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Presidential Documents

Title 3—

The President

Proclamation 8485 of March 24, 2010—Greek Independence Day: A National Day of Celebration of Greek and American Democracy, 2010

Correction

In Presidential document 2010–7240 beginning on page 15601 in the issue of Tuesday, March 30, 2010, make the following correction:

On page 15601, the first line of the heading should read “Proclamation 8485 of March 24, 2010”.

Also on page 15601, the second line of the heading should read “Greek Independence Day: A National Day of Celebration of Greek and American Democracy, 2010”.

[FR Doc. C1–2010–7240

Filed 4–12–10; 8:45 am]

Billing Code 1505–01–D

Presidential Documents

Proclamation 8494 of April 8, 2010

National D.A.R.E. Day, 2010

By the President of the United States of America

A Proclamation

Every day, young Americans face pressures to engage in violent activities, drug use, and other harmful behavior. Today, we reaffirm our commitment to empowering our children to resist violence and substance abuse.

Drug dependence affects individuals from all backgrounds, and its debilitating effects often go unaddressed. Too many of our families are afflicted by addiction, and too many lives are ruined by its harmful impact. Drug abuse is not an isolated crime, and communities experience the tragic results when drug-related violence and gang activity reach our neighborhoods. It takes parents, guardians, educators, clergy, law enforcement officers, and other mentors to demonstrate that a healthy and drug-free lifestyle can build a strong foundation for future success.

Families must be vigilant in recognizing and addressing the warning signs of drug and alcohol abuse. From prescriptions and over-the-counter medications to chemical inhalants, many substances can be harmful if abused, and preventing our children from doing so is vital. I urge friends and loved ones to be role-models and to discuss the consequences of drug use with the young people in their lives.

Community-based prevention and treatment programs can provide young Americans with mentors and reinforce positive behavior. Through the Drug Abuse Resistance Education (D.A.R.E.) program, law enforcement personnel contribute their expertise to help teach America's youth to resist peer pressure, and to abstain from drugs, gangs, and violence. We all have a responsibility to join these professionals in enabling youth to choose alternatives to violence and dangerous behavior and to lead the next generation of Americans toward a brighter future.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 8, 2010, as National D.A.R.E. Day. I call upon all Americans to observe this day with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of April, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fourth.

A handwritten signature in black ink, appearing to be "Barack Obama", with a large circular flourish and a vertical line through it.

[FR Doc. 2010-8557

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Rules and Regulations

Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 118

[Docket No. FDA-2000-N-0190]

Prevention of *Salmonella* Enteritidis in Shell Eggs During Production, Storage, and Transportation; Change of Registration Date, Address, and Telephone Number; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to correct the date by which producers must register their farm with FDA, reflect a change in the address and telephone number for requesting copies of Form No. 3733, and reflect a change in the address to which producers must send their CD-ROM. This action is editorial in nature and is intended to improve the accuracy of the agency's regulations.

DATES: Effective on April 13, 2010.

FOR FURTHER INFORMATION CONTACT: John Sheehan, Center for Food Safety and Applied Nutrition (HFS-315), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301-436-1488.

SUPPLEMENTARY INFORMATION: FDA is amending its regulations in 21 CFR part 118 to correct the following information: (1) The date by which egg producers must register their farm with FDA, (2) the address and telephone number for requesting copies of Form 3733, and (3) the address to which egg producers must send their CD-ROM. Publication of this document constitutes final action on this change under the Administrative

Procedure Act (5 U.S.C. 553). Notice and public procedures are unnecessary because FDA is merely updating nonsubstantive content.

List of Subjects in 21 CFR Part 118

Eggs and egg products, Incorporation by reference, Recordkeeping requirements, Safety.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 118 is amended as follows:

PART 118—PRODUCTION, STORAGE, AND TRANSPORTATION OF SHELL EGGS

■ 1. The authority citation for 21 CFR part 118 continues to read as follows:

Authority: 21 U.S.C. 321, 331-334, 342, 371, 381, 393; 42 U.S.C. 243, 264, 271.

■ 2. In § 118.11, revise paragraphs (a), (b)(2)(i), and (b)(3)(vi) to read as follows:

§ 118.11 Registration requirements for shell egg producers covered by the requirements of this part.

(a) Shell egg producers covered under § 118.1(a) are required to register their farms with FDA within 30 days of becoming an egg producer or, if already an egg producer, by each farm's applicable compliance date.

(b) * * *

(2) * * *

(i) You must register using FDA Form No. 3733. You may obtain a copy of this form by writing to the U.S. Food and Drug Administration, 5600 Fishers Lane (HFS-681), Rockville, MD 20857, or by requesting the form by phone at 1-800-216-7331 or 301-575-0156.

* * * * *

(3) * * *

(vi) You must mail the CD-ROM to the U.S. Food and Drug Administration, 5600 Fishers Lane (HFS-681), Rockville, MD 20857.

* * * * *

Dated: April 7, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010-8358 Filed 4-12-10; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF JUSTICE

28 CFR Part 20

[Docket No. FBI 114]

RIN 1110-AA26

FBI Criminal Justice Information Services Division User Fees

AGENCY: Federal Bureau of Investigation (FBI), Justice.

ACTION: Final rule.

SUMMARY: This Final Rule sets out the Director of the FBI's authority to establish and collect fees for providing fingerprint-based and name-based Criminal History Record Information (CHRI) checks and other identification services submitted by authorized users for noncriminal justice purposes, including employment and licensing. The FBI may set such fees at a level to include an amount to establish a fund to defray expenses for the automation of fingerprint identification and criminal justice information services and associated costs. It further provides that future fee adjustments will be made by notice published in the **Federal Register**.

DATES: This final rule is effective May 13, 2010.

FOR FURTHER INFORMATION CONTACT: FBI Criminal Justice Information Services Division, 1000 Custer Hollow Road, Module E-3, Clarksburg, West Virginia 26306, Attention: Christopher L. Enourato.

SUPPLEMENTARY INFORMATION:

I. Background

On June 19, 2008, the FBI published a Notice of Proposed Rulemaking (NPRM) setting forth the FBI's statutory authority to establish and collect fees for noncriminal justice fingerprint-based and name-based CHRI checks and other identification services performed by the CJIS Division. *See* 73 FR 34905 (2008) (to be codified at 28 CFR part 20).

The NPRM explained the methodology used to calculate the FBI's revised fees, provided a proposed fee schedule, and advised that the current fees would be published concurrently with this Final Rule as a Notice in the **Federal Register**. This Final Rule implements the FBI's statutory fee authority. All future fee adjustments will be made by Notice published in the **Federal Register**.

II. Legal Authority To Collect Fees

The FBI has collected user fees for fingerprint-based CHRI checks since 1982, when the authority to establish and collect fees to process fingerprint-based CHRI checks for noncriminal justice purposes, such as employment and licensing, was set out in Public Law (Pub. L.) 97–257. This statutory authority was renewed annually by subsequent appropriations legislation. Under Public Law 101–162, the FBI was also authorized to establish and collect fees for name-based checks and to set the fees at a level to include an amount to defray expenses for the automation of fingerprint identification and associated costs. Congress, in Public Law 101–515, subsequently authorized the FBI to establish and collect these fees on a continuing basis. This authority was further expanded by Public Law 104–99 with insertion of the term “criminal justice information services” so the FBI was authorized to use the collected fees to “defray expenses for the automation of fingerprint identification and criminal justice information services and associated costs.”

III. Fee Calculation

Standards and Guidelines Used To Calculate the Fees

Public Law 101–515 links the user fees charged for processing fingerprint identification records and name checks to the cost of providing these services. This authority also permits the FBI to establish user fees at a level to include an amount “to defray expenses for the automation of fingerprint identification and criminal justice information services and associated costs.”

In the absence of express statutory authority, Federal agencies are authorized to establish fees by the Independent Offices Appropriation Act of 1952, 31 U.S.C. 9701, which is implemented by specific guidelines in Office of Management and Budget (OMB) Circular A–25. Since the FBI has specific statutory authority to establish and collect fees under Public Law 101–515, the FBI is not required to follow strictly the mandates of OMB Circular A–25. In establishing the fees set out in this rule, the FBI referred to OMB Circular A–25 for guidance in calculating fees based on costs. For example, in calculating the fees, OMB Circular A–25’s definition of full cost “as all direct and indirect costs to any part of the Federal Government of providing a good, resource, or service” was used to include direct and indirect personnel costs, physical overhead, and other indirect costs such as material costs, utilities, travel, and equipment.

Congress, in the Volunteers for Children Act (VCA), 42 U.S.C. 5119a, limited the fee that can be charged to a volunteer to \$18, or the actual cost of providing the service, whichever is less. The statutory term “actual cost” does not appear in OMB Circular A–25, which uses the term full cost, defined as all direct and indirect costs of providing a service. Thus, the FBI defined the actual cost as the full cost of providing this service, when calculating the fee for checks of volunteers under the VCA.

Methodology Used To Calculate the User Fees

The FBI hired a contractor, BearingPoint, Inc., 1676 International Drive, McLean, Virginia 22102 (BearingPoint), to conduct an independent analysis of pertinent costs and to recommend a revised fee schedule for the fingerprint-based and name-based CHRI checks conducted by the CJIS Division. Referencing OMB Circular A–25; the Statement of Federal Financial Accounting Standards (SFFAS–4); Managerial Cost Accounting Concepts and Standards for the Federal Government; and other relevant financial management directives, BearingPoint developed a cost accounting methodology and related cost models based upon the concepts and principles of activity-based costing (ABC).

ABC is a business management process that provides information about the relationships between inputs (costs) and outputs (products or services) by quantifying how work is performed (activities). The ABC model used to calculate the user fees was developed using commercially available ABC software and followed generally accepted cost accounting procedures for cost assignment and unit cost calculation. Organizational resources were assigned to activities, and then the activities were assigned to services based upon reported patterns of consumption. BearingPoint identified the total resources associated with the fingerprint-based and name-based CHRI check services and assigned these costs to the services using relevant cost drivers. The cost drivers were selected primarily for their strong cause-effect linkages between the resources and the activities and services that consumed them. BearingPoint worked extensively with FBI staff, including programmatic subject matter experts and statistical experts, to gather the information necessary to devise the cost accounting methodology and to construct a representative ABC model. BearingPoint developed its cost accounting

methodology in six steps for the non-automation portion of the fee.

1. Operational labor costs were reviewed and assigned to activities and then to services.

2. Support labor costs were reviewed and assigned to activities and then to services.

3. Nonlabor costs, including unfunded personnel and judgment fund costs, were reviewed and assigned to activities and then to services.

4. Cost estimates were made for FY 2008, when the revised user fees are expected to be implemented.

5. Transaction volumes and trends were analyzed to predict appropriate transaction volumes for FY 2008.

6. Finally, using the projected FY 2008 costs and the projected FY 2008 transaction volumes, the projected unit costs for each service were calculated. The recommended user fees were based on these projected unit costs.

As explained above, under Public Law 101–515, the FBI is also authorized to charge an additional amount for the automation of fingerprint identification and criminal justice information services and associated costs. A similar process was used to develop this portion of the fee. It was determined that the most appropriate basis for the calculation of this portion of the fee was the capital investment and anticipated depreciation costs for automated fingerprint identification and other criminal justice information service capabilities and enhancements to certain automated systems. The costs for these automation efforts were obtained from the FBI’s asset management and financial management systems and records, and program planning documentation. By employing this methodology, users paying the fee will pay for services based on the cost of the automation which is already in place at the time their request is processed. While the funds collected will be used to develop future capabilities, the cost basis of the fee will be the automation in place. The projected FY 2008 volumes were then used to calculate the unit costs for this portion of the fee.

