragraph (k) of this section, constitutes critical habitat for *Adenophorus periens* on Hawaii. Within this unit, the currently known primary constituent elements of critical habitat include but are not limited to, the habitat components provided by:

(i) Epiphytic on *Metrosideros polymorpha* or *Ilex anomala,* or possibly other native tree trunks, in *Metrosideros polymorpha-Cibotium glaucum* lowland wet forest containing one or more of the following associated native plant species: *Broussasia arguta, Cheirodendron trigynum, Cyanea* sp., *Cyrtandra* sp., *Dicranopteris linearis, Freycinetia arborea, Hedyotis terminalis, Labordia hirtella, Machaerina angustifolia, Psychotria hawaiiensis,* or *Psychotria* sp.; and

(ii) Elevations between 675 and 921 m (2,215 and 3,021 ft).

* * * * *

Dated: May 30, 2003.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–14143 Filed 7–1–03; 8:45 am]

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Federal Register

Wednesday,
July 2, 2003

Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

Medicare Program; Home Health Prospective Payment System Rate Update for FY 2004; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1473–NC]

RIN 0938–AL94

Medicare Program; Home Health Prospective Payment System Rate Update for FY 2004

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice with comment period.

SUMMARY: This notice with comment period sets forth an update to the 60-day national episode rates and the national per-visit amounts under the Medicare prospective payment system for home health agencies. It also responds to public comments received on the June 28, 2002 notice with comment period, which set forth the home health prospective payment system rate update for FY 2003.

EFFECTIVE DATE: Effective Date: The rate updates in this notice with comment period are effective on October 1, 2003.

Comment Period: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on August 29, 2003.

ADDRESSES: In commenting, please refer to file code CMS–1473–NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Mail written comments (one original and three copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1473–NC, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses: Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Chester Robinson, (410) 786–6959 or Susan Levy, (410) 786–9364.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786–7195.

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I. Background

Legislation on Payment to Home Health Agencies

A. Balanced Budget Act of 1997

The Balanced Budget Act of 1997 (BBA), Pub. L. 105–33, enacted on August 5, 1997, significantly changed the way Medicare pays for Medicare home health services. Until the implementation of a home health prospective payment system (HH PPS) on October 1, 2000, home health agencies (HHAs) received payment under a cost-based reimbursement system. Section 4603 of the BBA governed the development of the HH PPS by adding section 1895 to the Social Security Act (the Act).

Section 1895(b)(3)(B) of the Act requires the standard prospective payment amounts to be increased by a factor equal to the applicable home health market basket increase for FY 2004.

B. System for Payment of Home Health Services

Generally, Medicare makes payment under the HH PPS on the basis of a national standardized 60-day episode payment, adjusted for case mix and wage index. For episodes with four or fewer visits, Medicare pays on the basis of a national per-visit amount by discipline, referred to as a low utilization payment adjustment (LUPA). Medicare also adjusts the 60-day episode payment for certain intervening events that give rise to a partial episode payment adjustment or a significant change in condition adjustment. For certain cases that exceed a specific cost threshold, an outlier adjustment may also be available. For a complete and full description of the HH PPS as required by the BBA and as refined by the Omnibus Consolidated and Emergency Supplemental Appropriations Act (OCESAA) for FY 1999, Pub. L. 105–277, enacted on October 21, 1998, and the Medicare, Medicaid and SCHIP Balanced Budget Refinement Act of 1999, Pub. L. 106–113, enacted on November 29, 1999, see the July 3, 2000 HH PPS final rule (65 FR 41128).

II. Analysis of and Responses To Comments on the Home Health Prospective Payment System June 28, 2002 Notice With Comment Period

On June 28, 2002, we published a notice with comment period in the **Federal Register** (67 FR 43616) that set forth an update to the 60-day national episode rates and the national per-visit amounts under the Medicare prospective payment system for HHA for FY 2003. In this section, we respond to the 10 public comments that we received on the FY 2003 HH PPS update notice:

Comment: Commenters disagreed with the statutory elimination of the 10 percent rural add-on set forth in section 508 of the Medicare, Medicaid, and SCHIP Benefits and Improvement Protection Act of 2000 (BIPA).

Response: Section 508 of BIPA explicitly prescribes the time period (home health services furnished in a rural area ending on or after April 1, 2001, and before April 1, 2003) governing the 10 percent rural add-on. To conform to the statutory timeframe governing the rural add-on, the FY 2003 update notice published on June 28, 2002 included the expiration of the 10 percent rural add-on mid FY 2003.

Comment: Commenters believe the actuarial assumptions of the behavior under the interim payment system (IPS) were flawed and inadequate data were

provided to the public, thereby compromising the meaning of the public comments.

Response: We do not agree with the commenters. For FY 2003, we must comply with section 1895(b)(3)(A)(i)(III) of the Act (as re-designated by section 501 of BIPA) governing the payment amount under HH PPS. Section 1895(b)(3)(A)(i)(III) of the Act requires the Secretary to determine the payment amount for FY 2003 as if there were a 15 percent reduction to the limits under the IPS updated to FY 2003. The IPS ended with the implementation of home health PPS on October 1, 2000. Originally, the BBA 1997 required the base year PPS rates to be budget neutral to the IPS with the limits reduced by 15 percent. This requirement was delayed in subsequent legislation until section 501 of BIPA made it applicable to the home health PPS payment amount for FY 2003.

As we explained in the FY 2003 update notice, the level by which actual payments to HHAs would be reduced by lowering the limits is not the same percent by which the IPS limits would be lowered. Our actuaries have used the 7 percent reduction in the PPS rates in every estimate for legislation since BBA 1997. Since it was the intention of the Congress to delay the cut it had already specified, we have simply captured the reductions in payments and carried those assumptions forward to the present. If our actuaries had attempted to impute the continued operation of the IPS until October 2002 given the amount of money available under the IPS limits that had not been spent, the actuaries may have well identified a larger reduction in payments. We did not believe such a result was the intent of the Congress.

Comment: Some commenters urged us to postpone the FY 2003 reduction to the PPS rates until the Congress acts to repeal the reduction.

Response: The FY 2003 update notice reflected the statutory requirements governing the home health PPS payment amount. The statutory requirements included both the required annual update to the PPS rates, according to section 1895(b)(3)(B) of the Act and section 1895(b)(3)(A)(i)(III) of the Act reflecting the IPS estimation. Both sections of the statute were effective October 1, 2002 for FY 2003. As the statute was not revised as of October 1, 2002, the FY 2003 update notice appropriately reflected the statutory requirements as of that date.

Comment: Some commenters raised concerns about the assumptions used to determine the low utilization payment adjustment and corresponding impact on the episode rates. Commenters urged us to refine the methodology governing low utilization payment adjustments.

Response: We understand the commenter's concerns. At this time, we are continuing to gather HH PPS data. As we gather more data, we will continue to monitor this issue.

Comment: One commenter requested a detailed explanation of the market basket inflation update utilized in the FY 2003 PPS rate setting. The commenter points out that costs of home care services have increased recently due to new administrative responsibilities and reduced economies of scale due to lowered visit volume. As a result of staff shortages of nurses and home health aides, labor costs have increased. In addition, the HHAs have experienced rising premiums for liability insurance, workers compensation insurance, and employee health insurance. The commenter believes these factors should be incorporated in the market basket calculations and feels that the market basket update relies on too many proxies and surrogates for actual cost increases.

Response: We agree with the commenter that showing the detail of the market basket increase for each year's payment update would be helpful. Thus, in this year's rule, we have added a table detailing the FY 2004 market basket forecast, which we believe adequately reflects the price increases for home health services (see Table 1 in section III.B. of this notice).

Comment: Some commenters suggested that it is inappropriate and inequitable to use the previous fiscal year's pre-floor and pre-reclassified hospital wage index to adjust the current fiscal year's HH PPS rates.

Response: We believe that the hospital wage index data we use is the most current data appropriate for adjusting HHA payments. As we have stated in both the FY 2002 and FY 2003 update notices, we use the most recent available pre-floor and pre-reclassified hospital wage index data available at the time of publication.

Comment: A commenter requested clarification of our response to comments in the update notice published on June 28, 2002 in the **Federal Register** that states, ''the statute does not contemplate a recalculation of the initial base year after the rates are established.'' The commenter requested specific clarification of whether or not we were referring to the retrospective or prospective recalculation.

Response: In our response to the comments on the June 2002 notice with comment period, we were referring to the commenter's request for a retrospective recalculation of the initial base year rates.

Comment: A commenter is requesting specific data regarding the frequency of outlier payments, any Home Health Resource Group (HHRG) connections to outlier payments, and the range of discipline-specific visits occurring in outlier cases and a re-evaluation of the outlier methodology.

Response: We appreciate the comment. We are still developing the data requested by the commenter. We anticipate releasing and/or publishing the data upon their completion.

Comment: We received comments on the pre-floor and pre-reclassified hospital wage index. Specifically, commenters noted that a reduction in wage index occurred in their area.

Response: The HH PPS uses the pre-floor and pre-reclassified hospital wage index. Accordingly, we refer the commenters to the annual acute care hospital inpatient proposed and final rules, which provide detailed explanations of the costs that are included in the hospital wage index and how the hospital wage index is calculated. The hospital wage index is computed annually, using data collected annually from hospitals' Medicare cost reports. In addition, hospital data may differ from year-to-year, in part, because in labor market areas with few hospitals, annual variations in wage index values are typical.

Comment: A commenter urged us to develop a home health specific wage index.

Response: We have previously developed a home health specific wage index, which the industry did not support because it was viewed less favorably or less accurate than the pre-floor and pre-reclassified hospital wage index. Specifically, the home health industry had concerns with the methodology used to develop a home health specific wage index. These concerns coupled with our lack of applicable specific home health wage index led to our adoption of the hospital wage index in developing home health PPS. We will, however, continue to review the feasibility of this recommendation.

III. Provisions of this Notice With Comment Period

A. National Standardized 60-Day Episode Rate

Medicare HH PPS has been effective since October 1, 2000. As set forth in the final rule published July 3, 2000 in the **Federal Register** (65 FR 41128), the unit

of payment under Medicare HH PPS is a national standardized 60-day episode rate. As set forth in 42 CFR 484.220, we adjust the national standardized 60-day episode rate by case mix and wage index based on the site of service for the beneficiary. The FY 2004 HH PPS rates use the same case-mix methodology and application of the wage index adjustment to the labor portion of the HH PPS rates as set forth in the July 3, 2000 final rule. We multiply the national 60-day episode rate by the patient's applicable case-mix weight. We divide the case-mix adjusted amount into a labor and non-labor portion. We multiply the labor portion by the applicable wage index based on the site of service of the beneficiary. The labor portion of the rate continues to be .77668 and the non-labor portion of the rate continues to be .22332. We add the wage-adjusted portion to the non-labor portion yielding the case-mix and wage-adjusted 60-day episode rate subject to applicable adjustments.

For FY 2004, we use again the design and case-mix methodology described in section III.G of the HH PPS July 3, 2000 final rule (65 FR 41192 through 41203). For FY 2004, we base the wage index adjustment to the labor portion of the PPS rates on the most recent pre-floor and pre-reclassified hospital wage index available at the time of publication of this notice, which is discussed in section III.C of this notice with comment period.

As discussed in the July 3, 2000 HH PPS final rule, for episodes with four or fewer visits, Medicare pays the national per-visit amount by discipline, referred to as a LUPA. We update the national per-visit amounts by discipline annually by the applicable home health market basket. We adjust the national per-visit amount by the appropriate wage index based on the site of service for the beneficiary as set forth in § 484.230. We adjust the labor portion of the updated national per-visit amounts by discipline used to calculate the LUPA by the most recent pre-floor and pre-reclassified hospital wage index available at the time of publication of this notice, as discussed in section III.C of this notice with comment period.

Medicare pays the 60-day case-mix and wage-adjusted episode payment on a split percentage payment approach. The split percentage payment approach includes an initial percentage payment and a final percentage payment as set forth in § 484.205(b)(1) and (b)(2). We may base the initial percentage payment on the submission of a request for anticipated payment and the final percentage payment on the submission of the claim for the episode, as discussed in regulations in § 409.43. The claim for the episode that the HHA submits for the final percentage payment determines the total payment amount for the episode and whether we make an applicable adjustment to the 60-day case-mix and wage-adjusted episode payment. The end date of the 60-day episode as reported on the claim determines the rate level at which Medicare will pay the claim for the fiscal period.

In summary, we may adjust the 60-day case-mix and wage adjusted episode payment based on the information submitted on the claim to reflect the following:

- A low utilization payment provided on a per-visit basis as set forth in § 484.205(c) and § 484.230.
- A partial episode payment adjustment as set forth in § 484.205(d) and § 484.235.
- A significant change in condition adjustment as set forth in § 484.205(e) and § 484.237.
- An outlier payment as set forth in § 484.205(f) and § 484.240.

This notice with comment period reflects the updated FY 2004 rates that are effective October 1, 2003.