Once the unit costs were calculated, BearingPoint generated the revised fee schedule. The FBI then independently reviewed the BearingPoint recommendations, compared them to current fee calculations and plans for future services, and determined that the revised schedules were both objectively reasonable and in consonance with the underlying legal authorities.

Overview of the Costs Included in the Fee Calculation

The fee calculation was made by gathering the labor and nonlabor costs of those divisions of the FBI that directly or indirectly support the provision of the fingerprint-based and name-based CHRI check services, and then using various drivers to assign those costs to the identified activities. The activities were then assigned to the specific fingerprint-based and name-based CHRI check services or to a general category for all other costs. The ABC model examined in detail only those costs which were related to the fingerprint-based and name-based CHRI check services. These services included both the criminal justice and law enforcement and the noncriminal justice identification services performed by the CJIS Division of the FBI. The discussion below is limited to those costs in the ABC model which were assigned to the fingerprint-based and name-based CHRI check services that are supported by the user fees. In other words, even though the ABC model calculated unit costs for various criminal justice fingerprint-based CHRI check services, these costs will not be discussed in this regulation since they are funded with appropriations and not with user fees.

The costs for providing the fee-supported fingerprint-based and name-based CHRI check services include the personnel costs for both direct and indirect support, as well as nonlabor costs such as travel, training, rent, equipment, utilities, printing, contract support, and supplies. In addition, depreciation for existing nonautomation assets was included per OMB Circular A-25 guidance. Finally, portions of the FBI's costs for workers compensation, unemployment compensation, and the judgment fund, used to pay judgments against the United States where appropriations have not otherwise been provided, were included.

These costs were derived from the FBI's financial systems and audited financial statements. The FY 2008 predicted costs were obtained by recalculating the depreciation and adding an inflation factor for labor and other nonlabor expenses. The OMB pay raise and inflation factors provided in OMB Circular A-11, Preparation, Submission, and Execution of an Agency Budget, were used. The costs associated with providing the services do not include any of the automation costs which instead were captured in the capital investment and depreciation costs for the automation portion of the fee described below.

The automation costs are divided into those which support fingerprint identification services currently in operation and those which support other criminal justice information services. Both types of automation costs are authorized by Public Law 101-515. The FBI chose to separate these costs to facilitate calculation of the cost of providing fingerprint-based CHRI checks for volunteers, since the VCA limits the fee to the actual cost or \$18.00, whichever is less. The FBI is interpreting the actual cost of providing the service to include only the costs for the automation of fingerprint services currently in operation; the actual cost does not include the costs for the automation of other criminal justice information services.

The costs for the automation of the fingerprint identification services include depreciation costs for the fingerprint identification infrastructure and the costs for developing a disaster recovery capability which would allow the FBI's essential fingerprint identification services to continue in all circumstances as required by OMB Circular A-130, Management of Federal Information Resources (OMB Circular A-130).

The costs for the automation of other criminal justice information services are based on the depreciation of assets already in place and the costs of enhancements which have passed through the approval gates for the planning stages of system development under the FBI's life cycle management directive. These enhancements include the Next Generation Identification program, which will increase the speed, capacity, and functionality of the FBI's fingerprint identification process, and the Biometric Interoperability Program which will provide two-way access to information in other major fingerprint databases such as the Department of Homeland Security's database of nonimmigrant visitors to the United States. The costs also include the automation of certain aspects of the National Crime Information Center (NCIC), the Law Enforcement National Data Exchange (N-DEx) program, and the Uniform Crime Reporting (UCR) program.

There is one additional component of cost which was considered when determining the fees. Federal agencies, certain State agencies, and approved nongovernmental entities that submit fingerprint-based CHRI checks function as *de facto* centralized billing service providers (CBSPs) by collecting the appropriate fee from individuals or subordinate agencies and submitting a consolidated payment. It is more cost-

effective for the FBI to bill a CBSP than to process individual direct payments for single fingerprint-based CHRI check submissions.

The FBI employs this centralized billing methodology to collect payment for more than 9.8 million fingerprint-based CHRI checks each year. Under the fee schedule proposed in this rule, the FBI will continue the practice of allowing approved CBSPs to retain a portion (currently \$2.00) of the fee for fingerprint-based CHRI checks for performing this centralized billing service. In order to allow the CBSPs to retain this portion of the fee, it is necessary to include this cost when determining the full costs which the fee must cover. At this time, this cost is calculated by multiplying the amount the CBSPs are allowed to retain by the volume of billed transactions. The centralized billing process will be subject to further analysis and, consequently, may be revised in the future.

IV. Proposed Changes to the Fee Schedule

Fingerprint-Based CHRI Checks

The FBI utilized categories or fee classes to set the charges for fingerprint-based CHRI checks. Fee classes are determined by the:

- Type of transaction—manual, electronic, or electronic submission with manual response, or
- Volunteer status under the VCA.

Name-Based CHRI Checks

The name-based CHRI checks are available only to authorized Federal agencies for purposes specifically authorized by statute, e.g., pursuant to the Security Clearance Information Act, 5 U.S.C. 9101. The fee classes for name-based CHRI checks differentiate between manual and electronic submissions.

New Services

If the FBI offers a new service or otherwise requires a new fee class in the future, the charge for this new fee class will be based upon the closest existing fee class until such time as a new fee class can be established. Authorized users will be advised of the new service or new fee class by CJIS Information Letter or other CJIS communication. The FBI will calculate a fee for the new fee class using the methodology discussed in the NPRM and will publish a revised fee schedule as a notice in the **Federal Register**. See 73 FR 34906-07 (2008).

V. Discussion of Comments

Comments on the proposed rule were received from two individuals and one professional association.

The comments from the professional association and an individual were fully supportive of the proposed rule. The letter from the professional association stated, "We appreciate the importance of maintaining rigorous personnel security practices, and believe the FBI's support of non-criminal CHRI checks, whether fingerprint or name-based, is necessary to the success of these programs." The final comment, from an individual, concerned the need for increased regulation of hazardous materials transportation, rather than the NPRM. After reviewing the comments, the FBI has determined that no changes to the proposed rule are necessary.

VI. Regulatory Certifications

Regulatory Flexibility Act

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires the agency to "prepare and make available for public comment an initial regulatory flexibility analysis" which will "describe the impact of the proposed rule on small entities." (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify, in lieu of preparing an analysis, that the proposed rulemaking is not expected to have significant economic impact on a substantial number of small entities. Small entities are defined by the RFA to include small businesses, small organizations, and small governmental jurisdictions.

The fees for providing fingerprint-based and name-based CHRI background checks for noncriminal justice purposes normally are imposed upon the individual subject of the background check, rather than upon small entities. In addition, under the new fee schedule that became effective October 1, 2007, the fee imposed on nonfederal users submitting electronic fingerprint-based CHRI dropped nearly 20 percent per request. This lower fee is applicable to more than 90 percent of the total nonfederal fingerprint-based checks. However, the fee for manual searches was increased, reflecting comparatively higher processing costs for those services. As a result of these different fees, the FBI expects that users will seek the lower costs associated with providing electronic fingerprint submissions.

State and Federal agencies and certain private entities serve as CBSPs, or entities that collect and submit an individual's fingerprints to the FBI and remit the fee charged to the individual.

There are no small businesses, organizations or governmental jurisdictions currently providing billing services as CBSPs.

With regard to name-based CHRI checks, there is no direct or indirect impact on small entities, as only Federal agencies are authorized to request name-based CHRI background checks, and Federal agencies do not fall within the definition of a "small entity." Accordingly, the Director of the FBI hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866 (Regulatory Planning and Review)

This regulation has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review, section 1(b), Principles of Regulation. The FBI has determined that this rule is a significant regulatory action under Executive Order 12866, Regulatory Planning and Review, section 3(f) and accordingly this rule has been reviewed by the OMB.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13132 (Federalism)

This rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The fees for providing fingerprint-based and name-based CHRI background checks for noncriminal justice purposes are imposed upon the individual subject of the background check, rather than on the State. Some States serve as CBSPs by collecting and submitting an individual's fingerprints to the FBI and remitting the fee charged to the individual. The proposed rule does not alter the amount the FBI allows CBSPs to retain for providing these services, but merely makes small adjustments to the fee schedule already in place. The proposed rule does not alter any of the policy set out at 28 CFR part 20, or 28 CFR parts 901–906. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act of 1995

This rule does not contain a mandate that will result in the expenditure by

State, local, and Tribal governments (in the aggregate) or by the private sector of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. While CBSPs may need to adjust their internal automated systems and processes, the change in fee amount is a foreseeable and expected eventuality and therefore, it is expected that these internal systems and processes were created with the capability of adjusting to changed fees without great cost or effort. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

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

IX. Conclusion

After careful consideration, the Department does not believe that any change to the rule is necessary based on these comments. Accordingly, pursuant to the authority set forth in Public Law 101–515, as amended by Public Law 104–99, set out in the notes to 28 U.S.C. 534, part 20 of chapter I of Title 28 of the CFR is amended as follows.

List of Subjects in 28 CFR Part 20

Classified information, Crime, Intergovernmental relations, Investigations, Law enforcement, Privacy.

■ Accordingly, pursuant to the authority set forth in Public Law 101–515, as amended by Public Law 104–99, set out in the notes to 28 U.S.C. 534, part 20 of chapter 1 of Title 28 of the CFR is amended as follows:

PART 20—CRIMINAL JUSTICE INFORMATION SYSTEMS

■ 1. The authority citation for Part 20 is revised to read as follows:

Authority: 28 U.S.C. 534; Pub. L. 92–544, 86 Stat. 1115; 42 U.S.C. 3711, *et seq.*, Pub. L. 99–169, 99 Stat. 1002, 1008–1011, as amended by Pub. L. 99–569, 100 Stat. 3190, 3196; Pub. L. 101–515, as amended by Pub. L. 104–99, set out in the notes to 28 U.S.C. 534.

■ 2. Amend § 20.31 to add paragraph (e) to read as follows:

§ 20.31 Responsibilities.

* * * * *

(e) The FBI may routinely establish and collect fees for noncriminal justice fingerprint-based and other identification services as authorized by Federal law. These fees apply to Federal, State and any other authorized entities requesting fingerprint identification records and name checks for noncriminal justice purposes.

(1) The Director of the FBI shall review the amount of the fee periodically, but not less than every four years, to determine the current cost of processing fingerprint identification records and name checks for noncriminal justice purposes.

(2) Fee amounts and any revisions thereto shall be determined by current costs, using a method of analysis consistent with widely accepted accounting principles and practices, and calculated in accordance with the provisions of 31 U.S.C. 9701 and other Federal law as applicable.

(3) Fee amounts and any revisions thereto shall be published as a notice in the **Federal Register**.

Dated: March 15, 2010.

Robert S. Mueller, III,

Director, Federal Bureau of Investigation.