B. Structure and Methodology for FY 2004 Market Basket

On July 1, 1996, we published a notice with comment period (61 FR 34349) in the **Federal Register** that fully explained the structure and methodology of the current home health market basket. The home health market basket captures the ''pure price'' change between payment years associated with providing home health services. In column 1 of Table 1, we have provided the 1993-based cost category components. In column 2 of Table 1, the weights in the home health market basket represent the average cost structure for freestanding HHAs for a base year, currently 1993. The weights are derived using Medicare Cost Reports for freestanding HHAs, augmented with additional information from the U.S. Department of Commerce, Bureau of Economic Analysis' Input-Output Tables. In column 3 of Table 1, the proxies used in the home health market basket are selected for their representativeness in tracking pure price changes and are generally publicly available price series from the U.S. Bureau of Labor Statistics. In column 4 of Table 1, the home health market basket percent change, or update, for FY 2004 is calculated as the weighted average of these specific price proxy changes. We feel that the home health market basket accurately reflects the price changes facing HHAs in providing an efficient level of care.

Market baskets are periodically rebased and revised to a more current base year. To this end, we have been monitoring the most recently available data (for proposes of this analysis, we used 1999 data) on the distribution of costs in providing home health services and the appropriateness of our price proxies. Though this work is still very preliminary, the distribution of costs through 1999 does not appear to be dramatically different than the distribution of costs in the 1993 base year. We will continue to monitor these data, particularly data for the periods after prospective payment began, to determine the most appropriate time to rebase and revise the home health market basket. In Table 1 below, we set forth the 1993-based cost categories, weights, price proxies, and FY 2004 updates for the market basket forecast. In Table 2 below, we have provided a comparison of the FY 2003 and FY 2004 updates to the home health market basket.

TABLE 1.—1993-BASED COST CATEGORIES, WEIGHTS, PRICE PROXIES, AND FY 2004 UPDATES

Cost category	1993-based market basket weight	Price proxy	FY 2004 update (percent)
Total	100.000		3.3
Compensation, including allocated Contract Services' labor	77.668		3.6
Wages and salaries, including allocated contract services' labor	64.226	HHA Occupational Wage Index	3.4
Employee benefits, including allocated contract services' labor	13.442	HHA Occupational Benefits Index	4.7
Operations & Maintenance	0.832	CPI–U Fuel & Other Utilities	0.5
Administrative & General, including allocated contract services' non-labor	9.569		2.7
Telephone	0.725	CPI–U Telephone	0.6

TABLE 1.—1993-BASED COST CATEGORIES, WEIGHTS, PRICE PROXIES, AND FY 2004 UPDATES—Continued

Cost category	1993-based market basket weight	Price proxy	FY 2004 update (percent)
Paper & Printing	0.529	CPI–U Household Paper, Paper Products & Stationery Supplies.	1.7
Postage	0.724	CPI–U Postage	1.8
Other Administrative & General, including allocated contract services' nonlabor.	7.591	CPI–U Services	3.0
Transportation	3.405	CPI–U Private Transportation	−0.4
Capital-Related	3.204		2.6
Insurance	0.560	CPI–U Household Insurance	3.6
Fixed Capital	1.764	CPI–U Owner's Equivalent Rent	3.3
Movable Capital	0.880	PPI Machinery & Equipment	0.1
Other Expenses, including allocated contract services' nonlabor	5.322	CPI–U All Items Less Food & Energy	2.7

Source: Global Insights Inc., 1st Qtr, 2003; @USMACRO/MODTREND @CISSIM/TL0203.SIM Historical data through 4TH Qtr, 2002

TABLE 2.—1993-BASED COST CATEGORIES, WEIGHTS, AND FY 2003 UPDATE VERSUS FY 2004 UPDATE

Cost category	1993-based market basket weight	FY03 update (as of 2001: 4th quarter forecast) (percent)	FY04 update (as of 2003: 1st quarter forecast) (percent)
Total	1000.000	3.2	3.3
Compensation, including allocated Contract Services' labor	77.668	3.4	3.6
Wages and salaries, including allocated contract services' labor	64.226	3.4	3.4
Employee benefits, including allocated contract services' labor	13.442	3.4	4.7
Operations & Maintenance	0.832	0.9	0.5
Administrative & General, including allocated contract services' non-labor	9.569	2.9	2.7
Telephone	0.725	0.4	0.6
Paper & Printing	0.529	0.9	1.7
Postage	0.724	3.6	1.8
Other Administrative & General, including allocated contract services' non-labor	7.591	3.1	3.0
Transportation	3.405	0.9	−0.4
Capital-Related	3.204	2.5	2.6
Insurance	0.560	3.0	3.6
Fixed Capital	1.764	3.4	3.3
Movable Capital	0.880	−0.3	0.1
Other Expenses, including allocated contract services' nonlabor	5.322	2.7	2.7

Source: Global Insights Inc., 1st Qtr, 2003; @USMACRO/MODTREND @CISSIM/TL0203.SIM Historical data through 4th Qtr, 2002; and 4th Qtr, 2001, @USMACRO/MODTREND @CISSIM/TRENDLONG1101 Historical data through 3rd Qtr, 2001.

C. FY 2004 Update to the Home Health Market Basket Index

Section 1895(b)(3)(B) of the Act requires the standard prospective payment amounts to be increased by a factor equal to the applicable home health market basket increase for FY 2004. This requirement has been codified in regulations in § 484.225.

• *FY 2004 Adjustments*

In calculating the annual update for the FY 2004 60-day episode rates, we first looked at the FY 2003 rates as a starting point. The FY 2003 national 60-day episode rate is $2,159.39.

In order to calculate the FY 2004 national 60-day episode rate, we multiplied the FY 2003 national 60-day episode rate (2,159.39) by the applicable home health market basket update for FY 2004. The home health market basket increase for FY 2004 is 3.3 percent. We increased the FY 2003 amount by the FY 2004 home health market basket increase ($2,159.39 + 3.3 percent) to yield the updated FY 2004 national 60-day episode rate ($2,230.65) (see Table 3 below).

TABLE 3.—NATIONAL 60-DAY EPISODE AMOUNTS UPDATED BY THE APPLICABLE HOME HEALTH MARKET BASKET FY 2004 PRIOR TO CASE-MIX ADJUSTMENT, WAGE INDEX ADJUSTMENT BASED ON THE SITE OF SERVICE FOR THE BENEFICIARY OR APPLICABLE PAYMENT ADJUSTMENT

Total prospective payment amount per 60-day episode for FY 2003	Multiply by the applicable home health market basket increase	Final FY 2004 updated national 60-day episode rate
$2,159.39	×1.033	$2,230.65

• *National Per-Visit Amounts Used To Pay LUPAs and Compute Imputed Costs Used in Outlier Calculations.*

As discussed previously in this notice with comment period, the policies governing the LUPAs and outlier calculations set forth in the July 3, 2000 HH PPS final rule will continue during FY 2004. In calculating the annual update for the FY 2004 national per-visit amounts we use to pay LUPAs and to compute the imputed costs in outlier calculations, we again looked at the FY 2003 rates as a starting point. We then multiply those amounts by the applicable home health market basket increase for FY 2004 to yield the updated per-visit amounts for each home health discipline for FY 2004. (See Table 4 below.)

TABLE 4.—NATIONAL PER-VISIT AMOUNTS FOR LUPAS AND OUTLIER CALCULATIONS UPDATED BY THE APPLICABLE HOME HEALTH MARKET BASKET INCREASE FOR FY 2004 PRIOR TO WAGE INDEX ADJUSTMENT BASED ON THE SITE OF SERVICE FOR THE BENEFICIARY

Home health discipline types	Final per-visit amounts per 60-day episode for FY 2003 for LUPAs	Multiply by applicable home health market basket	Final per-visit payment amount per discipline for FY 2004 for LUPAs
Home Health Aide	$42.68	×1.033	$44.09
Medical Social Services	151.11	×1.033	156.10
Occupational Therapy	103.77	×1.033	107.19
Physical Therapy	103.07	×1.033	106.47
Skilled Nursing	94.27	×1.033	97.38
Speech-Language Pathology	112.00	×1.033	115.70

C. Hospital Wage Index

Sections 1895(b)(4)(A)(ii) and (b)(4)(C) of the Act require the Secretary to establish area wage adjustment factors that reflect the relative level of wages and wage-related costs applicable to the furnishing of home health services and to provide appropriate adjustments to the episode payment amounts under HH PPS to account for area wage differences. We apply the appropriate wage index value to the labor portion of the HH PPS rates based on the geographic area in which the beneficiary received home health services. We determine each HHA's labor market area based on definitions of Metropolitan Statistical Areas (MSAs) issued by the Office of Management and Budget (OMB).

As discussed previously and set forth in the July 3, 2000 final rule, the statute provides that the wage adjustment factors may be the factors used by the Secretary for purposes of section 1886(d)(3)(E) of the Act for hospital wage adjustment factors. Again, as discussed in the July 3, 2000 final rule, we used the most recent pre-floor and pre-reclassified hospital wage index available at the time of publication of this notice to adjust the labor portion of the HH PPS rates based on the geographic area in which the beneficiary receives the home health services. We believe the use of the most recent available pre-floor and pre-reclassified hospital wage index data results in the appropriate adjustment to the labor portion of the costs as required by statute. (See addenda A and B of this notice with comment period, respectively, for the rural and urban hospital wage indexes. Furthermore, we have added an addendum C that shows a side-by-side comparison of the FY 2002 pre-floor and pre-reclassified hospital wage index and FY 2003 pre-floor and pre-reclassified hospital wage index for the FY 2004 HH PPS update notice. We believe that addendum C provides a clear illustration of changes in the wage index from FY 2002 and FY 2003.)

IV. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a notice such as this take effect. We can waive this procedure, however, if we find good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of finding and its reasons in the notice issued.

We believe it is unnecessary to undertake proposed notice and comment rulemaking as the statute requires annual updates to the HH PPS rates, the methodologies used to update the rate have been previously subject to public comment, and this notice reflects the application of previously established methodologies. This required annual update for the FY 2004 PPS rates is dictated by statute and does not require an exercise of discretion. Therefore, for good cause, we waive prior notice and comment procedures. As indicated previously, we are, however, providing a 60-day comment period for public comment.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VI. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of the preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

VII. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). The update set forth in this notice with comment period applies to Medicare payments under HH PPS in FY 2004. Accordingly, the following analysis describes the impact in FY 2004 only. We estimate that there will be an additional $340 million in FY 2004 expenditures attributable to the FY 2004 market basket increase of 3.3 percent.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and

government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million or less annually (for details, see the Small Business Administration's regulation that set forth size standards for health care industries at 65 FR 69432). For purposes of the RFA, approximately 75 percent of HHAs are considered small businesses according to the Small Business Administration's size standards with total revenues of $11.5 million or less in 1 year. Individuals and States are not included in the definition of a small entity. As stated above, this notice with comment period provides an update to all HHAs for FY 2004 as required by statute. This notice will have a significant positive effect upon small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area (MSA) and has fewer than 100 beds. We have determined that this notice with comment period will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. We believe this notice will not mandate expenditures in that amount.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this notice under the threshold criteria of Executive Order 13132, Federalism. We have determined that this notice would not have substantial direct effects on the rights, roles, and responsibilities of States.

B. Anticipated Effects

In accordance with the requirements of section 1895(b)(3) of the Act, we publish an update for each subsequent fiscal year that will provide an update to the payment rates. Section 1895(b)(3) of the Act requires us, for FY 2004, to increase the prospective payment amounts by the applicable home health market basket increase. The home health market basket increase for FY 2004 is 3.3 percent. Taking into account the provisions of section 1895(b)(3) of the Act, the increase for FY 2004 is 3.3 percent.

1. Effects on the Medicare Program

This notice merely provides a percentage update to all Medicare HHAs. Therefore, we have not furnished any impact tables. We increase the payment to each Medicare HHA equally by the home health market basket update for FY 2004, as required by statute. There is no differential impact among provider types. The impact is in the aggregate. We estimate that there will be an additional $340 million in FY 2004 expenditures attributable to the FY 2004 market basket increase of 3.3 percent. Thus, the anticipated expenditures outlined in this notice exceed the $100 million annual threshold for a major rule as defined in Title 5, USC, section 804(2).

The applicable home health market basket increase of 3.3 percent for FY 2004 applies to all Medicare participating in HHAs. We do not believe there is a differential impact due to the aggregate nature of the update.

TABLE 5

FY 2004 update to home health PPS rates required by the act	Additional FY 2004 medicare home health estimated expenditures due to annual update required by law
Section 1895(b)(3)(B) of the Act requires HH PPS rates increased by applicable home health market basket increase (3.3 percent increase).	$340 million.

(Source: President's FY 2003 Budget)

2. Effects on Providers

This notice will have a positive effect on providers of Medicare home health services by increasing their rate of Medicare payment. We do not anticipate specific effects on other providers. This notice reflects the statutorily required annual update to the HH PPS rates. We do not believe there is a differential impact due to the consistent and aggregate nature of the update.

C. Alternatives Considered

As discussed in section II, this notice with comment period reflects an annual update to the HH PPS rates as required by statute. Due to the lack of discretion provided in the statutory requirements governing this notice with comment period, we believe the statute provides no latitude for alternatives other than the approach set forth in this notice reflecting the FY 2004 annual update to the HH PPS rates. Other than the positive effect of the market basket increase, this notice with comment will not have a significant economic impact nor will it impose an additional burden on small entities. When a regulation or notice imposes additional burden on small entities, we are required under the RFA to examine alternatives for reducing burden.

Since this notice with comment period will not impose an additional burden, we have not examined alternatives.

D. Conclusion

We have examined the economic impact of this notice with comment period on small entities and have determined that the economic impact is positive, significant, and that all HHAs will be affected. To the extent that small rural hospitals are affiliated with HHAs, the impact on these facilities will also be positive. Finally, we have determined that the economic effects described above are largely the result of the specific statutory provisions, which this notice serves to announce.

In accordance with the provisions of notice with comment Executive Order 12866, this was reviewed by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 21, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: March 26, 2003.

Tommy G. Thompson,

Secretary.

ADDENDUM A.—WAGE INDEX FOR RURAL AREAS—APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX (FY 2003)

MSA name	Wage index
ALABAMA	.7660
ALASKA	1.2293
ARIZONA	.8493

ADDENDUM A.—WAGE INDEX FOR RURAL AREAS—APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX (FY 2003)—Continued

MSA name	Wage index
ARKANSAS	.7666
CALIFORNIA	.9840
COLORADO	.9015
CONNECTICUT	1.2394
DELAWARE	.9128
FLORIDA	.8814
GEORGIA	.8230
GUAM	.9611
HAWAII	1.0255
IDAHO	.8747
ILLINOIS	.8204
INDIANA	.8755
IOWA	.8315
KANSAS	.7923
KENTUCKY	.8079
LOUISIANA	.7567
MAINE	.8874
MARYLAND	.8946

ADDENDUM A.—WAGE INDEX FOR RURAL AREAS—APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX (FY 2003)—Continued

MSA name	Wage index
MASSACHUSETTS	1.1288
MICHIGAN	.9000
MINNESOTA	.9151
MISSISSIPPI	.7680
MISSOURI	.8021
MONTANA	.8481
NEBRASKA	.8204
NEVADA	.9577
NEW HAMPSHIRE	.9796
NEW JERSEY [1]	.....
NEW MEXICO	.8872
NEW YORK	.8542
NORTH CAROLINA	.8666
NORTH DAKOTA	.7788
OHIO	.8613
OKLAHOMA	.7590
OREGON	1.0303
PENNSYLVANIA	.8462

ADDENDUM A.—WAGE INDEX FOR RURAL AREAS—APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX (FY 2003)—Continued

MSA name	Wage index
PUERTO RICO	.4356
RHODE ISLAND [1]	.....
SOUTH CAROLINA	.8607
SOUTH DAKOTA	.7815
TENNESSEE	.7877
TEXAS	.7821
UTAH	.9312
VERMONT	.9345
VIRGINIA	.8504
VIRGIN ISLANDS	.7845
WASHINGTON	1.0179
WEST VIRGINIA	.7975
WISCONSIN	.9162
WYOMING	.9007

[1] All counties within State are classified as Urban.

ADDENDUM B.—FY 2003 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX

MSA	Urban area (constituent counties)	Wage index
0040	Abilene, TX	.7792
	Taylor, TX	
0060	Aguadilla, PR	.4587
	Aguada, PR	
	Aguadilla, PR	
	Moca, PR	
0080	Akron, OH	.9600
	Portage, OH	
	Summit, OH	
0120	Albany, GA	1.0594
	Dougherty, GA	
	Lee, GA	
0160	Albany-Schenectady-Troy, NY	.8384
	Albany, NY	
	Montgomery, NY	
	Rensselaer, NY	
	Saratoga, NY	
	Schenectady, NY	
	Schoharie, NY	
0200	Albuquerque, NM	.9315
	Bernalillo, NM	
	Sandoval, NM	
	Valencia, NM	
0220	Alexandria, LA	.7859
	Rapides, LA	
0240	Allentown-Bethlehem-Easton, PA	.9735
	Carbon, PA	
	Lehigh, PA	
	Northampton, PA	
0280	Altoona, PA	.9225
	Blair, PA	
0320	Amarillo, TX, Potter, TX	.9034
	Randall, TX	
0380	Anchorage, AK	1.2358
	Anchorage, AK	
0440	Ann Arbor, MI	1.1103
	Lenawee, MI	
	Livingston, MI	
	Washtenaw, MI	
0450	Anniston, AL	.8044
	Calhoun, AL	
0460	Appleton-Oshkosh-Neenah, WI	.8997
	Calumet, WI	

ADDENDUM B.—FY 2003 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
	Outagamie, WI	
	Winnebago, WI	
0470	Arecibo, PR	.4337
	Arecibo, PR	
	Camuy, PR	
	Hatillo, PR	
0480	Asheville, NC	.9876
	Buncombe, NC	
	Madison, NC	
0500	Athens, GA	1.0211
	Clarke, GA	
	Madison, GA	
	Oconee, GA	
0520	Atlanta, GA	.9991
	Barrow, GA	
	Bartow, GA	
	Carroll, GA	
	Cherokee, GA	
	Clayton, GA	
	Cobb, GA	
	Coweta, GA	
	DeKalb, GA	
	Douglas, GA	
	Fayette, GA	
	Forsyth, GA	
	Fulton, GA	
	Gwinnett, GA	
	Henry, GA	
	Newton, GA	
	Paulding, GA	
	Pickens, GA	
	Rockdale, GA	
	Spalding, GA	
	Walton, GA	
0560	Atlantic-Cape May, NJ	1.1017
	Atlantic, NJ	
	Cape May, NJ	
0580	Auburn-Opelka, AL	.8325
	Lee, AL	
0600	Augusta-Aiken, GA–SC	1.0264
	Columbia, GA	
	McDuffie, GA	
	Richmond, GA	
	Aiken, SC	
	Edgefield, SC	
0640	Austin-San Marcos, TX	.9637
	Bastrop, TX	
	Caldwell, TX	
	Hays, TX	
	Travis, TX	
	Williamson, TX	
0680	Bakersfield, CA	.9899
	Kern, CA	
0720	Baltimore, MD	.9929
	Anne Arundel, MD	
	Baltimore City, MD	
	Carroll, MD	
	Harford, MD	
	Howard, MD	
	Queen Annes, MD	
0733	Bangor, ME	.9664
	Penobscot, ME	
0743	Barnstable-Yarmouth, MA	1.3202
	Barnstable, MA	
0760	Baton Rouge, LA	.8294
	Ascension, LA	
	East Baton Rouge, LA	
	Livingston, LA	
	West Baton Rouge, LA	
0840	Beaumont-Port Arthur, TX	.8324

ADDENDUM B.—FY 2003 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
	Hardin, TX	
	Jefferson, TX	
	Orange, TX	
0860	Bellingham, WA	1.2282
	Whatcom, WA	
0870	Benton Harbor, MI	.9042
	Berrien, MI	
0875	Bergen-Passaic, NJ	1.2150
	Bergen, NJ	
	Passaic, NJ	
0880	Billings, MT	.9022
	Yellowstone, MT	
0920	Biloxi-Gulfport-Pascagoula, MS	.8757
	Hancock, MS	
	Harrison, MS	
	Jackson, MS	
0960	Binghamton, NY	.8341
	Broome, NY	
	Tioga, NY	
1000	Birmingham, AL	.9222
	Blount, AL	
	Jefferson, AL	
	St. Clair, AL	
	Shelby, AL	
1010	Bismarck, ND	.7972
	Burleigh, ND	
	Morton, ND	
1020	Bloomington, IN	.8907
	Monroe, IN	
1040	Bloomington-Normal, IL	.9109
	McLean, IL	
1080	Boise City, ID	.9310
	Ada, ID	
	Canyon, ID	
1123	Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH	1.1235
	Bristol, MA	
	Essex, MA	
	Middlesex, MA	
	Norfolk, MA	
	Plymouth, MA	
	Suffolk, MA	
	Worcester, MA	
	Hillsborough, NH	
	Merrimack, NH	
	Rockingham, NH	
	Strafford, NH	
1125	Boulder-Longmont, CO	.9689
	Boulder, CO	
1145	Brazoria, TX	.8535
	Brazoria, TX	
1150	Bremerton, WA	.0944
	Kitsap, WA	
1240	Brownsville-Harlingen-San Benito, TX	.8880
	Cameron, TX	
1260	Bryan-College Station, TX	.8821
	Brazos, TX	
1280	Buffalo-Niagara Falls, NY	.9365
	Erie, NY	
	Niagara, NY	
1303	Burlington, VT	1.0052
	Chittenden, VT	
	Franklin, VT	
	Grand Isle, VT	
1310	Caguas, PR	.4371
	Caguas, PR	
	Cayey, PR	
	Cidra, PR	
	Gurabo, PR	
	San Lorenzo, PR	
1320	Canton-Massillon, OH	.8932

ADDENDUM B.—FY 2003 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
	Carroll, OH	
	Stark, OH	
1350	Casper, WY	.9690
	Natrona, WY	
1360	Cedar Rapids, IA	.9056
	Linn, IA	
1400	Champaign-Urbana, IL	1.0635
	Champaign, IL	
1440	Charleston-North Charleston, SC	.9235
	Berkeley, SC	
	Charleston, SC	
	Dorchester, SC	
1480	Charleston, WV	.8898
	Kanawha, WV	
	Putnam, WV	
1520	Charlotte-Gastonia-Rock Hill, NC–SC	.9850
	Cabarrus, NC	
	Gaston, NC	
	Lincoln, NC	
	Mecklenburg, NC	
	Rowan, NC	
	Stanley, NC	
	Union, NC	
	York, SC	
1540	Charlottesville, VA	1.0438
	Albemarle, VA	
	Charlottesville City, VA	
	Fluvanna, VA	
	Greene, VA	
1560	Chattanooga, TN–GA	.8976
	Catoosa, GA	
	Dade, GA	
	Walker, GA	
	Hamilton, TN	
	Marion, TN	
	Cheyenne, WY	.8628
1580	Laramie, WY.	
1600	Chicago, IL	1.1044
	Cook, IL	
	DeKalb, IL	
	DuPage, IL	
	Grundy, IL	
	Kane, IL	
	Kendall, IL	
	Lake, IL	
	McHenry, IL	
	Will, IL	
1620	Chico-Paradise, CA	.9745
	Butte, CA	
1640	Cincinnati, OH–KY–IN	.9381
	Dearborn, IN	
	Ohio, IN	
	Boone, KY	
	Campbell, KY	
	Gallatin, KY	
	Grant, KY	
	Kenton, KY	
	Pendleton, KY	
	Brown, OH	
	Clermont, OH	
	Hamilton, OH	
	Warren, OH	
1660	Clarksville-Hopkinsville, TN–KY	.8406
	Christian, KY	
	Montgomery, TN	
1680	Cleveland-Lorain-Elyria, OH	.9670
	Ashtabula, OH	
	Cuyahoga, OH	
	Geauga, OH	
	Lake, OH	

ADDENDUM B.—FY 2003 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
	Lorain, OH	
	Medina, OH	
1720	Colorado Springs, CO	.9916
	El Paso, CO	
1740	Columbia, MO	.8496
	Boone, MO	
1760	Columbia, SC	.9307
	Lexington, SC	
	Richland, SC	
1800	Columbus, GA–AL	.8374
	Russell, AL	
	Chattahoochee, GA	
	Harris, GA	
	Muscogee, GA	
1840	Columbus, OH	.9751
	Delaware, OH	
	Fairfield, OH	
	Franklin, OH	
	Licking, OH	
	Madison, OH	
	Pickaway, OH	
1880	Corpus Christi, TX	.8729
	Nueces, TX	
	San Patricio, TX	
1890	Corvallis, OR	1.1453
	Benton, OR	
1900	Cumberland, MD–WV	.7847
	Allegany, MD	
	Mineral, WV	
1920	Dallas, TX	.9998
	Collin, TX	
	Dallas, TX	
	Denton, TX	
	Ellis, TX	
	Henderson, TX	
	Hunt, TX	
	Kaufman, TX	
	Rockwall, TX	
1950	Danville, VA	.8859
	Danville City, VA	
	Pittsylvania, VA	
1960	Davenport-Moline-Rock Island, IA–IL	.8835
	Scott, IA	
	Henry, IL	
	Rock Island, IL	
2000	Dayton-Springfield, OH	.9282
	Clark, OH	
	Greene, OH	
	Miami, OH	
	Montgomery, OH	
2020	Daytona Beach, FL	.9062
	Flagler, FL	
	Volusia, FL	
2030	Dacatur, AL	.8973
	Lawrence, AL	
	Morgan, AL	
2040	Dacatur, IL	.8055
	Macon, IL	
2080	Denver, CO	1.0601
	Adams, CO	
	Arapahoe, CO	
	Denver, CO	
	Douglas, CO	
	Jefferson, CO	
2120	Des Moines, IA	.8791
	Dallas, IA	
	Polk, IA	
	Warren, IA	
2160	Detroit, MI	1.0448
	Lapeer, MI	