[FR Doc. 2010-8385 Filed 4-12-10; 8:45 am]

BILLING CODE 4410-02-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2009-0317]

RIN 1625-AA87

Security Zone; Calcasieu River and Ship Channel, LA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is disestablishing the permanent safety zone at Trunkline LNG in Lake Charles, LA and replacing it with a security zone with new boundaries. The Coast Guard is also establishing two additional permanent security zones on the waters of the Calcasieu River for the mooring basins at Cameron LNG in Hackberry, LA and PPG Industries in Lake Charles, LA. The Coast Guard is also disestablishing the Calcasieu River ship channel moving safety zone and replacing it with a moving security

zone. The revised moving security zone extends channel edge to channel edge on the Calcasieu Channel and shoreline to shoreline on the Calcasieu River, 2 miles ahead and 1 mile astern of certain designated vessels while in transit on the Calcasieu Channel or Calcasieu River. Meeting, crossing or overtaking situations are not permitted within the security zone unless specifically authorized by the Captain of the Port. The moving security zone may commence at any point while certain vessels are transiting the Calcasieu Channel or Calcasieu River on U.S. territorial waters (12 nautical miles) in the Captain of the Port (COTP) Port Arthur zone. These security zones are needed to protect vessels, waterfront facilities, the public, and other surrounding areas from destruction, loss, or injury caused by sabotage, subversive acts, accidents, or other actions of a similar nature. Unless exempted under this rule, entry into or movement within these security zones is prohibited without permission from the Captain of the Port or a designated representative.

DATES: This rule is effective May 13, 2010.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2009-0317 and are available online by going to <http://www.regulations.gov>, inserting USCG-2009-0317 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Scott Whalen, Marine Safety Unit Port Arthur, TX, telephone (409) 719-5086, or e-mail scott.k.whelen@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On September 8, 2009, we published a notice of proposed rulemaking (NPRM) entitled "Security Zone; Calcasieu River and Ship Channel, LA" in the **Federal Register** (74 FR 46040). We received 2 comments on the

proposed rule. No public meeting was requested and none was held.

Background and Purpose

Heightened awareness of potential terrorist acts requires enhanced security of our ports, harbors, and vessels.

This rule establishes new, distinct security zones on the waters of the Calcasieu River. These zones will protect waterfront facilities, persons, and vessels from subversive or terrorist acts. This rule also eliminates the moving safety zone for non-gas free LNGs transiting the Calcasieu Channel and Calcasieu River and adds a distinct moving security zone that may commence at any point while certain vessels are transiting the Calcasieu Channel or Calcasieu River on U.S. territorial waters in the Captain of the Port, Port Arthur zone. Due to the potential for terrorist attacks, this rule allows the Captain of the Port to create moving security zones around certain vessels as deemed necessary, on a case-by-case basis. By limiting access to these areas, the Coast Guard is reducing potential methods of attack on these vessels, and potential use of the vessels to launch attacks on waterfront facilities and adjacent population centers located within the Captain of the Port zone. Vessels having a need to enter these security zones must obtain express permission from the Captain of the Port, Port Arthur or a designated representative prior to entry.

These zones are in an area concentrated with commercial facilities considered critical to national security. This rule does not restrict access to vessels engaged, or assisting in commerce with waterfront facilities within fixed security zones, vessels operated by port authorities, vessels operated by waterfront facilities within the fixed security zones, and vessels operated by federal, state, county or municipal agencies. By limiting access to these areas the Coast Guard is reducing potential methods of attack on vessels, waterfront facilities, and adjacent population centers located within the zones. Vessels not exempted under the provisions of this regulation and desiring to enter these zones are required to obtain permission from the Captain of the Port, Port Arthur or a designated representative prior to entry.

Discussion of Comments and Changes

The Coast Guard received two comments concerning the NPRM. One commenter recommended that the boundaries of the proposed security zone at PPG Industries (PPG) be extended to include the transfer dock located at the southern end of PPG

properties and all shoreline. The Coast Guard concurs in part with this comment and is modifying the security zone to include the southern-most transfer dock, but will minimize the impact on mariners by having the security zone encompass waters within 100 feet of the shoreline between the originally proposed security zone and the southern transfer dock area.

Another commenter recommended adding language specifying the agency responsible for enforcement of this security zone. The Coast Guard is the agency responsible for enforcement of this security zone. The proposed language expressly states that permission of the Captain of the Port, Port Arthur must be obtained to enter the security zone and future memoranda of agreements may allow state or local agencies to assist the Coast Guard in enforcing this security zone.

The Coast Guard is making a change to the language of the NPRM to provide the public with a visual cue that the moving safety zone is in effect. Specifically, the final rule states that "Coast Guard patrol assets will be on scene with flashing blue lights energized when the moving security zones are in effect."

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. The basis of this finding is that the fixed security zones are not part of the navigable waterway or a commercial fishing ground and do not impede commercial traffic on the Calcasieu Waterway. The moving security zone is limited in nature and will not create undue delay to vessel traffic in or around the Calcasieu River and Ship Channel.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a

significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (1) The rules for fixed security zones do not interfere with regular vessel traffic within the Calcasieu Ship Channel, Calcasieu River or the Intracoastal Waterway; (2) the rule for moving security zones are of limited duration and vessels may be allowed to pass through the zone with the permission of the Captain of the Port or his representative.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are

technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This rule involves security of certain vessels and facilities and is not expected to result in any significant adverse environmental impact as described in NEPA.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under

ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping 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. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 165.805 to read as follows:

§ 165.805 Security Zones; Calcasieu River and Ship Channel, Louisiana.

(a) *Location.* (1) The following areas are designated as fixed security zones (all coordinates are based upon North American Datum of 1983 [NAD 83]):

(i) *Trunkline LNG basin.* All waters encompassed by a line connecting the following points, beginning at 30°06'36" N, 93°17'36" W, south to a point

30°06'33" N, 93°17'36" W, east to a point 30°06'30" N, 93°17'02" W, north to a point 30°06'33" N, 93°17'01" W, then tracing the shoreline along the water's edge to the point of origin.

(ii) *Cameron LNG basin.* All waters encompassed by a line connecting the following points, beginning at 30°02'33" N, 093°19'53" W, east to a point at 30°02'34" N, 093°19'50" W, south to a point at 30°02'10" N, 093°19'52" W and west to a point at 30°02'10" N, 93°19'59" W, then tracing the shoreline along the water's edge to the point of origin.

(iii) *PPG Industries basin.* All waters encompassed by a line connecting the following points: Beginning at 30°13'29" N, 93°16'34" W, southwest to a point at 30°13'11" N, 93°16'51" W, then proceeding southerly following 100 feet off the shoreline to a point at 30°12'57.2" N, 93°16'53.2" W, then east to a point at 30°12'57.2" N, 93°16'50.6" W then southerly to a point at 30°12'47.7" N, 93°16'50.3" W then west to the shoreline and then following along the water's edge to the point of origin.

(2) The following areas are moving security zones: All waters within the Captain of the Port, Port Arthur zone commencing at U.S. territorial waters and extending channel edge to channel edge on the Calcasieu Channel and shoreline to shoreline on the Calcasieu River, 2 miles ahead and 1 mile astern of certain designated vessels while in transit. Meeting, crossing or overtaking situations are not permitted within the security zone unless specifically authorized by the Captain of the Port. Coast Guard patrol assets will be on scene with flashing blue lights energized when the moving security zones are in effect.

(b) *Regulations.* (1) Entry into or remaining in a fixed zone described in paragraph (a)(1) of this section is prohibited for all vessels except:

(i) Commercial vessels operating at waterfront facilities within these zones;

(ii) Commercial vessels transiting directly to or from waterfront facilities within these zones;

(iii) Vessels providing direct operational or logistical support to commercial vessels within these zones;

(iv) Vessels operated by the appropriate port authority or by facilities located within these zones; and

(v) Vessels operated by federal, state, county, or municipal agencies.

(2) Entry into or remaining in moving zones described in paragraph (a)(2) of this section is prohibited for all vessels except:

(i) Moored vessels or vessels anchored in a designated anchorage area. A

moored or an anchored vessel in a security zone described in paragraph (a)(2) of this section must remain moored or anchored unless it obtains permission from the Captain of the Port to do otherwise;

(ii) Commercial vessels operating at waterfront facilities located within the zone;

(iii) Vessels providing direct operational support to commercial vessels within a moving security zone;

(iv) Vessels operated by federal, state, county, or municipal agencies.

(3) Other persons or vessels requiring entry into security zones described in this section must request permission from the Captain of the Port, Port Arthur or designated representatives.

(4) To request permission as required by these regulations, contact Marine Safety Unit Lake Charles at (337) 491-7800 or the on scene patrol vessel.

(5) All persons and vessels within a security zone described in this section must comply with the instructions of the Captain of the Port, Port Arthur, designated on-scene U.S. Coast Guard patrol personnel or other designated representatives. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard. Designated representatives include federal, state, local and municipal law enforcement agencies.

(c) *Informational Broadcasts:* The Captain of the Port, Port Arthur will inform the public when moving security zones have been established around vessels via Broadcast Notices to Mariners and written notice provided by escort vessels.

Dated: March 12, 2010.

J.J. Plunkett,

Captain, U.S. Coast Guard, Captain of the Port, Port Arthur.

[FR Doc. 2010-8375 Filed 4-12-10; 8:45 am]

BILLING CODE 9910-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2009-0118; FRL-9124-9]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; Alternate Monitoring Requirements for Indianapolis Power and Light—Harding Street Station

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Indiana requested on December 31, 2008, that EPA approve as

a revision to its State Implementation Plan (SIP) alternative monitoring requirements for the Indianapolis Power and Light Company (IPL) at its Harding Street Generating Station. The alternative monitoring requirements allow the use of a particulate matter (PM) continuous emissions monitoring system (CEMS) in place of a continuous opacity monitor system (COMS).

DATES: This direct final rule will be effective June 14, 2010, unless EPA receives adverse comments by May 13, 2010. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2009-0118, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *E-mail:* damico.genevieve@epa.gov.
- *Fax:* (312) 385-5501.

- *Mail:* Genevieve Damico, Acting Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

- *Hand Delivery:* Genevieve Damico, Acting Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R05-OAR-2009-0118. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment.

If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Matt Rau, Environmental Engineer, at (312) 886-6524 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6524, rau.matthew@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- What Is the Background for This Action?
- What Is EPA's Analysis of the Revision?
- What Are the Environmental Effects of This Action?
- What Action Is EPA Taking?
- Statutory and Executive Order Reviews

I. What Is the Background for This Action?

Indiana has requested a revision to its SIP that would authorize an alternative monitoring plan contained in a State Commissioner's Order for Unit 7 at IPL's Harding Street Station, located in

Indianapolis (Marion County), Indiana. Indiana submitted its request to EPA on December 31, 2008. The alternative monitoring plan allows IPL to use a particulate matter CEMS in place of a COMS to demonstrate compliance with applicable PM limits.

IPL has installed a wet scrubber control device to control sulfur dioxide at its Harding Street Station Unit 7. The scrubber adds moisture to the exhaust gas, which condenses as the gas stream cools. According to Indiana Department of Environmental Management (IDEM), the condensation causes unreliable readings from the COMS on Unit 7. COMS measures opacity optically, so it cannot distinguish between light impairment caused by particulate and light impairment caused by moisture. The scrubber also removes some PM, so that placing the COMS prior to the exhaust entering the scrubber would also incorrectly measure those emissions from Unit 7.

IDEM has requested EPA approval of the alternative monitoring requirements under 326 IAC 3-5-1(c)(2)(A)(iii) of the SIP, which EPA approved on December 28, 2009 (74 FR 68541). This provision authorizes IDEM to approve an alternative monitoring requirement for fossil fuel-fired steam generators when IDEM determines that "installation of an opacity monitoring system would not provide accurate determinations of emissions as a result of interference from condensed uncombined water." The PM CEMS will be placed after the scrubber. A PM CEMS with proper calibration should provide accurate PM emission readings, even with moisture from the scrubber in the exhaust stream. Indiana certified the Harding Street Station's PM CEMS on June 22, 2009.