ADDENDUM B.—FY 2003 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
	Macomb, MI	
	Monroe, MI	
	Oakland, MI	
	St. Clair, MI	
	Wayne, MI	
2180	Dothan, AL	.8137
	Dale, AL	
	Houston, AL	
2190	Dover, DE	.9356
	Kent, DE	
2200	Dubuque, IA	.8795
	Dubuque, IA	
2240	Duluth-Superior, MN–WI	1.0368
	St. Louis, MN	
	Douglas, WI	
2281	Dutchess County, NY	1.0684
	Dutchess, NY	
2290	Eau Claire, WI	.8952
	Chippewa, WI	
	Eau Claire, WI	
2320	El Paso, TX	.9265
	El Paso, TX	
2330	Elkhart-Goshen, IN	.9722
	Elkhart, IN	
2335	Elmira, NY	.8416
	Chemung, NY	
2340	Enid, OK	.8376
	Garfield, OK	
2360	Erie, PA	.8925
	Erie, PA	
2400	Eugene-Springfield, OR	1.0944
	Lane, OR	
2440	Evansville-Henderson, IN–KY	.8177
	Posey, IN	
	Vanderburgh, IN	
	Warrick, IN	
	Henderson, KY	
2520	Fargo-Moorhead, ND–MN	.9684
	Clay, MN	
	Cass, ND	
2560	Fayetteville, NC	.8889
	Cumberland, NC	
2580	Fayetteville-Springdale-Rogers, AR	.8100
	Benton, AR	
	Washington, AR	
2620	Flagstaff, AZ–UT	1.0682
	Coconino, AZ	
	Kane, UT	
2640	Flint, MI	1.1135
	Genesee, MI	
2650	Florence, AL	.7792
	Colbert, AL	
	Lauderdale, AL	
2655	Florence, SC	.8780
	Florence, SC	
2670	Fort Collins-Loveland, CO	1.0066
	Larimer, CO	
2680	Ft. Lauderdale, FL	1.0297
	Broward, FL	
2700	Fort Myers-Cape Coral, FL	.9680
	Lee, FL	
2710	Fort Pierce-Port St. Lucie, FL	.9823
	Martin, FL	
	St. Lucie, FL	
2720	Fort Smith, AR–OK	.7895
	Crawford, AR	
	Sebastian, AR	
	Sequoyah, OK	
2750	Fort Walton Beach, FL	.9693
	Okaloosa, FL	

ADDENDUM B.—FY 2003 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
2760	Fort Wayne, IN	.9457
	Adams, IN	
	Allen, IN	
	De Kalb, IN	
	Huntington, IN	
	Wells, IN	
	Whitley, IN	
2800	Forth Worth-Arlington, TX	.9446
	Hood, TX	
	Johnson, TX	
	Parker, TX	
	Tarrant, TX	
2840	Fresno, CA	1.0216
	Fresno, CA	
	Madera, CA	
2880	Gadsden, AL	.8505
	Etowah, AL	
2900	Gainesville, FL	.9871
	Alachua, FL	
2920	Galveston-Texas City, TX	.9465
	Galveston, TX	
2960	Gary, IN	.9584
	Lake, IN	
	Porter, IN	
2975	Glens Falls, NY	.8281
	Warren, NY	
	Washington, NY	
2980	Goldsboro, NC	.8892
	Wayne, NC	
2985	Grand Forks, ND–MN	.8897
	Polk, MN	
	Grand Forks, ND	
2995	Grand Junction, CO	.9456
	Mesa, CO	
3000	Grand Rapids-Muskegon-Holland, MI	.9525
	Allegan, MI	
	Kent, MI	
	Muskegon, MI	
	Ottawa, MI	
3040	Great Falls, MT	.8950
	Cascade, MT	
3060	Greeley, CO	.9237
	Weld, CO	
3080	Green Bay, WI	.9502
	Brown, WI	
3120	Greensboro-Winston-Salem-High Point, NC	.9282
	Alamance, NC	
	Davidson, NC	
	Davie, NC	
	Forsyth, NC	
	Guilford, NC	
	Randolph, NC	
	Stokes, NC	
	Yadin, NC	
3150	Greenville, NC	.9100
	Pitt, NC	
3160	Greenville, Spartanburg-Anderson, SC	.9122
	Anderson, SC	
	Cherokee, SC	
	Greenville, SC	
	Pickens, SC	
	Spartanburg, SC	
3180	Hagerstown, MD	.9268
	Washington, MD	
3200	Hamilton-Middletown, OH	.9418
	Butler, OH	
3240	Harrisburg-Lebanon-Carlisle, PA	.9223
	Cumberland, PA	
	Dauphin, PA	

ADDENDUM B.—FY 2003 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
	Lebanon, PA	
	Perry, PA	
3283	Hartford, CT	1.1549
	Hartford, CT	
	Litchfield, CT	
	Middlesex, CT	
	Tolland, CT	
3285	Hattiesburg, MS	.7659
	Forrest, MS	
	Lamar, MS	
3290	Hickory-Morganton–Lenoir, NC	.9028
	Alexander, NC	
	Burke, NC	
	Caldwell, NC	
	Catawaba, NC	
3320	Honolulu, HI	1.1457
	Honolulu, HI	
3350	Houma, LA	.8385
	Lafourche, LA	
	Terrebonne, LA	
3360	Houston, TX	.9892
	Chambers, TX	
	Fort Bend, TX	
	Harris, TX	
	Liberty, TX	
	Montgomery, TX	
	Waller, TX	
3400	Huntington-Ashland, WV–KY–OH	.9636
	Boyd, KY	
	Carter, KY	
	Grenup, KY	
	Lawrence, OH	
	Cabell, WV	
	Wayne, WV	
3440	Huntsville, AL	.8903
	Limestone, AL	
	Madison, AL	
3480	Indianapolis, IN	.9717
	Boone, IN	
	Hamilton, IN	
	Hancoock, IN	
	Hendricks, IN	
	Johnson, IN	
	Madison, IN	
	Marion, IN	
	Morgan, IN	
	Shelby, IN	
3500	Iowa City, IA	.9587
	Johnson, IA	
3520	Jackson, MI	.9532
	Jackson, MI	
3560	Jackson, MS	.8607
	Hinds, MS	
	Madison, MS	
	Rankin MS	
3580	Jackson, TN	.9275
	Madison, TN	
	Chester, TN	
3600	Jacksonville, FL	.9381
	Clay, FL	
	Duval, FL	
	Nassau, FL	
	St. Johns, FL	
3605	Jacksonville, NC	.8239
	Onslow, NC	
3610	Jamestown, NY	.7976
	Chautauqua, NY	
3620	Janesville-Beloit, WI	.9849
	Rock, WI	
3640	Jersey City, NJ	1.1190

ADDENDUM B.—FY 2003 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
	Hudson, NJ	
3660	Johnson City-Kingsport-Bristol, TN–VA	.8268
	Carter, TN	
	Hawkins, TN	
	Sullivan, TN	
	Unicoi, TN	
	Washington, TN	
	Bristol City, VA	
	Scott, VA	
	Washington, VA	
3680	Johnstown, PA	.8329
	Cambria, PA	
	Somerset, PA	
3700	Jonesboro, AR	.7749
	Craighead, AR	
3710	Joplin, MO	.8613
	Jasper, MO	
	Newton, MO	
3720	Kalamazoo-Battlecreek, MI	1.0595
	Calhoun, MI	
	Kalamazoo, MI	
	Van Buren, MI	
3740	Kankakee, IL	1.0790
	Kankakee, IL	
3760	Kansas City, KS–MO	.9736
	Johnson, KS	
	Leavenworth, KS	
	Miami, KS	
	Wyandotte, KS	
	Cass, MO	
	Clay, MO	
	Clinton, MO	
	Jackson, MO	
	Lafayette, MO	
	Platte, MO	
	Ray, MO	
3800	Kenosha, WI	.9686
	Kenosha, WI	
3810	Killeen-Temple, TX	1.0399
	Bell, TX	
	Coryell, TX	
3840	Knoxville, TN	.8970
	Anderson, TN	
	Blount, TN	
	Knox, TN	
	Loudon, TN	
	Sevier, TN	
	Union, TN	
3850	Kokomo, IN	.8971
	Howard, IN	
	Tipton, IN	
3870	La Crosse, WI–MN	.9400
	Houston, MN	
	La Crosse, WI	
3880	Lafayette, LA	.8475
	Acadia, LA	
	Lafayette, LA	
	St. Landry, LA	
	St. Martin, LA	
3920	Lafayette, IN	.9278
	Clinton, IN	
	Tippecanoe, IN	
3960	Lake Charles, LA	.7965
	Calcasieu, LA	
3980	Lakeland-Winter Haven, FL	.9357
	Polk, FL	
4000	Lancaster, PA	.9078
	Lancaster, PA	
4040	Lansing-East Lansing, MI	.9726
	Clinton, MI	

ADDENDUM B.—FY 2003 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
	Eaton, MI	
	Ingham, MI	
4080	Laredo, TX	.8472
	Webb, TX	
4100	Las Cruces, NM	.8745
	Dona Ana, NM	
4120	Las Vegas, NV–AZ	1.1521
	Mohave, AZ	
	Clark, NV	
	Nye, NV	
4150	Lawrence, KS	.7983
	Douglas, KS	
4200	Lawton, OK	.8315
	Comanche, OK	
4243	Lewiston-Auburn, ME	.9179
	Androscoggin, ME	
4280	Lexington, KY	.8581
	Bourbon, KY	
	Clark, KY	
	Fayette, KY	
	Jessamine, KY	
	Madison, KY	
	Scott, KY	
	Woodford, KY	
	Lima, OH	.9483
4320	Allen, OH.	
	Auglaize, OH	
4360	Lincoln, NE	.9892
	Lancaster, NE	
4400	Little Rock-North Little Rock, AR	.9097
	Faulkner, AR	
	Lonoke, AR	
	Pulaski, AR	
	Saline, AR	
4420	Longview-Marshall, TX	.8629
	Gregg, TX	
	Harrison, TX	
	Upshur, TX	
4480	Los Angeles-Long Beach, CA	1.2001
	Los Angeles, CA	
4520	Louisville, KY–IN	.9276
	Clark, IN	
	Floyd, IN	
	Harrison, IN	
	Scott, IN	
	Bullitt, KY	
	Jefferson, KY	
	Oldham, KY	
4600	Lubbock, TX	.9646
	Lubbock, TX	
4640	Lynchburg, VA	.9219
	Amherst, VA	
	Bedford, VA	
	Bedford City, VA	
	Campbell, VA	
	Lynchburg City, VA	
4680	Macon, GA	.9204
	Bibb, GA	
	Houston, GA	
	Jones, GA	
	Peach, GA	
	Twiggs, GA	
4720	Madison, WI	1.0467
	Dane, WI	
4800	Mansfield, OH	.8900
	Crawford, OH	
	Richland, OH	
4840	Mayaguez, PR	.4914
	Anasco, PR	
	Cabo Rojo, PR	

ADDENDUM B.—FY 2003 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
	Hormigueros, PR	
	Mayaguez, PR	
	Sabana Grande, PR	
	San German, PR	
4880	McAllen-Edinburg-Mission, TX	.8428
	Hidalgo, TX	
4890	Medford-Ashland, OR	1.0498
	Jackson, OR	
4900	Melbourne-Titusville-Palm Bay, FL	1.0253
	Brevard, FL	
4920	Memphis, TN–AR–MS	.8920
	Crittenden, AR	
	DeSoto, MS	
	Fayette, TN	
	Shelby, TN	
	Tipton, TN	
4940	Merced, CA	.9837
	Merced, CA	
5000	Miami, FL	.9802
	Dade, FL	
5015	Middlesex-Somerset-Hunterdon, NJ	1.1213
	Hunterdon, NJ	
	Middlesex, NJ	
	Somerset, NJ	
5080	Milwaukee-Waukesha, WI	.9893
	Milwaukee, WI	
	Ozaukee, WID	
	Washington, WI	
	Waukesha, WI	
5120	Minneapolis-St. Paul, MN–WI	1.0903
	Anoka, MN	
	Carver, MN	
	Chisago, MN	
	Dakota, MN	
	Hennepin, MN	
	Isanti, MN	
	Ramsey, MN	
	Scott, MN	
	Sherburne, MN	
	Washington, MN	
	Wright, MN	
	Pierce, WI	
	St. Croix, WI	
5140	Missoula, MT	.9157
	Missoula, MT	
5160	Mobile, AL	.8108
	Baldwin, AL	
	Mobile, AL	
5170	Modesto, CA	1.0498
	Stanislaus, CA	
5190	Monmouth-Ocean, NJ	1.0674
	Monmouth, NJ	
	Ocean, NJ	
5200	Monroe, LA	.8137
	Ouachita, LA	
5240	Montgomery, AL	.7734
	Autauga, AL	
	Elmore, AL	
	Montgomery, AL	
5280	Muncie, IN	.9284
	Delaware, IN	
5330	Myrtle Beach, SC	.8976
	Horry, SC	
5345	Naples, FL	.9754
	Collier, FL	
5360	Nashville, TN	.9578
	Cheatham, TN	
	Davidson, TN	
	Dickson, TN	
	Robertson, TN	

ADDENDUM B.—FY 2003 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
	Rutherford, TN	
	Sumner, TN	
	Williamson, TN	
	Wilson, TN	
5380	Nassau-Suffolk, NY	1.3357
	Nassau, NY	
	Suffolk, NY	
5483	New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2408
	Fairfield, CT	
	New Haven, CT	
5523	New London-Norwich, CT	1.1767
	New London, CT	
5560	New Orleans, LA	.9046
	Jefferson, LA	
	Orleans, LA	
	Plaquemines, LA	
	St. Bernard, LA	
	St. Charles, LA	
	St. James, LA	
	St. John The Baptist, LA	
	St. Tammany, LA	
5600	New York, NY	1.4414
	Bronx, NY	
	Kings, NY	
	New York, NY	
	Putnam, NY	
	Queens, NY	
	Richmond, NY	
	Rockland, NY	
	Westchester, NY	
5640	Newark, NJ	1.1381
	Essex, NJ	
	Morris, NJ	
	Sussex, NJ	
	Union, NJ	
	Warren, NJ	
5660	Newburgh, NY—PA	1.1387
	Orange, NY	
	Pike, PA	
5720	Norfolk-Virginia Beach-Newport News, VA–NC	.8574
	Currituck, NC	
	Chesapeake City, VA	
	Gloucester, VA	
	Hampton City, VA	
	Isle of Wight, VA	
	James City, VA	
	Mathews, VA	
	Newport News City, VA	
	Norfolk City, VA	
	Poquoson City, VA	
	Portsmouth City, VA	
	Suffolk City, VA	
	Virginia Beach City VA	
	Williamsburg City, VA	
	York, VA	
5775	Oakland, CA	1.5072
	Alameda, CA	
	Contra Costa, CA	
5790	Ocala, FL	.9402
	Marion, FL	
5800	Odessa-Midland, TX	.9397
	Ector, TX	
	Midland, TX	
5880	Oklahoma City, OK	.8900
	Canadian, OK	
	Cleveland, OK	
	Logan, OK	
	McClain, OK	
	Oklahoma, OK	
	Pottawatomie, OK	

ADDENDUM B.—FY 2003 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
5910	Olympia, WA	1.0960
	Thurston, WA	
5920	Omaha, NE–IA	.9978
	Pottawattamie, IA	
	Cass, NE	
	Douglas, NE	
	Sarpy, NE	
	Washington, NE	
5945	Orange County, CA	1.1474
	Orange, CA	
5960	Orlando, FL	.9640
	Lake, FL	
	Orange, FL	
	Osceola, FL	
	Seminole, FL	
5990	Owensboro, KY	.8344
	Daviess, KY	
6015	Panama City, FL	.8865
	Bay, FL	
6020	Parkersburg-Marietta, WV–OH	.8127
	Washington, OH	
	Wood, WV	
6080	Pensacola, FL	.8645
	Escambia, FL	
	Santa Rosa, FL	
6120	Peoria-Pekin, IL	.8739
	Peoria, IL	
	Tazewell, IL	
	Woodford, IL	
6160	Philadelphia, PA–NJ	1.0713
	Burlington, NJ	
	Camden, NJ	
	Gloucester, NJ	
	Salem, NJ	
	Bucks, PA	
	Chester, PA	
	Delaware, PA	
	Mongtomery, PA	
	Philadelphia, PA	
6200	Phoenix-Mesa, AZ	.9820
	Maricopa, AZ	
	Pinal, AZ	
6240	Pine Bluff, AR	.7962
	Jefferson, AR	
6280	Pittsburgh, PA	.9365
	Allegheny, PA	
	Beaver, PA	
	Butler, PA	
	Fayette, PA	
	Washington, PA	
	Westmoreland, PA	
6323	Pittsfield, MA	1.0235
	Berkshire, MA	
6340	Pocatello, ID	.9372
	Bannock, ID	
6360	Ponce, PR	.5169
	Guayanilla, PR	
	Juana Diaz, PR	
	Penuelas, PR	
	Ponce, PR	
	Villalba, PR	
	Yauco, PR	
6403	Portland, ME	.9794
	Cumberland, ME	
	Sagadahoc, ME	
	York, ME	
6440	Portland-Vancouver, OR–WA	1.0667
	Clackamas, OR	
	Columbia, OR	
	Multnomah, OR	

ADDENDUM B.—FY 2003 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
	Washington, OR	
	Yamhill, OR	
	Clark, WA	
6483	Providence-Warwick-Pawtucket, RI	1.0854
	Bristol, RI	
	Kent, RI	
	Newport, RI	
	Providence, RI	
	Washington, RI	
6520	Provo-Orem, UT	.9984
	Utah, UT	
6560	Pueblo, CO	.8820
	Pueblo, CO	
6580	Punta Gorda, FL	.9218
	Charlotte, FL	
6600	Racine, WI	.9334
	Racine, WI	
6640	Raleigh-Durham-Chapel Hill, NC	.9990
	Chatham, NC	
	Durham, NC	
	Franklin, NC	
	Johnston, NC	
	Orange, NC	
	Wake, NC	
6660	Rapid City, SD	.8846
	Pennington, SD	
6680	Reading, PA	.9295
	Berks, PA	
6690	Redding, CA	1.1135
	Shasta, CA	
6720	Reno, NV	1.0648
	Washoe, NV	
6740	Richland-Kennewick-Pasco, WA	1.1491
	Benton, WA	
	Franklin, WA	
6760	Richmond-Petersburg, VA	.9477
	Charles City County, VA	
	Chesterfield, VA	
	Colonia Heights City, VA	
	Dinwiddie, VA	
	Goochland, VA	
	Hanover, VA	
	Henrico, VA	
	Hopewell City, VA	
	New Kent, VA	
	Petersburg City, VA	
	Powhatan, VA	
	Prince George, VA	
	Richmond City, VA	
6780	Riverside-San Bernardino, CA	1.1365
	Riverside, CA	
	San Bernardino, CA	
6800	Roanoke, VA	.8614
	Botetourt, VA	
	Roanoke, VA	
	Roanoke City, VA	
	Salem City, VA	
6820	Rochester, MN	1.2139
	Olmsted, MN	
6840	Rochester, NY	.9194
	Genesee, NY	
	Livingston, NY	
	Monroe, NY	
	Ontario, NY	
	Orleans, NY	
	Wayne, NY	
6880	Rockford, IL	.9625
	Boone, IL	
	Ogle, IL	
	Winnebago, IL	

ADDENDUM B.—FY 2003 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
6895	Rocky Mount, NC	.9228
	Edgecombe, NC	
	Nash, NC	
6920	Sacramento, CA	1.1500
	El Dorado, CA	
	Placer, CA	
	Sacramento, CA	
6960	Saginaw-Bay City-Midland, MI	.9650
	Bay, MI	
	Midland, MI	
	Saginaw, MI	
6980	St. Cloud, MN	.9700
	Benton, MN	
	Stearns, MN	
7000	St. Joseph, MO	.8021
	Andrew, MO	
	Buchanan, MO	
7040	St. Louis, MO–IL	.8855
	Clinton, IL	
	Jersey, IL	
	Madison, IL	
	Monroe, IL	
	St. Clair, IL	
	Franklin, MO	
	Jefferson, MO	
	Lincoln, MO	
	St. Charles, MO	
	St. Louis, MO	
	St. Louis City, MO	
	Warren, MO	
7080	Salem, OR	1.0367
	Marion, OR	
	Polk, OR	
7120	Salinas, CA	1.4623
	Monterey, CA	
7160	Salt Lake City-Ogden, UT	.9945
	Davis, UT	
	Salt Lake, UT	
	Weber, UT	
7200	San Angelo, TX	.8374
	Tom Green, TX	
7240	San Antonio, TX	.8753
	Bexar, TX	
	Comal, TX	
	Guadalupe, TX	
	Wilson, TX	
7320	San Diego, CA	1.1131
	San Diego, CA	
7360	San Francisco, CA	1.4142
	Marin, CA	
	San Francisco, CA	
	San Mateo, CA	
7400	San Jose, CA	1.4145
	Santa Clara, CA	
7440	San Juan-Bayamon, PR	.4741
	Aguas Buenas, PR	
	Barceloneta, PR	
	Bayamon, PR	
	Canovanas, PR	
	Carolina, PR	
	Catano, PR	
	Ceiba, PR	
	Comerio, PR	
	Corozal, PR	
	Dorado, PR	
	Fajardo, PR	
	Florida, PR	
	Guaynabo, PR	
	Humacao, PR	
	Juncos, PR	

ADDENDUM B.—FY 2003 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
	Los Piedras, PR	
	Loiza, PR	
	Luguillo, PR	
	Manati, PR	
	Morovis, PR	
	Naguabo, PR	
	Naranjito, PR	
	Rio Grande, PR	
	San Juan, PR	
	Toa Alta, PR	
	Toa Baja, PR	
	Trujillo Alto, PR	
	Vega Alta, PR	
	Vega Baja, PR	
	Yabucoa, PR	
7460	San Luis Obispo-Atascadero-Paso	1.1271
	Robles, CA	
	San Luis Obispo, CA	
7480	Santa Barbara-Santa Maria-Lompoc, CA	1.0481
	Santa Barbara, CA	
7485	Santa Cruz-Watsonville, CA	1.3646
	Santa Cruz, CA	
7490	Santa Fe, NM	1.0712
	Los Alamos, NM	
	Santa Fe, NM	
7500	Santa Rosa, CA	1.3046
	Sonoma, CA	
7510	Sarasota-Bradenton, FL	.9425
	Manatee, FL	
	Sarasota, FL	
7520	Savannah, GA	.9376
	Bryan, GA	
	Chatham, GA	
	Effingham, GA	
7560	Scranton-Wilkes-Barre-Hazleton, PA	.8599
	Columbia, PA	
	Lackawanna, PA	
	Luzerne, PA	
	Wyoming, PA	
7600	Seattle-Bellevue-Everett, WA	1.1474
	Island, WA	
	King, WA	
	Snohomish, WA	
7610	Sharon, PA	.7869
	Mercer, PA	
7620	Sheboygan, WI	.8697
	Sheboygan, WI	
7640	Sherman-Denison, TX	.9255
	Grayson, TX	
7680	Shreveport-Bossier City, LA	.8987
	Bossier, LA	
	Caddo, LA	
	Webster, LA	
7720	Sioux City, IA–NE	.9046
	Woodbury, IA	
	Dakota, NE	
7760	Sioux Falls, SD	.9257
	Lincoln, SD	
	Minnehaha, SD	
7800	South Bend, IN	.9802
	St. Joseph, IN	
7840	Spokane, WA	1.0852
	Spokane, WA	
7880	Springfield, IL	.8659
	Menard, IL	
	Sangamon, IL	
7920	Springfield, MO	.8424
	Christian, MO	
	Greene, MO	
	Webster, MO	

ADDENDUM B.—FY 2003 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
8003	Springfield, MA	1.0927
	Hampden, MA	
	Hampshire, MA	
8050	State College, PA	.8941
	Centre, PA	
8080	Steubenville-Weirton, OH–WV	.8804
	Jefferson, OH	
	Brooke, WV	
	Hancock, WV	
8120	Stockton-Lodi, CA	1.0506
	San Joaquin, CA	
8140	Sumter, SC	.8273
	Sumter, SC	
8160	Syracuse, NY	.9714
	Cayuga, NY	
	Madison, NY	
	Onondaga, NY	
	Oswego, NY	
8200	Tacoma, WA	1.0940
	Pierce, WA	
8240	Tallahassee, FL	.8504
	Gadsden, FL	
	Leon, FL	
8280	Tampa-St. Petersburg-Clearwater, FL	.9065
	Hernando, FL	
	Hillsborough, FL	
	Pasco, FL	
	Pinellas, FL	
8320	Terre Haute, IN	.8599
	Clay, IN	
	Vermillion, IN	
	Vigo, IN	
8360	Texarkana, AR-Texarkana, TX	.8088
	Miller, AR	
	Bowie, TX	
8400	Toledo, OH	.9810
	Fulton, OH	
	Lucas, OH	
	Wood, OH	
8440	Topeka, KS	.9199
	Shawnee, KS	
8480	Trenton, NJ	1.0432
	Mercer, NJ	
8520	Tucson, AZ	.8911
	Pima, AZ	
8560	Tulsa, OK	.8332
	Creek, OK	
	Osage, OK	
	Rogers, OK	
	Tulsa, OK	
	Wagoner, OK	
8600	Tuscaloosa, AL	.8130
	Tuscaloosa, AL	
8640	Tyler, TX	.9521
	Smith, TX	
8680	Utica-Rome, NY	.8465
	Herkimer, NY	
	Oneida, NY	
8720	Vallejo-Fairfield-Napa, CA	1.3354
	Napa, CA	
	Solano, CA	
8735	Ventura, CA	1.1096
	Ventura, CA	
8750	Victoria, TX	.8756
	Victoria, TX	
8760	Vineland-Millville-Bridgeton, NJ	1.0031
	Cumberland, NJ	
8780	Visalia-Tulare-Porterville, CA	.9429
	Tulare, CA	
8800	Waco, TX	.8073

ADDENDUM B.—FY 2003 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
	McLennan, TX	
8840	Washington, DC–MD–VA–WV	1.0851
	District of Columbia, DC	
	Calvert, MD	
	Charles, MD	
	Frederick, MD	
	Montgomery, MD	
	Prince Georges, MD	
	Alexandria City, VA	
	Arlington, VA	
	Clarke, VA	
	Culpeper, VA	
	Fairfax, VA	
	Fairfax City, VA	
	Falls Church City, VA	
	Fauquier, VA	
	Fredericksburg City, VA	
	King George, VA	
	Loudoun, VA	
	Manassas City, VA	
	Manassas Park City, VA	
	Prince William, VA	
	Spotsylvania, VA	
	Stafford, VA	
	Warren, VA	
	Berkeley, WV	
	Jefferson, WV	
8920	Waterloo-Cedar Falls, IA	.8069
	Black Hawk, IA	
8940	Wausau, WI	.9782
	Marathon, WI	
8960	West Palm Beach-Boca Raton, FL	.9939
	Palm Beach, FL	
9000	Wheeling, WV–OH	.7670
	Belmont, OH	
	Marshall, WV	
	Ohio, WV	
9040	Wichita, KS	.9520
	Butler, KS	
	Harvey, KS	
	Sedgwick, KS	
9080	Wichita Falls, TX	.8498
	Archer, TX	
	Wichita, TX	
9140	Williamsport, PA	.8544
	Lycoming, PA	
9160	Wilmington-Newark, DE–MD	1.1173
	New Castle, DE	
	Cecil, MD	
9200	Wilmington, NC	.9640
	New Hanover, NC	
	Brunswick, NC	
9260	Yakima, WA	1.0569
	Yakima, WA	
9270	Yolo, CA	.9434
	Yolo, CA	
9280	York, PA	.9026
	York, PA	
9320	Youngstown-Warren, OH	.9358
	Columbiana, OH	
	Mahoning, OH	
	Trumbull, OH	
9340	Yuba City, CA	1.0276
	Sutter, CA	
	Yuba, CA	
9360	Yuma, AZ	.8589
	Yuma, AZ	