The alternative monitoring plan for the Harding Street Station was adopted by Indiana on October 31, 2008, in Commissioner's Order #2008-02. It is not effective, however, until EPA approves the plan as a SIP revision. See 326 IAC 3-5-1(c)(2)(A)(iv).

Indiana notified the public of an opportunity to request a public hearing on this action on November 12, 2008. It did not receive any comments or requests for a public hearing.

II. What Is EPA's Analysis of the Revision?

Under the alternative monitoring plan approved by Indiana in Commissioner's Order #2008-02, IPL will continuously monitor PM emissions in place of opacity. The visible emissions exiting the stack are primarily composed of PM. Visible emissions observations under 40 CFR Part 60, Appendix A, Method 9 may be taken in the atmosphere after

any moisture has condensed and left the plume. A COMS, like the one at the Harding Street Station, reads the opacity in the stack. The addition of a wet scrubber will remove pollutants from the exhaust, but will add moisture. This moisture condenses as the exhaust cools in the stack causing a higher opacity reading from the COMS. Installing the COMS to read the opacity before the scrubber would also not give an accurate measurement of the facility's emissions because the COMS would not reflect any emission reductions from the scrubber.

The PM CEMS will be calibrated to provide accurate measurements even with moisture in the stack. The PM CEMS provides the particulate emissions from the facility. Knowing the emissions from the facility, IPL will be able to make adjustments or control device repairs should the emissions rise too high. This facility will average the PM CEMS data at time intervals specified in its Title V permit. IPL is also required to monitor other pollutants and their operating parameters. The alternate monitoring requirement removes the need to operate the COMS, but does not remove the opacity limits at the facility under SIP rules 326 IAC 5–1. Visible emissions observations in accordance with Method 9 can still be made to determine whether the opacity limits are being met.¹

III. What Are the Environmental Effects of This Action?

PM interferes with lung function when inhaled. Exposure to PM can cause heart and lung disease. It also aggravates asthma. Airborne particulate is also a source of haze, which reduces visibility. PM deposited on the ground and in the water harms the environment by changing the nutrient and chemical balance.

This action only changes the PM monitoring requirements for Unit 7 at the Harding Street Station. All other applicable air pollution control requirements remain in place. No changes in any emissions from the Harding Street Station are expected as a result of this action.

IV. What Action Is EPA Taking?

EPA is approving the alternative monitoring plan in Commissioner's

Order #2008–02 into the Indiana SIP. The alternative monitoring plan for IPL's Harding Street Station is to use a PM CEMS on Unit 7 in place of a COMS. This action is consistent with Indiana SIP rule 326 IAC 3–5–1(c)(2)(A)(iii) because moisture in the facility's exhaust stream could cause inaccurate opacity readings from a COMS.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the State plan if relevant adverse written comments are filed. This rule will be effective June 14, 2010 without further notice unless we receive relevant adverse written comments by May 13, 2010. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective June 14, 2010.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

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 action 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 June 14, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a

¹ The Commissioner's Order also contains a section granting a variance to IPL for the period of time between the completion of the CEMS certification and EPA's approval of the alternative opacity monitoring plan. As noted in the variance provision: "This is a variance from State law only and does not change Federally approved SIP requirements." Order at 4.

petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: February 25, 2010.

Walter W. Kovalick Jr.,

Acting Regional Administrator, Region 5.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart P—Indiana

■ 2. Section 52.770 is amended by adding paragraph (c)(194) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(194) On December 31, 2008, Indiana submitted a Commissioner's Order that provided an alternative monitoring plan for Indianapolis Power and Light—Harding Street Generating Station in Marion County that is being incorporated into its SIP. The alternative monitoring requirements allow the use of a particulate matter continuous emissions monitoring system in place of a continuous opacity monitor.

(i) *Incorporation by reference.* Commissioner's Order #2008–02 for Indianapolis Power and Light as issued by the Indiana Department of Environmental Management on October 31, 2008.

[FR Doc. 2010–8295 Filed 4–12–10; 8:45 am]

BILLING CODE 5560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 89

RIN 0991–AB60

Organizational Integrity of Entities That Are Implementing Programs and Activities Under the Leadership Act

AGENCY: U.S. Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: The Department is issuing a final rule establishing the organizational integrity requirements for Federal funding recipients under the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (Leadership Act). This rule requires that funding announcements and agreements with funding recipients include a clause that states that the recipient is opposed to prostitution and sex trafficking because of the psychological and physical risks they pose for women, men and children. This rule also modifies the requirements for recipient-affiliate separation and eliminates the requirement for an additional certification by funding recipients.

DATES: This rule is effective May 13, 2010.

FOR FURTHER INFORMATION CONTACT: John Monahan, Office of Global Health Affairs, Hubert H. Humphrey Building, Room 639H, 200 Independence Avenue, SW., Washington, DC 20201, Tel: 202–690–6174, E-mail: ogha.os@hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Background

Congress enacted the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (“Leadership Act”) in May 2003. Public Law 108–25 [22 U.S.C. 7601–7682]. The Leadership Act contains limitations on the use of funds provided to carry out HIV/AIDS activities under the Act. Subsection 7631(f) prohibits the use of Leadership Act HIV/AIDS funds “to provide assistance to any group or organization that does not have a policy explicitly opposing prostitution and sex trafficking.” Subsection 7631(f) was amended in 2004 to exempt certain public international organizations. Consolidated Appropriations Act of 2004, Public Law 108–199, Div. D, Title II (2004).

The United States government is opposed to prostitution and sex trafficking. In enacting the Leadership Act, Congress specifically found “Prostitution and other sexual

victimization are degrading to women and children and it should be the policy of the United States to eradicate such practices. The sex industry, the trafficking of individuals into such industry, and sexual violence are additional causes of and factors in the spread of the HIV/AIDS epidemic.” Leadership Act § 2(23) Public Law 108–25. Congressional hearings at the time of the Act showed a high incidence of HIV among prostitutes and that prostitution fueled the demand for sex trafficking. Accordingly, Congress unambiguously called for the elimination of prostitution and sex-trafficking as part of the United States’ fight against HIV/AIDS.

Section 301(f) [22 U.S.C. 7631(f)] of the Leadership Act requires that funding recipients have a policy explicitly opposing prostitution and sex trafficking. Additionally, recipients of Leadership Act funds cannot engage in activities that are inconsistent with their opposition to prostitution and sex trafficking.

Congress did not dictate the means by which the Department would implement the policy and the Congressional intent of the Act was not to overburden applicants with unnecessary requirements. For example, during legislative debate on the Leadership Act, in response to a question from Senator Leahy on the Senate floor regarding section 301(f), Senator Frist stated that “a statement in the contract or grant agreement between the U.S. Government and such organization that the organization is opposed to the practices of prostitution and sex trafficking because of the psychological and physical risks they pose for women * * * would satisfy the intent of the provision.” 149 CONG. REC. S6,457 (daily ed. May 15, 2003) (statement of Sen. Frist).

B. Litigation and Regulatory Background

The Leadership Act was challenged on constitutional grounds in two separate lawsuits after its enactment. In a case filed in the U.S. District Court for the District of Columbia, plaintiffs claimed the anti-prostitution provision compelled speech when the organization had no policy either opposing or supporting prostitution. *DKT Int'l v. United States Agency for Int'l Dev. (USAID)*, 435 F. Supp. 2d 5 (D.D.C. 2006). Ultimately, the U.S. Court of Appeals for the District of Columbia Circuit upheld the anti-prostitution provision, holding that the government had a legitimate interest in ensuring that organizations chosen to communicate its particular viewpoint did so in an efficient and effective fashion. *DKT Int'l v. USAID*, 477 F.3d 758 (DC Cir. 2007).

In upholding this provision, the DC Circuit relied in part on the fact that nothing prevented the plaintiff from itself remaining neutral and setting up a subsidiary that had a policy opposing prostitution to receive government funds.

A second case was filed in the U.S. District Court for the Southern District of New York, which granted an injunction against the Government on the basis that the statute was unconstitutional because it did not leave open "adequate alternative channels for communication." *Alliance for Open Soc'y Int'l (AOSI) v. USAID*, 430 F. Supp. 2d 222 (S.D.N.Y. 2006). On appeal, the U.S. Court of Appeals for the Second Circuit remanded the case, in light of newly issued guidance by the Government providing for organizations to work with affiliates that would not be subject to the Leadership Act's requirements. *AOSI v. USAID*, 254 Fed. Appx. 843 (2d Cir. 2007). Upon remand, however, the District Court maintained the injunction and allowed additional plaintiffs to join the suit. *AOSI v. USAID*, 570 F. Supp. 2d 533 (S.D.N.Y. 2008). The Government has appealed that decision.

Prior to and concurrent with the litigation, the Department took a number of steps to implement the prostitution policy requirement under the statute. By December 2003, HHS had begun including a requirement in all of its grant and cooperative agreement funding announcements that all recipients under the Leadership Act of HIV/AIDS funds have a policy explicitly opposing prostitution and sex trafficking. On July 23, 2007, HHS published "Organizational Integrity Guidance" in the **Federal Register** to clarify the scope of the policy requirement. The guidance allowed Leadership Act HIV/AIDS funding recipients to have relationships with organizations that engage in activities inconsistent with a policy against prostitution and sex trafficking. 72 FR 41,076 (7/26/2007). HHS followed the issuance of this guidance with a notice of proposed rulemaking (NPRM) on April 17, 2008, 73 FR 29,096, which initiated the notice-and-comment rulemaking process. The final rule was published on December 24, 2008, 73 FR 78,997, corrected on January 16, 2009, 74 FR 2,888 (codified at 45 CFR part 89), and took effect on January 20, 2009. The final rule established the legal, financial, and organizational standards for determining whether a funding recipient had objective integrity and independence from an affiliated organization that engaged in activities inconsistent with a policy opposing

prostitution and sex trafficking. The final rule also required all Leadership Act HIV/AIDS funding recipients, including sub-recipients, to certify compliance with the rule.

On November 23, 2009, the Department again issued a notice of proposed rulemaking to modify the final rule of January 20, 2009. 74 FR 61096 (11/23/2009). The proposed amendment to the present rule modifies the criteria for evaluating the separation between recipients and affiliated organizations, while complying with the statutory requirement regarding opposition to prostitution and sex trafficking. It is essential to the Leadership Act that recipients of funds who implement HIV/AIDS programs and activities do not create confusion as to the U.S. Government's message opposing prostitution and sex trafficking by undertaking activities or advocating positions that conflict with this policy. However, as noted above, the Department has determined that the Congressional intent of the Leadership Act can be effectuated through the application of standards that allow more flexibility for funding recipients than the present guidelines.

II. Description of Final Rule and Response to Comments

The Department received twenty-seven comments in response to the proposed rule, including one comment filed after the close of the comment period which was also considered. Comments came from individuals and organizations both opposed to and in favor of changes to the previous rule. Several comments were not responsive to the proposed rule and therefore are not addressed. Several commenters stated the policy requirement was inconsistent with the Leadership Act or improperly conflated prostitution with sex trafficking. However, the final rule is consistent with section 301(f) of the Act which requires organizations receiving funds to have a policy opposing "prostitution and sex trafficking." Other comments are discussed under applicable headings.