ADDENDUM C.—COMPARISON OF PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR FY 2002 AND FY 2003

Rural area	FY 2002 wage index	FY 2003 wage index	Percent change, FY 2002–FY 2003
ALABAMA	0.7339	0.766	4.37
ALASKA	1.1862	1.2293	3.63
ARIZONA	0.8681	0.8493	−2.17
ARKANSAS	0.7489	0.7666	2.36
CALIFORNIA	0.9659	0.984	1.87
COLORADO	0.8811	0.9015	2.32
CONNECTICUT	1.2077	1.2394	2.62
DELAWARE	0.9589	0.9128	−4.81
FLORIDA	0.8794	0.8814	0.23
GEORGIA	0.8295	0.823	−0.78
GUAM	0.9611	0.9611	0.00
HAWAII	1.1112	1.0255	−7.71
IDAHO	0.8718	0.8747	0.33
ILLINOIS	0.8053	0.8204	1.88
INDIANA	0.8721	0.8755	0.39
IOWA	0.8147	0.8315	2.06
KANSAS	0.7812	0.7923	1.42
KENTUCKY	0.7963	0.8079	1.46
LOUISIANA	0.7596	0.7567	−0.38
MAINE	0.8721	0.8874	1.75
MARYLAND	0.8859	0.8946	0.98
MASSACHUSETTS	1.1454	1.1288	−1.45
MICHIGAN	0.9	0.9	0.00
MINNESOTA	0.9035	0.9151	1.28
MISSISSIPPI	0.7528	0.768	2.02
MISSOURI	0.7891	0.8021	1.65
MONTANA	0.8655	0.8481	−2.01
NEBRASKA	0.8142	0.8204	0.76
NEVADA	0.9727	0.9577	−1.54
NEW HAMPSHIRE	0.9779	0.9796	0.17
NEW JERSEY	.....	.....	.....
NEW MEXICO	0.8676	0.8872	2.26
NEW YORK	0.8547	0.8542	−0.06
NORTH CAROLINA	0.8535	0.8666	1.53

Non-Urban area	FY 2002 wage index	FY 2003 wage index	Percent change, FY 2002–FY 2003 (percent)
NORTH DAKOTA	0.7879	0.7788	−1.15
OHIO	0.8668	0.8613	−0.63
OKLAHOMA	0.7566	0.759	0.32
OREGON	1.0027	1.0303	2.75
PENNSYLVANIA	0.8607	0.8462	−1.68
PUERTO RICO	0.48	0.4356	−9.25
RHODE ISLAND	.....	.....	
SOUTH CAROLINA	0.8512	0.8607	1.12
SOUTH DAKOTA	0.7861	0.7815	−0.59
TENNESSEE	0.7928	0.7877	−0.64
TEXAS	0.7712	0.7821	1.41
UTAH	0.9051	0.9312	2.88
VERMONT	0.9466	0.9345	−1.28
VIRGINIA	0.8241	0.8504	3.19
VIRGIN ISLANDS	0.6747	0.7845	16.27
WASHINGTON	1.0209	1.0179	−0.29
WEST VIRGINIA	0.8067	0.7975	−1.14
WISCONSIN	0.9066	0.9162	1.06
WYOMING	0.8747	0.9007	2.97

Urban MSA	FY 2002 wage index	FY 2003 wage index	Percent change, FY 2002–FY 2003	Urban MSA	FY 2002 wage index	FY 2003 wage index	Percent change, FY 2002–FY 2003	Urban MSA	FY 2002 wage index	FY 2003 wage index	Percent change, FY 2002–FY 2003
0040	0.7965	0.7792	−2.17	0060	0.4683	0.4587	−2.05	0080	0.9876	0.96	−2.79

Urban MSA	FY 2002 wage index	FY 2003 wage index	Percent change, FY 2002–FY 2003
0120	1.064	1.0594	−0.43
0160	0.85	0.8384	−1.36
0200	0.9759	0.9315	−4.55
0220	0.8029	0.7859	−2.12
0240	1.0077	0.9735	−3.39
0280	0.9126	0.9225	1.08
0320	0.8711	0.9034	3.71
0380	1.257	1.2358	−1.69
0440	1.1098	1.1103	0.05
0450	0.8276	0.8044	−2.80
0460	0.9241	0.8997	−2.64
0470	0.463	0.4337	−6.33
0480	0.92	0.9876	7.35
0500	0.9842	1.0211	3.75
0520	1.0058	0.9991	−0.67
0560	1.1293	1.1017	−2.44
0580	0.823	0.8325	1.15
0600	0.997	1.0264	2.95
0640	0.963	0.9637	0.07
0680	0.9519	0.9899	3.99
0720	0.9856	0.9929	0.74
0733	0.9593	0.9664	0.74
0743	1.3626	1.3202	−3.11
0760	0.8149	0.8294	1.78
0840	0.8442	0.8324	−1.40
0860	1.1826	1.2282	3.86
0870	0.8887	0.9042	1.74
0875	1.1689	1.215	3.94
0880	0.9352	0.9022	−3.53
0920	0.844	0.8757	3.76
0960	0.8446	0.8341	−1.24
1000	0.8808	0.9222	4.70
1010	0.7984	0.7972	−0.15
1020	0.8842	0.8907	0.74
1040	0.9038	0.9109	0.79
1080	0.905	0.931	2.87
1123	1.1383	1.1235	−1.30
1125	0.9799	0.9689	−1.12
1145	0.8209	0.8535	3.97
1150	1.0758	1.0944	1.73
1240	0.9012	0.888	−1.46
1260	0.9328	0.8821	−5.44
1280	0.9459	0.9365	−0.99
1303	0.9883	1.0052	1.71
1310	0.4699	0.4371	−6.98
1320	0.8956	0.8932	−0.27
1350	0.9496	0.969	2.04
1360	0.8699	0.9056	4.10
1400	0.9306	1.0635	14.28
1440	0.9206	0.9235	0.32
1480	0.9264	0.8898	−3.95
1520	0.9336	0.985	5.51
1540	1.0566	1.0438	−1.21
1560	0.9369	0.8976	−4.19
1580	0.8288	0.8628	4.10
1600	1.1046	1.1044	−0.02
1620	0.9856	0.9745	−1.13
1640	0.9473	0.9381	−0.97
1660	0.8337	0.8406	0.83
1680	0.9457	0.967	2.25
1720	0.9744	0.9916	1.77
1740	0.8686	0.8496	−2.19
1760	0.9492	0.9307	−1.95
1800	0.844	0.8374	−0.78
1840	0.9565	0.9751	1.94
1880	0.8341	0.8729	4.65
1890	1.1646	1.1453	−1.66
1900	0.8306	0.7847	−5.53
1920	0.9936	0.9998	0.62
1950	0.8613	0.8859	2.86
1960	0.8638	0.8835	2.28
2000	0.9225	0.9282	0.62
2020	0.8972	0.9062	1.00
2030	0.8775	0.8973	2.26
2040	0.7987	0.8055	0.85
2080	1.0328	1.0601	2.64
2120	0.8779	0.8791	0.14
2160	1.0487	1.0448	−0.37
2180	0.7948	0.8137	2.38
2190	1.0296	0.9356	−9.13
2200	0.8519	0.8795	3.24
2240	1.0284	1.0368	0.82
2281	1.0532	1.0684	1.44
2290	0.8899	0.8952	0.60
2320	0.9215	0.9265	0.54
2330	0.9638	0.9722	0.87
2335	0.8415	0.8416	0.01
2340	0.8357	0.8376	0.23
2360	0.8716	0.8925	2.40
2400	1.1471	1.0944	−4.59
2440	0.8514	0.8177	−3.96
2520	0.9267	0.9684	4.50
2560	0.9027	0.8889	−1.53
2580	0.8445	0.81	−4.09
2620	1.0556	1.0682	1.19
2640	1.0913	1.1135	2.03
2650	0.7845	0.7792	−0.68
2655	0.8722	0.878	0.66
2670	1.0045	1.0066	0.21
2680	1.0293	1.0297	0.04
2700	0.9374	0.968	3.26
2710	1.0214	0.9823	−3.83
2720	0.8053	0.7895	−1.96
2750	0.9002	0.9693	7.68
2760	0.9203	0.9457	2.76
2800	0.9394	0.9446	0.55
2840	0.9984	1.0216	2.32
2880	0.8792	0.8505	−3.26
2900	0.9481	0.9871	4.11
2920	1.0313	0.9465	−8.22
2960	0.953	0.9584	0.57
2975	0.8336	0.8281	−0.66
2980	0.8709	0.8892	2.10
2985	0.9069	0.8897	−1.90
2995	0.9569	0.9456	−1.18
3000	1.0048	0.9525	−5.21
3040	0.887	0.895	0.90
3060	0.9495	0.9237	−2.72
3080	0.9208	0.9502	3.19
3120	0.9539	0.9282	−2.69
3150	0.9289	0.91	−2.03
3160	0.9217	0.9122	−1.03
3180	0.8365	0.9268	10.79
3200	0.9287	0.9418	1.41
3240	0.9425	0.9223	−2.14
3283	1.1533	1.1549	0.14
3285	0.7476	0.7659	2.45
3290	0.9367	0.9028	−3.62
3320	1.1539	1.1457	−0.71
3350	0.7975	0.8385	5.14
3360	0.9631	0.9892	2.71
3400	0.9616	0.9636	0.21
3440	0.8883	0.8903	0.23
3480	0.9698	0.9717	0.20
3500	0.9859	0.9587	−2.76
3520	0.9257	0.9532	2.97
3560	0.8491	0.8607	1.37
3580	0.9013	0.9275	2.91
3600	0.9223	0.9381	1.71
3605	0.7622	0.8239	8.09
3610	0.805	0.7976	−0.92
3620	0.9739	0.9849	1.13
3640	1.1178	1.119	0.11
3660	0.8617	0.8268	−4.05
3680	0.8723	0.8329	−4.52
3700	0.8425	0.7749	−8.02
3710	0.8727	0.8613	−1.31
3720	1.0639	1.0595	−0.41
3740	0.9889	1.079	9.11
3760	0.9536	0.9736	2.10
3800	0.9568	0.9686	1.23
3810	0.9764	1.0399	6.50
3840	0.889	0.897	0.90
3850	0.9126	0.8971	−1.70
3870	0.925	0.94	1.62
3880	0.8544	0.8475	−0.81
3920	0.9121	0.9278	1.72
3960	0.7765	0.7965	2.58
3980	0.9067	0.9357	3.20
4000	0.9296	0.9078	−2.35
4040	0.9653	0.9726	0.76
4080	0.7849	0.8472	7.94
4100	0.8621	0.8745	1.44
4120	1.1182	1.1521	3.03
4150	0.7812	0.7923	1.42
4200	0.8682	0.8315	−4.23
4243	0.9287	0.9179	−1.16
4280	0.8791	0.8581	−2.39
4320	0.947	0.9483	0.14
4360	1.0173	0.9892	−2.76
4400	0.8955	0.9097	1.59
4420	0.8571	0.8629	0.68
4480	1.1948	1.2001	0.44
4520	0.9529	0.9276	−2.66
4600	0.8449	0.9646	14.17
4640	0.9103	0.9219	1.27
4680	0.8957	0.9204	2.76
4720	1.0337	1.0467	1.26
4800	0.8708	0.89	2.20
4840	0.486	0.4914	1.11
4880	0.8378	0.8428	0.60
4890	1.0314	1.0498	1.78
4900	0.9913	1.0253	3.43
4920	0.8978	0.892	−0.65
4940	0.9947	0.9837	−1.11
5000	0.995	0.9802	−1.49
5015	1.1469	1.1213	−2.23
5080	0.9971	0.9893	−0.78
5120	1.093	1.0903	−0.25
5140	0.9364	0.9157	−2.21
5160	0.8082	0.8108	0.32
5170	1.082	1.0498	−2.98
5190	1.0851	1.0674	−1.63
5200	0.8201	0.8137	−0.78
5240	0.7359	0.7734	5.10
5280	0.9939	0.9284	−6.59
5330	0.8771	0.8976	2.34
5345	0.9699	0.9754	0.57
5360	0.9754	0.9578	−1.80
5380	1.3643	1.3357	−2.10
5483	1.2238	1.2408	1.39
5523	1.1526	1.1767	2.09
5560	0.9036	0.9046	0.11
5600	1.4427	1.4414	−0.09
5640	1.1622	1.1381	−2.07
5660	1.1113	1.1387	2.47
5720	0.8579	0.8574	−0.06
5775	1.5319	1.5072	−1.61
5790	0.9556	0.9402	−1.61
5800	1.0104	0.9397	−7.00
5880	0.8694	0.89	2.37
5910	1.135	1.096	−3.44
5920	0.9712	0.9978	2.74