Section 89.1 Applicability

This section provides that the policy requirement applies to all funding recipients not exempted by the Leadership Act. Currently, those organizations exempted are the Global Fund to Fight AIDS, Tuberculosis, and Malaria, the World Health Organization, the International AIDS Vaccine Initiative and any other United Nations agency.

This section also states what is required of HIV/AIDS funding

recipients under the Leadership Act. The Department shall include in any HIV/AIDS public funding announcement under the Leadership Act the requirement that recipients agree that they are opposed to the practices of prostitution and sex trafficking because of the psychological and physical risks they pose for women, men and children. This statement will also be included in any Leadership Act HIV/AIDS funding instrument entered into with the recipient. As explained, the Department believes this statement is consistent with the anti-prostitution provision and the Congressional intent behind it, as well as other goals of the Act.

The Department will work with the Department of State and with other agencies implementing the Leadership Act to ensure consistent application of its requirements.

Section 89.2 Definitions

This section defines terms used in this rule. It retains several terms from the previous iteration of the rule such as "commercial sex act" and "prostitution." However, given the regulation now requires the anti-prostitution statement only in the announcement and the awarding instrument to the "recipient," it deletes the terms "prime recipient" and "subrecipient." A definition of "recipient" that mirrors the former "prime recipient," directly funded entity, is included. While the section deletes the definition of subrecipient, any organization receiving Leadership Act HIV/AIDS funds must comply with the statutory requirements.

Several commenters objected to the lack of definition for a number of terms such as "affiliate," "restricted activities," and "to the extent practicable." As explained below, the Department's commitment to a case-by-case approach in this area will allow flexibility based on the circumstances presented. Some organizations may be better able to separate themselves from an affiliate "in the circumstances." Conditions in some countries may make it difficult for organizations to meet certain factors relevant to determining whether sufficient separation exists. Therefore, any attempt to strictly prescribe the degree of separation would undermine the purpose of the regulation.

Similarly, the Department does not define the term "affiliated organizations." In common usage, "affiliate" means "to bring into close connection as a member or branch." *Merriam-Webster's Collegiate Dictionary* at 21 (11th ed. 2007). Legal affiliation is only one aspect of this relationship. The use of separate personnel, accounting,

timekeeping, space and identifying signage are also factors, among others. In determining whether there is sufficient separation, the Department will not base its decision solely on whether an entity is a legally separate "affiliate," but instead will consider the likelihood that the degree of separation between a recipient of Leadership Act HIV/AIDS funds and other connected organizations that are not required to have a policy opposing prostitution and sex trafficking will not undermine or confuse the Government's position in opposition to prostitution and sex trafficking.

As noted by multiple comments, the proposed rule did not define "restricted activities." Several comments expressed concerns that organizations that work with the victims of prostitution and sex trafficking would stop providing services that could prevent HIV/AIDS because of their fear that the Government would determine the activities were "restricted activities," and revoke Federal funding. Several comments also sought approval of particular hypotheticals. The Department does not believe it should provide opinions on hypothetical scenarios because information may be incomplete. While the Department does not define restricted activities in the rule, working with other agencies implementing the Leadership Act, the U.S. Government intends to provide broad information on types of activities that illustrate what would be covered.

Section 89.3 Organizational Integrity of the Recipients

This section sets forth the separation requirements for funding recipients who wish to affiliate with organizations that do not have a policy opposing prostitution and sex trafficking. Specifically, the final rule no longer requires that an affiliate be a legally separate entity. As stated in the November 23, 2009, NPRM, separate legal incorporation in each of the host countries where a recipient might work could prove complicated. Additionally, the inherent difficulty of the Department analyzing multiple foreign legal requirements makes this factor unworkable as a determinative criterion.

The rule also allows greater flexibility for funding recipients to demonstrate organizational separation from entities which do not have a policy opposing sex trafficking and prostitution. As noted in the NPRM, these changes include changing separate personnel requirements to allocation of personnel requirements, and the deletion of separate management and governance requirements.

Many commenters believe that the proposed rule, even with modification, unlawfully compels speech in violation of the First Amendment, and therefore cannot be enforced against domestic entities. The Department disagrees. As explained above, the DC Circuit Court of Appeals upheld the Leadership Act against constitutional claims even prior to the promulgation of implementing regulations. The court in that case specifically relied on the fact that entities were free to set up affiliates which "would qualify for government funds as long as the two organizations' activities were kept sufficiently separate." *DKT Int'l v. USAID*, 477 F.3d at 763. Likewise, the Supreme Court and the Second Circuit Court of Appeals have upheld more burdensome regulations where funding recipients had "adequate alternative channels for protected expression." *Brooklyn Legal Servs. Corp. v. Legal Serv's Corp.*, 462 F.3d 219, 231 (2d Cir. 2006); *Rust v. Sullivan*, 500 U.S. 173 (1991).

The goal in implementing the revised rule on the prostitution policy provision is to ensure that the Government's position opposing prostitution and sex trafficking is not undermined while allowing Leadership Act funding recipients greater flexibility in finding alternative channels for protected expression in diverse areas for diverse populations. Given the numerous factual situations that may arise, the Department has deliberately adopted a case-by-case approach in this area, recognizing that circumstances in some countries may make it difficult for organizations to satisfy some of the factors demonstrating objective integrity and independence. The Department also plans to work with recipients to address individual questions regarding the separation criteria, and to help remedy violations before taking enforcement action. We believe these steps will ensure recipients have adequate channels for engaging in protected speech while still adhering to the requirement of the Leadership Act that recipient organizations be opposed to the practices of prostitution and sex trafficking because of the psychological and physical risks they pose for women, men and children.

Several commenters also objected to the Department's listing of only five factors relevant to the integrity analysis when the regulation allows that other unlisted factors may be taken into account. Again, the relevant inquiry will not be the presence or absence of any particular factor, but the "totality of circumstances," under which the recipient organization is shown to be sufficiently separate from an affiliate

organization that does not have a policy opposing prostitution. The court decisions previously discussed all upheld similar regulations where the Government specifically stated the factors were "not limited to" those set forth in regulation.

Several commenters expressed concern that the extent of restricted activities by the affiliated organization would be a factor considered by the Department. Given that the purpose of affiliate separation requirements is to determine when an affiliated organization is so closely tied to the funding recipient that a reasonable observer would attribute its activities to the funding recipient, the Department agrees that the extent of restricted activities by a separate entity should not be considered, and therefore has deleted that part of Subsection 89.3(b)(4).

Several commenters believed the proposed rule should mirror the Department's non-discrimination regulations for faith based organizations. Under these regulations, the commenters insist, "religious activities" require only time or space separation. However, the faith based regulations rely on different statutory and constitutional foundations. The faith based regulations allow religious and non-religious organizations to compete equally in applying for Federal funds as long as time, place and other restrictions on religious activities are met consistent with the Establishment Clause of the U.S. Constitution. By contrast, the Leadership Act requires all funding recipients, regardless of the character of their organization, to have a policy against prostitution and sex trafficking. The Leadership Act requires that HIV/AIDS funding recipients act consistently with their opposition to prostitution and sex trafficking. This requirement necessitates greater separation between funding recipients and organizations that engage in activities inconsistent with an opposition to prostitution and sex trafficking, than the faith based regulations require between governmental programs operated by a faith based organization and its religious activities. The Department believes this rule best meets the goals of the Leadership Act's anti-prostitution provision without infringing upon the constitutional rights of recipients.

Deleted Section 89.3 Certification

As proposed, former section 89.3 requiring annual certification of compliance with the anti-prostitution provision by both recipients and sub-recipients has been deleted. The Department does not believe such procedures are necessary for compliance

under the Leadership Act. Recipients are still required to follow the dictates of the Leadership Act and maintain the required separation from affiliates that engage in activities inconsistent with an opposition to prostitution and sex trafficking. The required notice in the public announcement and awarding instrument will provide notice to funding recipients of the Leadership Act's anti-prostitution requirements and allow an opportunity to engage the Department in further dialogue on the issue if an applicant desires.

Those commenting on this deletion suggested the lack of certification would make the Leadership Act unenforceable, adding that the negligible cost of certification is far outweighed by its benefits. The Department disagrees. The Department is not hampered in its monitoring or enforcement by the lack of certification, and may still conduct audits of discretionary grant programs whenever they are warranted to ensure compliance with program requirements. Nothing in the Leadership Act requires certification by recipients or prevents

enforcement when those requirements are not met. Given the cost to the public of administering the certification and the negligible benefit to the Department, deleting the requirement comports with the goals of the Paperwork Reduction Act to "minimize the paperwork burden * * * from the collection of information by and for the Federal Government." 35 U.S.C. 3501.

III. Impact Analysis

Executive Order 12866 and Paperwork Reduction Act

As explained in the NPRM to this final rule, this rule is a "significant regulatory action" under Executive Order 12866, section 3(f)(4), because it raises novel legal or policy issues that arise out of legal mandates and the President's priorities, and accordingly, the Office of Management and Budget has reviewed it.

This rule modifies a previously issued final rule on the same subject, published on December 24, 2008, in the **Federal Register**. The modification reduces the burden on applicants and funding

recipients in complying with the policy. The December 24, 2008, final rule required statements and formal documentation from recipients before they could receive Leadership Act HIV/AIDS funds. The Impact Analysis and the Paperwork Reduction Act in the December 24, 2008, final rule estimated the burden and cost of writing the additional documentation. This rule no longer requires this additional documentation. As a result, applicants for Leadership Act HIV/AIDS funds will no longer have to incur the costs outlined in the December 24, 2008, impact analysis and paperwork burden analysis.

Therefore, the rule should relieve regulated entities by the amounts specified in the December 24, 2008, final rule. We are republishing the impact table from the December 24, 2008, final rule. The burden estimate was \$7,337 calculated by assuming an additional half hour of clerical work to prepare documentation on behalf of 555 grantees at an hourly rate of \$26.44.

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Average cost per hour	Total burden hours	Total burden cost
Certifications	555	1	0.5	\$26.44	277.5	\$7,337

List of Subjects in 45 CFR Part 89

Administrative practice and procedure, Federal aid programs, Grants programs, Grants administration.

Dated: January 22, 2010.

John Monahan,

Interim Director, Office of Global Health Affairs.

Dated: January 22, 2010.

Kathleen Sebelius,

Secretary.

■ Therefore, under the authority of section 301(f) of the Leadership Act, as amended, and for the reasons stated in the preamble, the Department revises 45 CFR part 89 to read as follows:

PART 89—ORGANIZATIONAL INTEGRITY OF ENTITIES IMPLEMENTING PROGRAMS AND ACTIVITIES UNDER THE LEADERSHIP ACT

Sec.

89.1 Applicability and requirements.

89.2 Definitions.

89.3 Organizational integrity of recipients.

Authority: Section 301(f) of the Leadership Act, Pub. L. 108–25, as amended (22 U.S.C. 7631(f)) and 5 U.S.C. 301.

§ 89.1 Applicability and requirements.

(a) This regulation applies to all recipients unless they are exempted from the policy requirement by the Leadership Act or other statute.

(b) The Department of Health and Human Services (HHS) components shall include in the public announcement of the availability of the grant, cooperative agreement, contract, or other funding instrument involving Leadership Act HIV/AIDS funds the requirement that recipients agree that they are opposed to the practices of prostitution and sex trafficking because of the psychological and physical risks they pose for women, men, and children. This requirement shall also be included in the award documents for any grant, cooperative agreement or other funding instrument involving Leadership Act HIV/AIDS funds entered into with the recipient.

§ 89.2 Definitions.

For the purposes of this part:

Commercial sex act means any sex act on account of which anything of value is given to or received by any person.

Leadership Act means the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003,

Public Law 108–25, as amended (22 U.S.C. 7601–7682).

Prostitution means procuring or providing any commercial sex act.

Recipients are contractors, grantees, applicants or awardees who receive Leadership Act funds for HIV/AIDS programs directly or indirectly from HHS.

Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

§ 89.3 Organizational integrity of recipients.

A recipient must have objective integrity and independence from any affiliated organization that engages in activities inconsistent with the recipient's opposition to the practices of prostitution and sex trafficking because of the psychological and physical risks they pose for women, men and children ("restricted activities"). A recipient will be found to have objective integrity and independence from such an organization if:

(a) The affiliated organization receives no transfer of Leadership Act HIV/AIDS funds, and Leadership Act HIV/AIDS

funds do not subsidize restricted activities; and

(b) The recipient is, to the extent practicable in the circumstances, separate from the affiliated organization. Mere bookkeeping separation of Leadership Act HIV/AIDS funds from other funds is not sufficient. HHS will determine, on a case-by-case basis and based on the totality of the facts, whether sufficient separation exists. The presence or absence of any one or more factors relating to legal, physical, and financial separation will not be determinative. Factors relevant to this determination shall include, but not be limited to, the following:

(1) Whether the organization is a legally separate entity;

(2) The existence of separate personnel or other allocation of personnel that maintains adequate separation of the activities of the affiliated organization from the recipient;

(3) The existence of separate accounting and timekeeping records;

(4) The degree of separation of the recipient's facilities from facilities in which restricted activities occur; and

(5) The extent to which signs and other forms of identification that distinguish the recipient from the affiliated organization are present.

[FR Doc. 2010-8378 Filed 4-12-10; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 92

[FWS-R7-MB-2009-0082; 91200-1231-9BPP-L2]

RIN 1018-AW67

Migratory Bird Subsistence Harvest in Alaska; Harvest Regulations for Migratory Birds in Alaska During the 2010 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) establishes migratory bird subsistence harvest regulations in Alaska for the 2010 season. These regulations enable the continuation of customary and traditional subsistence uses of migratory birds in Alaska and prescribe regional information on when and where the harvesting of birds may occur. These regulations were developed under a co-management process involving the

Service, the Alaska Department of Fish and Game, and Alaska Native representatives. This rulemaking is necessary because the regulations governing the subsistence harvest of migratory birds in Alaska are subject to annual review. This rulemaking establishes region-specific regulations that go into effect April 13, 2010 and expire August 31, 2010.

DATES: The amendments to subpart D of 50 CFR part 92 are effective April 13, 2010, through August 31, 2010.

FOR FURTHER INFORMATION CONTACT: Fred Armstrong, (907) 786-3887, or Donna Dewhurst, (907) 786-3499, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, AK 99503.

SUPPLEMENTARY INFORMATION:

Why Is This Rulemaking Necessary?

This rulemaking is necessary because, by law, the migratory bird harvest season is closed unless opened by the Secretary of the Interior, and the regulations governing subsistence harvest of migratory birds in Alaska are subject to public review and annual approval. This rule establishes regulations for the taking of migratory birds for subsistence uses in Alaska during the spring and summer of 2010. This rule lists migratory bird season openings and closures in Alaska by region.

How Do I Find the History of These Regulations?

Background information, including past events leading to this rulemaking, accomplishments since the Migratory Bird Treaties with Canada and Mexico were amended, and a history addressing conservation issues can be found in the following **Federal Register** documents:

Date	FEDERAL REGISTER citation
August 16, 2002	67 FR 53511.
July 21, 2003	68 FR 43010.
April 2, 2004	69 FR 17318.
April 8, 2005	70 FR 18244.
February 28, 2006	71 FR 10404.
April 11, 2007	72 FR 18318.
March 14, 2008	73 FR 13788.
May 19, 2009	74 FR 23336.

These documents, which are all final rules setting forth the annual harvest regulations, are available at <http://alaska.fws.gov/ambcc/regulations.htm>.

What Is the Process for Issuing Regulations for the Subsistence Harvest of Migratory Birds in Alaska?

The U.S. Fish and Wildlife Service (Service or we) establishes migratory

bird subsistence harvest regulations in Alaska for the 2010 season. These regulations enable the continuation of customary and traditional subsistence uses of migratory birds in Alaska and prescribe regional information on when and where the harvesting of birds may occur. These regulations were developed under a co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives.

We opened the process to establish regulations for the 2010 spring and summer subsistence harvest of migratory birds in Alaska in a proposed rule published in the **Federal Register** on April 10, 2009 (74 FR 16339). While that proposed rule dealt primarily with the regulatory process for hunting migratory birds for all purposes throughout the United States, we also discussed the background and history of Alaska subsistence regulations, explained the annual process for their establishment, and requested proposals for the 2010 season. The rulemaking processes for both types of migratory bird harvest are related, and the April 10, 2009, proposed rule explained the connection between the two.

The Alaska Migratory Bird Co-management Council (Co-management Council) held a meeting in April 2009 to develop recommendations for changes that would take effect during the 2010 harvest season. These recommendations were presented first to the Flyway Councils and then to the Service Regulations Committee at the committee's meeting on July 29 and 30, 2009.

Who Is Eligible To Hunt Under These Regulations?

Eligibility to harvest under the regulations established in 2003 was limited to permanent residents, regardless of race, in villages located within the Alaska Peninsula, Kodiak Archipelago, the Aleutian Islands, and in areas north and west of the Alaska Range (50 CFR 92.5). These geographical restrictions opened the initial subsistence migratory bird harvest to about 13 percent of Alaska residents. High populated areas such as Anchorage, the Matanuska-Susitna and Fairbanks North Star boroughs, the Kenai Peninsula roaded area, and the Gulf of Alaska roaded area, and Southeast Alaska were excluded from eligible subsistence harvest areas.

Based on petitions requesting inclusion in the harvest, in 2004, we added 13 additional communities based on criteria set forth in 50 CFR 92.5(c). These communities were Gulkana, Gakona, Tazlina, Copper Center,

Mentasta Lake, Chitina, Chistochina, Tatitlek, Chenega, Port Graham, Nanwalek, Tyonek, and Hoonah, with a combined population of 2,766. In 2005, we added three additional communities for glaucous-winged gull egg gathering only, based on petitions requesting inclusion. These southeastern communities were Craig, Hydaburg, and Yakutat, with a combined population of 2,459.

In 2007, we enacted the Alaska Department of Fish and Game's request to expand the Fairbanks North Star Borough excluded area to include the Central Interior area. This action excluded the following communities from participation in this harvest: Big Delta/Fort Greely, Healy, McKinley Park/Village and Ferry, with a combined population of 2,812. These removed communities reduced the percentage of the State population included in the subsistence harvest to 13 percent.

How Will the Service Ensure That the Subsistence Harvest Will Not Raise Overall Migratory Bird Harvest or Threaten the Conservation of Endangered and Threatened Species?

We have monitored subsistence harvest for the past 25 years through the use of annual household surveys in the most heavily used subsistence harvest areas, such as the Yukon-Kuskokwim Delta. In recent years, more intensive surveys combined with outreach efforts focused on species identification have been added to improve the accuracy of information gathered from regions still reporting some subsistence harvest of listed or candidate species.

Spectacled and Steller's Eiders

Spectacled eiders (*Somateria fischeri*) and the Alaska-breeding population of Steller's eiders (*Polysticta stelleri*) are listed as threatened species; their migration and breeding distribution overlap with where the spring and summer subsistence migratory bird hunt is open in Alaska. Both species are closed to hunting, although harvest surveys and Service documentation indicate both species have been taken in several regions of Alaska.

The Service has dual goals and responsibilities for authorizing a subsistence harvest while protecting migratory birds and threatened species. Although these goals continue to be challenging, they are not irreconcilable, providing sufficient recognition is given to the need to protect threatened species, measures to remedy documented threats are implemented, and the subsistence community and other conservation partners commit to working together. With these dual goals

in mind, the Service, working with partners, developed measures in 2009 to further reduce the potential for shooting mortality or injury of closed species. These conservation measures included: (1) Increased waterfowl hunter outreach and community awareness partnering with the Migratory Bird Task Force; (2) continued enforcement of the migratory bird regulations that are protective of listed eiders; and (3) in-season Service verification of the harvest to detect Steller's eider mortality.

This rule is focused on the North Slope from Barrow through Point Hope because listed spectacled and Steller's eiders from the listed Alaska breeding population, are known to breed and migrate there. These regulations address several eider management needs by restricting hunting to times of day with sufficient daylight to improve a hunter's ability to distinguish between species and minimize shooting species closed for harvest; clarifying for subsistence users that Service law enforcement personnel have authority to verify species of birds possessed by hunters; clarifying that it is illegal to possess any bird closed to harvest; and describing how the Service's existing authority of emergency closure would be implemented, if necessary, to protect Steller's eiders. These regulations, implemented in accordance with conservation measures, are considered the principal means by which the threat from shooting mortality of threatened eiders will be reduced. In addition, the emergency closure authority provides another level of assurance if an unexpected amount of Steller's eider shooting mortality occurs.

In-season, real-time harvest survey information obtained by the local community is desirable at Point Hope, Point Lay, Wainwright, and Barrow. The North Slope Borough has offered to assist with collection of this information, including traveling to hunters in the field and providing photo documentation of some portion of the harvest. In-season harvest monitoring information will be used to independently evaluate harvest survey reports, as well as evaluate the efficacy of regulations, conservation measures, and outreach efforts.

On the North Slope in 2009, no Steller's eider harvest was reported, and no Steller's eiders were found shot during in-season verification of the subsistence harvest. Based on these successes, the Service will continue the same regulations for the 2010 season. The 2009 conservation measures will also be continued, although there will be some modification of the amount of effort and emphasis each will receive.

Specifically, as local communities develop greater responsibility for taking actions to ensure Steller's and spectacled eider conservation and recovery, and hunters demonstrate greater compliance with hunting regulations, the Service's Office of Law Enforcement plans to decrease its presence in Barrow.

The longstanding general emergency closure provision at 50 CFR 92.21 specifies that the harvest may be closed or temporarily suspended upon finding that a continuation of the regulation allowing the harvest would pose an imminent threat to the conservation of any migratory bird population. With regard to Steller's eiders, the regulation at 50 CFR 92.32, carried over from last year, clarifies that we will take action under 50 CFR 92.21 as is necessary to prevent further take of Steller's eiders, and that action could include temporary or long-term closures of the harvest in all or a portion of the geographic area open to harvest. If mortality of threatened eiders occurs, we will evaluate each mortality event by criteria such as cause, quantity, sex, age, location, and date. We will consult with the Co-management Council when we are considering an emergency closure. If we determine that an emergency closure is necessary, we will design it to minimize its impact on the subsistence harvest.

Yellow-billed Loon and Kittlitz's Murrelet

Yellow-billed loon (*Gavia adamsii*) and Kittlitz's murrelet (*Brachyramphus brevirostris*) are listed as candidate species for Endangered Species Act Listing. Their migration and breeding distribution overlaps with where the spring and summer migratory bird hunt is open in Alaska. Both species are closed to hunting, and there is no evidence Kittlitz's murrelets are harvested. On the other hand, harvest surveys have indicated harvest of yellow-billed loons on the North Slope and St. Lawrence Island. Some or all of the yellow-billed loons reported harvested on the North Slope were found to be entangled loons salvaged from subsistence fishing nets as described below. The Service will continue outreach efforts in both areas in 2010, engaging partners to improve harvest estimates and decrease take of yellow-billed loons.