Urban MSA	FY 2002 wage index	FY 2003 wage index	Percent change, FY 2002–FY 2003
5945	1.1123	1.1474	3.16
5960	0.9642	0.964	−0.02
5990	0.8334	0.8344	0.12
6015	0.9061	0.8865	−2.16
6020	0.8133	0.8127	−0.07
6080	0.8361	0.8645	3.40
6120	0.8773	0.8739	−0.39
6160	1.0947	1.0713	−2.14
6200	0.9638	0.982	1.89
6240	0.7895	0.7962	0.85
6280	0.956	0.9365	−2.04
6323	1.0278	1.0235	−0.42
6340	0.9448	0.9372	−0.80
6360	0.5218	0.5169	−0.94
6403	0.9427	0.9794	3.89
6440	1.1111	1.0667	−4.00
6483	1.0805	1.0854	0.45
6520	0.9843	0.9984	1.43
6560	0.8604	0.882	2.51
6580	0.9015	0.9218	2.25
6600	0.9333	0.9334	0.01
6640	0.9818	0.999	1.75
6660	0.8869	0.8846	−0.26
6680	0.9583	0.9295	−3.01
6690	1.1155	1.1135	−0.18
6720	1.0421	1.0648	2.18
6740	1.096	1.1491	4.84
6760	0.9678	0.9477	−2.08
6780	1.1112	1.1365	2.28
6800	0.8371	0.8614	2.90
6820	1.1462	1.2139	5.91
6840	0.9347	0.9194	−1.64
6880	0.9204	0.9625	4.57
6895	0.9109	0.9228	1.31
6920	1.1831	1.15	−2.80
6960	0.959	0.965	0.63
6980	0.9851	0.97	−1.53
7000	0.7891	0.8021	1.65
7040	0.8931	0.8855	−0.85
7080	1.0011	1.0367	3.56
7120	1.4684	1.4623	−0.42
7160	0.9863	0.9945	0.83
7200	0.8193	0.8374	2.21
7240	0.8584	0.8753	1.97
7320	1.1265	1.1131	−1.19
7360	1.414	1.4142	0.01
7400	1.4193	1.4145	−0.34
7440	0.4762	0.4741	−0.44
7460	1.099	1.1271	2.56
7480	1.0802	1.0481	−2.97
7485	1.397	1.3646	−2.32
7490	1.0194	1.0712	5.08
7500	1.3034	1.3046	0.09
7510	1.009	0.9425	−6.59
7520	1.0018	0.9376	−6.41
7560	0.8683	0.8599	−0.97
7600	1.1361	1.1474	0.99
7610	0.7926	0.7869	−0.72
7620	0.8427	0.8697	3.20
7640	0.9373	0.9255	−1.26
7680	0.905	0.8987	−0.70
7720	0.8767	0.9046	3.18
7760	0.9139	0.9257	1.29
7800	0.9993	0.9802	−1.91
7840	1.0668	1.0852	1.72
7880	0.8676	0.8659	−0.20
7920	0.8567	0.8424	−1.67
8003	1.0881	1.0927	0.42
8050	0.9133	0.8941	−2.10
8080	0.8637	0.8804	1.93
8120	1.0815	1.0506	−2.86
8140	0.7794	0.8273	6.15
8160	0.9621	0.9714	0.97
8200	1.1616	1.094	−5.82
8240	0.8527	0.8504	−0.27
8280	0.8925	0.9065	1.57
8320	0.8532	0.8599	0.79
8360	0.8327	0.8088	−2.87
8400	0.9809	0.981	0.01
8440	0.8912	0.9199	3.22
8480	1.0416	1.0432	0.15
8520	0.8967	0.8911	−0.62
8560	0.8902	0.8332	−6.40
8600	0.8171	0.813	−0.50
8640	0.9641	0.9521	−1.24
8680	0.8329	0.8465	1.63
8720	1.3562	1.3354	−1.53
8735	1.0994	1.1096	0.93
8750	0.8328	0.8756	5.14
8760	1.0441	1.0031	−3.93
8780	0.9628	0.9429	−2.07
8800	0.8129	0.8073	−0.69
8840	1.0962	1.0851	−1.01
8920	0.8041	0.8069	0.35
8940	0.9696	0.9782	0.89
8960	0.9777	0.9939	1.66
9000	0.7985	0.767	−3.94
9040	0.9606	0.952	−0.90
9080	0.7867	0.8498	8.02
9140	0.8628	0.8544	−0.97
9160	1.0877	1.1173	2.72
9200	0.9409	0.964	2.46
9260	1.0567	1.0569	0.02
9270	0.9701	0.9434	−2.75
9280	0.9441	0.9026	−4.40
9320	0.9563	0.9358	−2.14
9340	1.0359	1.0276	−0.80
9360	0.8989	0.8589	−4.45

[FR Doc. 03–16397 Filed 6–27–03; 8:45 am]

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Federal Register

Wednesday,
July 2, 2003

Part IV

The President

Proclamation 7688—Death of James Strom Thurmond

Proclamation 7689—To Modify Duty-Free Treatment Under the Generalized System of Preferences

Federal Register
Vol. 68, No. 127
Wednesday, July 2, 2003

Presidential Documents

Title 3—

The President

Proclamation 7688 of June 30, 2003

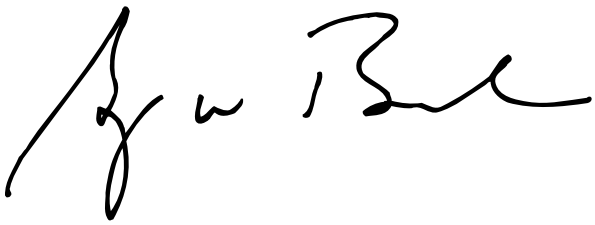
Death of James Strom Thurmond

By the President of the United States of America

A Proclamation

As a mark of respect for the memory of James Strom Thurmond, the longest serving member and former President pro tempore of the United States Senate, I hereby order, by the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, that on the day of his interment, the flag of the United States shall be flown at half-staff at the White House and upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions until sunset on such day. I also direct that the flag shall be flown at half-staff for the same period at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of June, 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.



[FR Doc. 03–17034
Filed 7–1–03; 11:39 am]
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Presidential Documents

Proclamation 7689 of June 30, 2003

To Modify Duty-Free Treatment Under the Generalized System of Preferences

By the President of the United States of America

A Proclamation

1. Pursuant to sections 501, 503(a)(1)(A), and 503(c)(1) of title V of the Trade Act of 1974, as amended (the ''1974 Act'') (19 U.S.C. 2461, 2463(a)(1)(A), and 2463(c)(1)), the President may designate or withdraw designation of specified articles provided for in the Harmonized Tariff Schedule of the United States (HTS) as eligible for preferential tariff treatment under the Generalized System of Preferences (GSP) when imported from designated beneficiary developing countries.

2. Pursuant to section 503(a)(1)(B) of the 1974 Act (19 U.S.C. 2463(a)(1)(B)), the President may designate articles as eligible articles only for countries designated as least-developed beneficiary developing countries under section 502(a)(2) (19 U.S.C. 2462(a)(2)), if the President determines that such articles are not import-sensitive in the context of imports from such least-developed beneficiary developing countries.

3. Pursuant to section 503(c)(2)(A) of the 1974 Act (19 U.S.C. 2463(c)(2)(A)), beneficiary developing countries, except those designated as least-developed beneficiary developing countries or beneficiary sub-Saharan African countries pursuant to section 503(c)(2)(D) of the 1974 Act (19 U.S.C. 2463(c)(2)(D)), are subject to competitive need limitations on the preferential treatment afforded under the GSP to eligible articles.

4. Section 503(c)(2)(C) of the 1974 Act (19 U.S.C. 2463(c)(2)(C)), provides that a country that is no longer treated as a beneficiary developing country with respect to an eligible article may be redesignated as a beneficiary developing country with respect to such article if imports of such article from such country did not exceed the competitive need limitations in section 503(c)(2)(A) during the preceding calendar year.

5. Section 503(c)(2)(F) of the 1974 Act (19 U.S.C. 2463(c)(2)(F)), provides that the President may disregard the competitive need limitation provided in section 503(c)(2)(A)(i)(II) (19 U.S.C. 2463(c)(2)(A)(i)(II)) with respect to any eligible article from any beneficiary developing country if the aggregate appraised value of the imports of such article into the United States during the preceding calendar year does not exceed an amount set forth in section 503(c)(2)(F)(ii) (19 U.S.C. 2463(c)(2)(F)(ii)).

6. Pursuant to section 503(d) of the 1974 Act (19 U.S.C. 2463(d)), the President may waive the application of the competitive need limitations in section 503(c)(2)(A) with respect to any eligible article from any beneficiary developing country if certain conditions are met.

7. (a) Pursuant to sections 501 and 503(a)(1)(A) of the 1974 Act, and after receiving advice from the International Trade Commission in accordance with section 503(e) (19 U.S.C. 2463(e)), I have determined to designate certain articles, previously designated under section 503(a)(1)(B), as eligible articles when imported from any beneficiary developing country. In order to do so, it is necessary to subdivide and amend the nomenclature of existing subheadings of the HTS.

(b) Furthermore, I have determined that it is appropriate to modify the application of duty-free treatment under title V of the 1974 Act for a certain article, in particular for a good previously eligible for such treatment that the Bureau of Customs and Border Protection reclassified.

8. Pursuant to section 503(a)(1)(B) of the 1974 Act, I have determined to designate certain articles as eligible articles under the GSP only for least-developed beneficiary developing countries.

9. Pursuant to section 503(c)(1) of the 1974 Act, and having considered the factors set forth in sections 501 and 502(c), I have determined to limit the application of duty-free treatment accorded to certain articles from certain beneficiary developing countries.

10. Pursuant to sections 503(c)(1) and 503(c)(2)(A) of the 1974 Act, I have determined that certain beneficiary countries should no longer receive preferential tariff treatment under the GSP with respect to certain eligible articles that were imported in quantities exceeding the applicable competitive need limitation in 2002.

11. Pursuant to section 503(c)(2)(C) of the 1974 Act, I have determined that certain countries should be redesignated as beneficiary developing countries with respect to certain eligible articles that previously had been imported in quantities exceeding the competitive need limitations of section 503(c)(2)(A).

12. Pursuant to section 503(c)(2)(F) of the 1974 Act, I have determined that the competitive need limitation provided in section 503(c)(2)(A)(i)(II) should be waived with respect to certain eligible articles from certain beneficiary developing countries.

13. Pursuant to section 503(d) of the 1974 Act, I have determined that the competitive need limitations of section 503(c)(2)(A) should be waived with respect to certain eligible articles from certain beneficiary developing countries. I have received the advice of the International Trade Commission on whether any industries in the United States are likely to be adversely affected by such waiver, and I have determined, based on that advice and on the considerations described in sections 501 and 502(c), that such waivers are in the national economic interest of the United States.

14. Section 604 of the 1974 Act, as amended (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to title V and section 604 of the 1974 Act, do proclaim that:

(1) In order to provide that one or more countries that have not been treated as beneficiary developing countries with respect to one or more eligible articles should be redesignated as beneficiary developing countries with respect to such article or articles for purposes of the GSP, and, in order to provide that one or more countries should no longer be treated as a beneficiary developing country with respect to one or more eligible articles for purposes of the GSP, general note 4(d) to the HTS is modified as provided in section A of Annex I to this proclamation.

(2) In order to designate certain articles as eligible articles for purposes of the GSP, the HTS is modified by amending and sub-dividing the nomenclature of certain existing HTS subheadings as provided in section B of Annex I to this proclamation.

(3)(a) In order to designate certain articles as eligible articles for purposes of the GSP when imported from any beneficiary developing country, the Rates of Duty 1-Special subcolumn for such HTS subheadings is modified as provided in section C(1) of Annex I to this proclamation.

(b) In order to designate certain articles as eligible articles for purposes of the GSP when imported from any beneficiary developing country other than India, the Rates of Duty 1-Special subcolumn for such HTS subheadings is modified as provided for in section C(2) of Annex I to this proclamation.

(c) In order to designate certain articles as eligible articles for purposes of the GSP when imported from any least- developed beneficiary developing country, the Rates of Duty 1-Special subcolumn for such HTS subheadings is modified as provided in section C(3) of Annex I to this proclamation.

(d) In order to provide preferential tariff treatment under the GSP to a beneficiary developing country that has been excluded from the benefits of the GSP for certain eligible articles, the Rates of Duty 1-Special subcolumn for such HTS subheadings is modified as provided for in section C(4) of Annex I to this proclamation.

(e) In order to provide that one or more countries should not be treated as a beneficiary developing country with respect to certain eligible articles for purposes of the GSP, the Rates of Duty 1-Special subcolumn for such HTS subheadings is modified as provided for in section C(5) of Annex I to this proclamation.

(4) A waiver of the application of section 503(c)(2)(A)(i)(II) of the 1974 Act shall apply to the eligible articles in the HTS subheadings and to the beneficiary developing countries listed in Annex II to this proclamation.

(5) A waiver of the application of section 503(c)(2)(A) of the 1974 Act shall apply to the eligible articles in the HTS subheading and to the beneficiary developing countries set forth in Annex III to this proclamation.

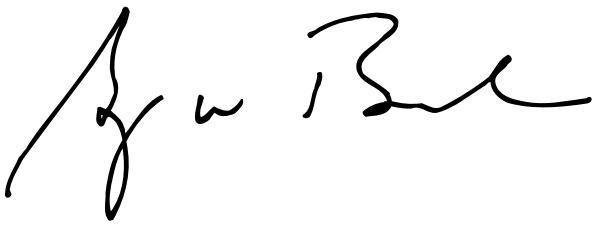
(6) Any provisions of previous proclamations or Executive orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(7) (a) The modifications made by Annex I to this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after July 1, 2003.