Consistent with the request of the North Slope Borough Fish and Game Management Committee and the recommendation of the Co-management Council, this rule continues into 2010 the provisions originally established in 2005 to allow subsistence use of yellow-

billed loons (*Gavia adamsii*) inadvertently entangled in subsistence fishing (gill) nets on the North Slope. Yellow-billed loons are culturally important for the Inupiat Eskimo of the North Slope for use in traditional dance regalia. A maximum of 20 yellow-billed loons may be caught in 2010 under this provision. This provision does not authorize intentional harvest of yellow-billed loons, but allows use of those loons inadvertently entangled during normal subsistence fishing activities. Individual reporting to the North Slope Borough Department of Wildlife is required by the end of each season. However, the North Slope Borough has asked fishermen, through announcements on the radio and through personal contact, to report inadvertent entanglements of loons as they occur, to better estimate the level of mortality caused by gill nets. In 2008, the North Slope Borough reported that one yellow-billed loon was found dead in a fishing net; one severely injured yellow-billed loon was observed by Borough staff; and two were released uninjured from fishing nets by Borough staff.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act (16 U.S.C. 1536) requires the Secretary of the Interior to “review other programs administered by him and utilize such programs in furtherance of the purposes of the Act” and to “insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *.” We conducted an intra-agency consultation with the Service’s Fairbanks Field Office on this harvest as it will be managed in accordance with this final rule and the conservation measures. The consultation was completed with an April 2, 2010, biological opinion that concluded the final rule and conservation measures are not likely to jeopardize the continued existence of Steller’s eider, spectacled eider, yellow-billed loon, or Kittlitz’s murrelet, or result in the destruction or adverse modification of designated critical habitat for Steller’s eider or spectacled eider.

What Is Different in the Region-Specific Regulations for 2010?

Aleutian and Arctic Terns

We are removing the provision that opened a season from May 15 to June 30 for harvesting Aleutian (*Onychoprion aleutica*) and arctic tern (*Sterna*

paradisaea) eggs in the Yakutat Harvest area, from Icy Bay (Icy Cape to Point Riou) and the coastal islands bordering the Gulf of Alaska from Point Manby southeast to and including Dry Bay. The Yakutat Tlingit Tribe requested that we remove this regulation at the April 2009 Co-Management Council meeting, stating that they will not be able to adequately monitor the tern subsistence take as requested by the Service, so they would prefer to withdraw the regulation at this time.

Summary of Public Involvement

On November 20, 2009, we published in the **Federal Register** a proposed rule (74 FR 60228) to establish spring and summer migratory bird subsistence harvest regulations in Alaska for the 2010 subsistence season. The proposed rule provided for a public comment period of 60 days. We posted an announcement of the comment period dates for the proposed rule, as well as the rule itself and related historical documents, on the Co-management Council’s Internet homepage. We issued a press release announcing our request for public comments and the pertinent deadlines for such comments, which was faxed to the media Statewide. Additionally, all documents were available on <http://www.regulations.gov>.

In mid-December 2009, we received a request to extend the public comment period and hold a public hearing in Barrow, Alaska. Based on this request, we held a public meeting to record public comments on the proposed regulations on January 12, 2010, at the Inupiat Heritage Center, 5421 North Star St., Barrow. We also reopened the public comment period until February 18, 2010, by publishing a document in the January 25, 2010, **Federal Register** (75 FR 3888). The public was informed that if they had submitted comments previously, they did not need to resubmit because we had already incorporated those comments into the public record and would consider them in preparation of our final determination. By the close of the second public comment period on February 18, 2010, we received responses from 20 individuals and 2 organizations.

Response to Public Comments

General Comments

Comment: We received two general comments on the overall regulations that expressed strong opposition to the concept of allowing any harvest of migratory birds in Alaska.

Service Response: For centuries, indigenous inhabitants of Alaska have

harvested migratory birds for subsistence purposes during the spring and summer months. The Canada and Mexico migratory bird treaties were recently amended for the express purpose of allowing subsistence hunting for migratory birds during the spring and summer. The amendments indicate that the Service should issue regulations allowing such hunting as provided in the Migratory Bird Treaty Act, 16 U.S.C. 712(1), expressly allows the Service to issue regulations allowing such hunting. See Statutory Authority section for more details.

One of the goals of the Protocol amending the Canada Treaty is to allow a traditional subsistence hunt while also improving conservation of migratory birds through effective regulation of this hunt. Although the Protocol sanctions a traditional subsistence hunt, the Parties did not intend to cause significant increases in the take of migratory birds, relative to their continental population sizes. If at some point the subsistence harvest regulations result in significantly increased harvest, management strategies would be implemented to ensure maintenance of continental populations.

Comment: Fourteen commenters explained the true value of subsistence to their way of life on the North Slope—it includes both providing essential food that is shared and preserves the age-old customs and traditions associated with it.

Service Response: We respectfully acknowledge the importance of the customs and traditions that go along with the subsistence way of life in rural Alaska. The amendments to the Migratory Bird Treaties with Canada and Mexico recognize the importance of maintaining the cultural and traditional lifestyle of the indigenous inhabitants of Alaska.

Comment: One commenter requested that the public comment period be extended.

Service Response: We reopened the public comment period until February 18, 2010, by publishing a document in the January 25, 2010, **Federal Register** (75 FR 3888). The public was informed that if they had submitted comments previously, they did not need to resubmit those comments because we had already incorporated them into the public record and would consider them in preparation of our final determination.

Comment: Twelve commenters expressed continued disappointment with the duck stamp and license issue and that these requirements were pushed upon them and were not cultural and traditional. One commenter

added that some of the elders in Barrows are afraid to go out bird hunting because of the threat of getting a ticket for no license or duck stamp. One commenter explained the difficulty of buying a State hunting license, Federal duck stamp, and State duck stamp for subsistence hunters on a limited income. Several commenters stated that purchasing a license and stamps is a burden for a family on a fixed, low income.

Service Response: The only way the requirement to possess a Federal Migratory Bird Hunting and Conservation Stamp could be changed is through a congressional modification of the Migratory Bird Hunting and Conservation Stamp Act (16 U.S.C. 718 *et seq.*). Similarly, the requirement for an Alaska hunting license and Waterfowl Conservation Tag (duck stamp) is codified in Alaska's statutes and regulations and can be changed only by the State legislature. There are a few exemptions. Hunters under the age of 16 or 60 years or older and qualified disabled veterans are not required to purchase licenses and duck stamps to hunt. Residents who qualify for a \$5.00 low income license are not required to purchase a duck stamp.

The Subsistence Division (AS 16.05.340(17)(B)) of the Alaska Department of Fish and Game (Department) has the responsibility to evaluate the impact of State and Federal laws and regulations on subsistence hunting and, when corrective action is indicated, make recommendations to the Department, who in turn make recommendations to the Alaska Board of Game regarding amendment and repeal of regulations affecting subsistence hunting.

The Alaska Board of Game (AS 16.05.130(b)(2)–(4)) can establish regulations to exempt the requirement to purchase a waterfowl conservation tag (duck stamp) for waterfowl hunting in areas of the State not likely to benefit from the following programs: (1) The acquisition of wetlands important for waterfowl and public use of waterfowl, (2) waterfowl related projects approved by the State commissioner, and (3) the administration of the waterfowl conservation program.

Comment: Two commenters noted that the **Federal Register** document did not address Executive Order 13175, Government-to-Government Relations, and should have.

Service Response: We did discuss Executive Order 13175 in the November 20, 2009, proposed rule; see 74 FR 60232–60233. In that discussion, we stated that because eligibility to hunt under these regulations is not limited to

tribal members, but rather extends to all indigenous inhabitants of the subsistence harvest areas, we are not required to engage in formal consultation with tribes. However, in keeping with the spirit of the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), and Executive Order 13175 (65 FR 67249; November 6, 2000) and Memorandum on Tribal Consultations dated November 5, 2009, concerning consultation and coordination with Indian Tribal Governments, we conducted a public hearing in Barrow, Alaska, for the express purpose of gathering public comments on our November 20, 2009, proposed rule (74 FR 60228). We also conducted local meetings with the Migratory Bird Task Force, which is comprised of Alaska Native Tribes, Alaska Native corporations, and Alaska Native nonprofit organizations, to develop an outreach strategy for the coming spring and summer season. The Service's Alaska Regional Director also traveled to Barrow to meet with local leaders on the 2010 migratory bird regulations and discuss how the local community could be involved in the conservation of listed eiders.

Comment: One commenter requested the Service to consider, under Executive Order 12898 on environmental justice, the impacts of the regulations on the Inupiat subsistence lifestyle, because neither the proposed November 20, 2009, proposed rule (74 FR 60228) nor the environmental assessment on which they are based cite the order.

Service Response: The Service, working with the Co-management Council, already complies with Section 4–401 of this Executive Order, by annually collecting and publishing subsistence harvest data; however, the Service does not have the responsibility to evaluate any potential health risks associated with the consumption of environmentally contaminated wild foods. We have notified the public in our regulations of the risks associated with the potential presence of highly pathogenic H5N1 bird flu in the migratory birds being taken and consumed. The implication from the question appears to be more focused on the additional 2009 regulations imposed on 4 North Slope Inupiat communities within the North Coastal Zone. Our regulations at 50 CFR 92.31(g)(5)(i), which establish shooting hours, have the potential to safeguard human health and safety by preventing the use of firearms when light levels are inadequate to ensure safe practices. The other two regulations under this section

pertain more to law enforcement with no applicability to human health.

Comment: One commenter expressed concern that the growing numbers of bird watchers in the Barrow area causing disturbance and affecting bird movement, and that the birdwatchers are there for pleasure, while subsistence is a lifestyle.

Service Response: The Gasline/Cakeeater and Freshwater Lake roads are primarily located on Native owned or privately owned lands and use is managed by the Ukeagvik Inupiat Corporation, which does restrict use by commercial birdwatching tours and professional photographers by requiring permits.

Comment: One commenter expressed that we should remove spectacled eiders from the list of threatened species, because the population surveys the commenter had read stated that there were plenty of these birds worldwide, and that only a small percentage migrate along the North Slope. The commenter stated that any subsistence take should be allowed.

Service Response: We intend to re-evaluate the species' status rangewide this year during a "5-year review" that we are conducting on spectacled eiders. One result of this review will be to consider whether recent changes in the species' status warrant reconsideration of its protection under the Endangered Species Act. It should be noted, however, that standardized aerial surveys indicate a decline in the number of spectacled eiders nesting on the North Slope.

Comment: One commenter brought up that, under the Small Business Regulatory Enforcement Fairness Act, the proposed rule stated that this action will not have an annual effect on the economy, but the commenter felt the North Slope regulations would negatively affect their subsistence economy.

Service Response: The Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804(2), addresses potential annual effects on the economy of \$100 million or more, which is well beyond the scope of the action contained in this **Federal Register** document.

Comment: One commenter was concerned that under the Unfunded Mandates Reform Act, participation on regional management bodies and the Co-management Council requires travel expenses for some Alaska Native organizations and local governments, but that the local tribal governments have not been paid to participate.

Service Response: As part of the Co-management Council, regional groups were formed to provide for local village

and tribal representation. Grants are annually provided by the Service for each regional representative and their sponsoring organization to fund travel for village representatives to attend regional meetings twice a year.