(b) The actions taken in Annex II to this proclamation shall be effective on July 1, 2003.

(c) The actions taken in Annex III to this proclamation shall be effective on the date of publication of this proclamation in the **Federal Register**.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of June, 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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Annex I

Modifications to the Harmonized Tariff Schedule of the United States (HTS)

Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after July 1, 2003.

Section A. General note 4(d) to the HTS is modified by:

(1). deleting the following subheadings and the country set out opposite such subheading:

0711.30.00	Turkey
0712.90.74	Turkey
1602.50.09	Argentina
1703.90.50	Poland
2002.90.40	Turkey
2005.10.00	Turkey
2007.99.50	Brazil
2008.19.30	Pakistan; Turkey
3904.21.00	Brazil
4006.10.00	Brazil
4010.19.50	Brazil
4012.90.45	Sri Lanka
4101.20.50	Brazil
4101.50.50	Brazil
4101.90.50	Brazil
4103.10.30	Pakistan
4106.21.90	Pakistan
4106.22.00	Pakistan
4107.19.50	Argentina
4107.99.50	Argentina
4113.10.30	Pakistan
4113.10.60	Pakistan
4411.29.90	Brazil
4823.90.20	Philippines
7113.19.29	Turkey
7116.10.10	Thailand
7409.39.50	Hungary
8211.92.60	Pakistan
8211.95.50	Pakistan
8414.51.00	Thailand
8528.12.16	Thailand
8544.30.00	Thailand
9105.19.10	Brazil
9105.19.40	Brazil
9405.30.00	Thailand

(2). deleting the country set out opposite the following subheadings:

0805.50.30	Turkey
0805.90.01	Turkey
2907.23.00	Brazil
2915.31.00	Brazil
2934.99.15	Brazil
3824.90.40	Brazil
7113.19.50	Turkey
7403.11.00	Kazakhstan

(3). adding, in numerical sequence, the following provisions and countries set out opposite them:

0410.00.00	Indonesia
0711.40.00	India
1602.50.09	Brazil
1901.20.02	Colombia
2903.69.08	India
2917.12.10	India
2921.43.15	India
2921.43.22	India
3806.90.00	India
4012.11.80	India
4106.21.10	Peru
4107.11.80	Argentina

Annex I (continued)

Section A. (con)

(3). (con).

4107.99.60	Colombia	6802.93.00	Brazil
4412.13.25	Brazil	7113.19.25	Turkey
4412.14.25	Brazil	7614.10.50	Ecuador
4412.19.30	Russia	7615.19.30	Thailand
4802.56.60	Colombia	8525.40.80	Indonesia
4816.20.00	Indonesia	9001.30.00	Indonesia
5702.99.20	India	9305.10.40	Peru

(4). adding, in alphabetical order, the country or countries set out opposite the following subheadings:

1806.32.55	Dominican Republic	3823.19.20	Philippines
2403.91.20	Dominican Republic	6501.00.60	Ecuador
2905.11.20	Chile	7106.92.50	Brazil
3815.90.10	Panama		

Section B. The HTS is modified as provided in this section, with bracketed matter included to assist in the understanding of proclaimed modifications. The following provisions supersedes matter now in the HTS. The subheadings and superior text are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1 General", "Rates of Duty 1 Special", and "Rates of Duty 2", respectively.

(1)(a). Subheading 2903.69.70 is superseded and the following provisions inserted in numerical sequence:

	[Halogenated derivatives of hydrocarbons:]			
	[Halogenated derivatives of aromatic hydrocarbons:]			
	[Other:]			
"2903.69.08	p-Chlorobenzotrifluoride; and 3,4-Dichlorobenzotrifluoride	5.5%	Free (A*,CA,D,E, IL,J,MX) 1.3% (JO)	15.4¢/kg + 71%"
	[Other:]			
"2903.69.80	Other	5.5%	Free (A+,CA,D,E, IL,J,K,MX) 1.3% (JO)	15.4¢/kg + 71%"

Annex I (continued)

Section B. (con.)

(b). Conforming changes:

(i) For subheadings 2903.69.08 and 2903.69.80 on January 1, 2004, the rate of duty followed by the symbol "JO" in parentheses and the symbol "JO" in parentheses are deleted from the Rates of Duty 1-Special subcolumn and the symbol "JO" is inserted in alphabetical order in the parentheses following the Free rate of duty in such subcolumn.

(ii) The article descriptions of headings 9902.28.09, 9902.28.10 and 9902.32.82 are modified by deleting "2903.69.70" and inserting "2903.69.80" in lieu thereof.

(2)(a). Subheading 2921.43.80 is superseded and the following provisions inserted in numerical sequence:

	[Amine-function compounds:]			
	[Aromatic monoamines and their...]			
	[Toluidines and their...]			
"2921.43.22	*N*-Ethyl-*N*-(2-methyl-2-propenyl)-2,6-dinitro-4-(trifluoromethyl)benzenamine	0.2¢/kg + 7.7%	Free (A*,CA,D,E, IL,J,MX) 0.4¢/kg + 4.5% (JO)	15.4¢/kg + 60%"
	[Other:]			
"2921.43.90	Other	0.2¢/kg + 7.7%	Free (A+,CA,D,E, IL,J,MX) 0.4¢/kg + 4.5% (JO)	15.4¢/kg + 60%"

(b). Conforming changes:

(i) For subheadings 2921.43.22 and 2921.43.90 on January 1, 2004, the rate of duty in the Rates of Duty 1-General subcolumn is deleted and "6.5%" is inserted in lieu thereof.

(ii) For subheadings 2921.43.22 and 2921.43.90 on January 1 for each of the dated columns listed below, the rate of duty in the Rates of Duty 1-Special subcolumn followed by the symbol "JO" is deleted and rate of duty for such dated column is inserted in lieu thereof.

2004	2005
0.2¢/kg + 2.2%	Free

(iii) The article description of heading 9902.30.49 is modified by deleting "2921.43.80" and inserting "2921.43.22" in lieu thereof.

(iv) The article descriptions of headings 9902.29.59, 9902.29.62 and 9902.32.12 are modified by deleting "2921.43.80" and inserting "2921.43.90" in lieu thereof.

Annex I (continued)

Section B. (con.)

(3)(a). Subheading 4202.92.05 is superseded by:

	[Trunks, suitcases, vanity cases,...]			
	[Other:]			
	[With outer surface of...]			
	[Insulated food...]			
	"With outer surface of textile materials:			
4202.92.04	Beverage bags whose interior incorporates only a flexible plastic container of a kind for storing and dispensing potable beverages through attached flexible tubing	7%	Free (A,CA,E,IL, J,MX) 1.7% (JO)	40%
4202.92.08	Other	7%	Free (CA,E,IL,J, MX) 1.7% (JO)	40%"

(b). Conforming change: For subheadings 4202.92.04 and 4202.92.08 on January 1, 2004, the rate of duty followed by the symbol "JO" in parentheses and the symbol "JO" in parentheses are deleted from the Rates of Duty 1-Special subcolumn and the symbol "JO" is inserted in alphabetical order in the parentheses following the Free rate of duty in such subcolumn.

(4). Subheading 7202.93.00 is superseded by:

	[Ferroalloys :]			
	[Other:]			
"7202.93	Ferroniobium:			
7202.93.40	Containing by weight less than 0.02 percent of phosphorus or sulfur or less than 0.4 percent of silicon	5%	Free (A+,CA,D,E, IL,J,JO,MX)	25%
7202.93.80	Other	5%	Free (A,CA,D,E, IL,J,JO,MX)	25%"

(5)(a). Subheading 7202.99.50 is superseded by:

	[Ferroalloys :]			
	[Other:]			
	[Other:]			
"7202.99.20	Calcium silicon	5%	Free (A,CA,D,E, IL,J,JO,MX)	25%
7202.99.80	Other	5%	Free (A+,CA,D,E, IL,J,JO,MX)	25%"

Annex I (continued)

Section B. (con.)

(b). Conforming change: The article description of heading 9902.72.02 is modified by deleting "7202.99.50" and inserting "7202.99.80" in lieu thereof.

(6). Subheading 8414.51.00 is superseded by:

	[Air or vacuum pumps, air or...]			
	[Fans:]			
"8414.51	Table, floor, wall, window, ceiling or roof fans, with a self-contained electric motor of an output not exceeding 125 W			
8414.51.30	Ceiling fans for permanent installation	4.7%	Free (A,C,CA,E, IL, J,JO,MX)	35%
8414.51.90	Other	4.7%	Free (A,C,CA,E, IL, J,JO,MX)	35%"

Section C. Each enumerated article's preferential tariff treatment under the Generalized System of Preferences (GSP) in the HTS is modified as provided in this section.

(1). For the following subheadings, the Rates of Duty 1-Special subcolumn is modified by deleting the symbol "A+," and inserting an "A," in lieu thereof.

0406.20.51	1202.10.40	1901.90.42	2008.11.25
0406.90.41	1202.20.40	2001.90.20	2008.11.45

(2). For the following subheadings, the Rates of Duty 1-Special subcolumn is modified by deleting the symbol "A+," and inserting an "A*," in lieu thereof.

2917.12.10
2921.43.15
3806.90.00

(3). For the following subheadings, the Rates of Duty 1-Special subcolumn is modified by inserting the symbol "A+," in alphabetical order.

8211.91.20	8215.99.10
8215.99.01	8215.99.30

Annex I (continued)

Section C. (con.)

(4). For the following subheadings, the Rates of Duty 1-Special subcolumn is modified by deleting the symbol "A*" and inserting an "A" in lieu thereof.

0711.30.00	4010.19.50	4107.99.50	8211.95.50
0712.90.74	4012.90.45	4113.10.30	8528.12.16
1703.90.50	4101.20.50	4113.10.60	8544.30.00
2002.90.40	4101.50.50	4411.29.90	9105.19.10
2005.10.00	4101.90.50	4823.90.20	9105.19.40
2007.99.50	4103.10.30	7113.19.29	9405.30.00
2008.19.30	4106.21.90	7116.10.10	
3904.21.00	4106.22.00	7409.39.50	
4006.10.00	4107.19.50	8211.92.60	

(5). For the following provisions, the Rates of Duty 1-Special subcolumn is modified by deleting the symbol "A" and inserting an "A*" in lieu thereof:

0410.00.00	4107.11.80	4802.56.60	7614.10.50
0711.40.00	4107.99.60	4816.20.00	7615.19.30
1901.20.02	4412.13.25	5702.99.20	8525.40.80
4012.11.80	4412.14.25	6802.93.00	9001.30.00
4106.21.10	4412.19.30	7113.19.25	9305.10.40

Annex II

HTS subheading and countries for which the competitive need limitation provided in section 503(c)(2)(A)(i)(II) is waived

0305.69.60	Philippines	1401.90.40	Madagascar
0405.20.80	Poland	1604.15.00	Chile
0710.29.15	India	1605.90.10	Thailand
0712.90.70	Egypt	1605.90.55	Indonesia
0714.20.10	India	1701.11.05	Mauritius
0802.31.00	Turkey	1702.90.35	Brazil
0802.50.20	Turkey	1806.10.43	Brazil
0804.50.80	Philippines	1901.20.45	Argentina
0810.60.00	Thailand	1901.90.28	Poland
0813.30.00	Chile	2008.19.30	Turkey
0813.40.10	Thailand	2008.99.35	Thailand
1301.90.40	Brazil	2008.99.45	Philippines

Annex II (continued)

2008.99.50	Thailand
2305.00.00	Argentina
2306.30.00	Argentina
2515.12.20	Turkey
2804.29.00	Russia
2836.91.00	Chile
2840.11.00	Turkey
2840.19.00	Turkey
2841.61.00	Czech Republic
2850.00.20	Russia
2903.51.00	Romania
2903.69.30	Russia
2908.10.15	Hungary
2909.50.40	Indonesia
2917.19.10	Hungary
2917.32.00	Indonesia
2918.21.10	Brazil
2931.00.25	Brazil
2934.20.05	Brazil
2938.10.00	Brazil
4010.12.10	Hungary
4101.90.35	Brazil
4101.90.50	Brazil
4107.11.60	Brazil
4107.19.40	India
4107.91.40	India
4107.92.40	Pakistan
4412.99.46	Chile
4802.54.10	Brazil
4802.54.20	Indonesia
4802.57.20	Indonesia
5208.31.20	India
5208.32.10	India
5208.41.20	India
5208.42.10	India
5209.31.30	India
5209.41.30	India
5607.90.35	Philippines
5702.39.10	India
5702.49.15	India
6116.99.35	Philippines
6406.10.85	India
7114.19.00	India
7202.50.00	Kazakstan
7202.99.10	Brazil
8112.92.50	Chile
8514.20.40	Thailand
8546.10.00	Brazil

Annex III

HTS Subheading and Country Granted A Waiver of the Application of Section 503(c)(2)(A) of the 1974 Act

HTS Subheading	Country
1202.20.40	Argentina
2008.11.25	Argentina
7113.19.29	Turkey
7113.19.50	Turkey
7205.50.00	Kazakhstan
7202.93.80	Brazil
7418.19.50	India
8414.51.30	Thailand
8528.12.28	Thailand
8544.30.00	Thailand
9405.50.20	India
9405.50.40	India

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