Law Enforcement

Comment: Six commenters said that the extra law enforcement presence in Barrow created extra tension in the community. Several commenters stated that subsistence hunters in Barrow have been impacted because of the presence of law enforcement. Another commenter said that the additional law enforcement intimidated some people from going hunting. Another commenter suggested we use local people, the city council, and the local Native government to enforce regulations.

Service Response: For several years, the Service's Office of Law Enforcement and Divisions of Endangered Species and Migratory Bird Management have worked with many groups and individuals in the greater North Slope area and Barrow specifically to provide information on the regulatory requirements and enforcement of the regulations. Our approach has focused on significant outreach efforts, including public meetings, radio talk show opportunities, posted fliers, and brochures followed by a phased-in, increased reliance on enforcement actions. The Service and its partners have conducted outreach over the past couple of years to increase hunter awareness. We expect hunter compliance with the regulations and thus do not plan on having a continuous presence in Barrow this season.

Who Is Eligible To Hunt Under These Regulations?

Comment: One commenter questioned what the purpose was of adding the communities of Gulkana, Tazlina, Copper Center, Mentasta Lake, and the rest. The commenter questioned whether or not they hunt birds there.

Service Response: In 2003, the interior Alaska communities in question submitted petitions for inclusion in the subsistence migratory bird. Part of the petitioning process is to show evidence of customary and traditional use of the migratory bird resource. Upon review of these petitions, the Co-management Council at its April and May 2003 meetings recommended that 13 additional communities be included, starting in 2004, based on the five criteria set forth in 50 CFR 92.5(c). The Upper Copper River region included the communities of Gulkana, Gakona, Tazlina, Copper Center, Mentasta Lake,

Chitina, and Chistochina, totaling 1,172 people.

Comments on Original Region-Specific Regulations

Comment: One commenter expressed concern about global warming and how it is changing the timing of birds' departure, which causes problems with having fixed dates in the regulations, specifically on the North Slope.

Service Response: The Service has accommodated concerns about fixed regulatory dates in the Yukon-Kuskokwim Delta region by allowing the Regional Director or his designee to consult with field biologists and the regional Native Representative group to announce different closure dates each year. A similar request could be made for the North Slope during the open proposal period of November 1 through December 15 of each year.

Comment: Two commenters asked that the Service continue using the provisions proposed in 50 CFR 92.31(g)(4) (originally established in 2005) to allow subsistence use of yellow-billed loons inadvertently entangled in subsistence fishing nets on the North Slope.

Yellow-billed loons remain an important part of the Inupiaq culture.

Service Response: We are retaining the yellow-billed loon provision for the North Slope for 2010.

Comment: Two commenters expressed concerns regarding the special brant harvest for the community of Wainwright. The commenter said that the hunt should be extended from 16 days to a full month to allow for variables in weather and brant migration patterns. Another commenter requested that the Service consider the extent to which climate change is already limiting this harvest and attempt to accommodate Wainwright's request to change the special brant season.

Service Response: Proposals to change regional regulations are accepted from November 1 through December 15 of each year. The Service encourages the commenters to submit a proposal, working with their regional representative, to address their concerns during the next open proposal season.

Comment: Three commenters were concerned that the Service has not defined criteria that would trigger emergency regulations (50 CFR 92.32). A definition of what constitutes an "imminent threat" to Steller's eider conservation is not provided, nor is there any indication of the geographic scale to which this imminent threat applies. One commenter added that critical thresholds or imminent threats should be determined in advance

through consultation with the Recovery Team and affected Co-management Council partner organizations. One commenter added that there is no reliable way presented for estimating how small numbers of inadvertently shot eiders would affect the sustainability of the listed population.

Service Response: The Service has intentionally avoided identifying specific thresholds for management actions, including possible closure of the hunt, in order to preserve flexibility for decision makers. Although the number of Steller's eiders known to be taken is one indication of the actual threat, other information will be used to help assess the threat and determine whether further management actions are warranted. Information on the proportion of the hunters checked; degree of cooperation with conservation measures by the hunting community as a whole, circumstances surrounding the birds being shot; breeding status of the species; and the individuals taken, date of take, and other factors may all contribute to the assessment of the situation and identification of appropriate measures in response. We believe identifying specific thresholds would compromise the desire to balance the dual objectives of supporting the hunt while adequately providing for the conservation of Steller's eiders.

What Is Different in the Region-Specific Regulations for 2010?

Comment: One commenter stated that the final rule should note that North Coastal Zone regulations did not originate from the Co-management Council nor were they endorsed by the Co-management Council.

Service Response: The North Slope Borough requested that the regulations go back to the published regulations for the 2008 season, eliminating the three Steller's eider regulations instituted for the 2009 season. The Co-management Council recommended that we revert back to the 2008 regulations because the MOU between the Service and the North Slope partners was only enacted for 2009, and did not address what to do for the 2010 subsistence season.

Comment: Three commenters requested that we remove the regulations added to protect Steller's eiders for the North Slope in 2009. The commenter explained that Steller's eiders are not a targeted species. The commenter added a recommendation to remove the shooting hours and any other provision that is not a customary and traditional practice. Another commenter added a concern that the proposed regulations may not be based on the best science, do not adequately

consider the health and customs of the Inupiat people, and may increase (rather than reduce) the mortality rates of threatened eider species.

Service Response: The Service has dual goals and responsibilities of authorizing a subsistence harvest while protecting migratory birds and threatened species. Although these goals were and continue to be challenging, they are not irreconcilable with sufficient recognition of the need to protect threatened species, measures to remedy documented threats, and commitment from the subsistence community and other conservation partners to work together toward these dual goals. With these dual goals in mind, the Service Regulations Committee decided to continue the 2009 provisions that were designed to help protect Steller's eiders during their summer presence on the North Slope.

Comment: One commenter challenged that there is little scientific information on which the proposed regulations are based. Little is known regarding the migratory route, winter habitat, and nesting range of Steller's eiders, such that it is difficult to assess their actual population status. As FWS stated during the January 12, 2010, hearing, the recovery goal in terms of an ideal population number for Steller's eiders has yet to be set. The regulations proposed for four villages on the North Slope differ significantly from those proposed for the rest of Alaska. Without science to justify this difference, the regulations appear arbitrary.

Service Response: The Service's Migratory Bird Division has conducted aerial surveys of the Arctic Coastal Plain annually since 1993 to monitor Steller's and spectacled eider populations. These surveys, in addition to aerial surveys by Alaska Biological Research, Inc. and ground searches by Service personnel near Barrow, provide an index of population size and nesting range on the North Slope. Furthermore, telemetry data from Steller's eider fitted with transmitters in Barrow in 2000 and 2001 revealed migration corridors, molting areas, and movements between wintering areas, which are also surveyed aurally each spring by Service personnel. Given the best available scientific information, the nesting range and migratory route of Alaska breeding Steller's eider support the position that listed Steller's eiders are vulnerable to harvest by subsistence hunters at Point Hope, Point Lay, Wainwright, and Barrow.

Comment: One commenter said that it is difficult to understand why the North Slope villages are subject to hunting hours, while Kivalina, just 72 miles

south of Point Hope, is not. The commenter added that at the January 12, 2010, hearing, the Service explained that it assumed that once the migratory birds move farther south, they mingle with the Russian population. What study has the Service done showing that the American and Russian populations mingle in the 72 miles between Point Hope and Kivalina?

Service Response: The Service is implementing regulations to protect the North American breeding population of Steller's eiders. The mixing of North American and Russian/Siberian-breeding birds likely changes in latitude and longitude as seasonal weather and land and sea conditions change each year. We do not know exactly where this will occur in 2010, as no definitive biological information on mixing rates and locations exists at this time. To obtain that information with current biological investigative techniques would require handling a significant percentage of the fewer than 600 estimated North American breeding birds, which in our estimation could negatively impact the population and delay recovery. In balancing our dual goals of recovery while providing hunting opportunities for the other species that are open to harvest, we are attempting to minimize the impact of the regulations to those areas in which we are confident the majority of Steller's eiders encountered are North American breeding birds. We believe the Steller's eiders around the four affected villages are comprised of North American breeding birds, and therefore we are applying and limiting the regulations specific to Steller's eider conservation to those areas.

Comment: Two commenters oppose the North Slope regulation that requires hunters to present any birds taken upon request by a Service law enforcement officer. One commenter said they thought this activity should require a search warrant. Another commenter opined that this regulation has caused some hunters to reduce their activity because of perceived intrusion.

Service Response: Our ability to monitor and verify the ongoing harvest is an important component of the conservation strategy that we developed in 2009 to enable us to issue the annual regulations to open the subsistence harvest. This requirement enables our officers to effectively verify harvest composition while contacting hunters in the field.

Comment: One commenter stated 50 CFR 92.31(g)(5)(ii) would prohibit hunters (and even non-Service biologists) from touching Steller's eiders (whether dead or injured) under any

circumstances. The commenter further pointed out that aside from contravening Inupiaq culture, this rule is detrimental to the Service's ability to monitor and investigate eider deaths.

Service Response: The Service encourages those that find a dead Steller's or Spectacled eider to immediately report the finding to either Federal or State law enforcement. This regulation does not prohibit the finder from covering the carcass to protect it from scavengers, mark the location, or rescue an injured eider.

Comment: Ten commenters specifically opposed the prohibition against hunting after sunset. One commenter said that brant fly lower after sunset and are then easier for people in Wainwright to shoot. Another commenter said that during the day it is harder to hunt and in the evenings it is cooler, and that ducks fly more in the cooler hours. Another commenter explained that shooting hours are not customary and traditional and suggested that the Service look into traditional knowledge relating to weather conditions and flight patterns before imposing hunting hours. Two commenters also questioned the science behind justifying the shooting hours restrictions.

Service Response: The Service is always receptive to the use of traditional and ecological knowledge in addressing environmental issues, and welcomes any local input that would aid in finding a solution for Steller's eiders being mistakenly shot. We designed the shooting hours restriction to eliminate hunting under poor visibility, to improve species' identification, and to reduce the probability of mistakenly shooting and crippling Steller's eiders. The Service believes that bird identification prior to shooting is key to preventing protected species from being accidentally taken during the harvest.

The determination of shooting hours for the individual communities used data provided by the Naval Meteorology and Oceanography Command (NMOC). Tables illustrating civil twilight times by date and location were used to determine the dates when shooting hour restrictions would begin in August. These restrictions were initiated on the dates when periods of "complete darkness" begin to occur. For consistency in managing bird hunting, the beginning and ending times of shooting hours in these subsistence regulations parallel those found in 50 CFR 20.102, which applies for all migratory bird hunting on the North Slope after September 1st of each year. These times are based on NMOC tables for sunrise and sunset. The Service

acknowledges that weather conditions also add a degree of variability in light conditions for shooting, but did not want to address this in the spirit of keeping the regulation as simple as possible.

Comment: One commenter brought up the 5-mile boundary used in delineating the North Coastal Zone. The commenter thought that it meant no hunting within the zone and complained about that.

Service Response: The 5-mile boundary for the North Coastal Zone applies only to the three regulations added in 2009, including presentation of birds upon request; possession prohibition of any illegally taken bird; and daylight-related shooting hours. Migratory bird hunting is not otherwise restricted within that 5-mile zone.

Comment: One commenter opined that targeting the North Slope with the special 2009 eider regulations was prejudiced, since those regulations were not equally applied throughout the birds' flyway range.

Service Response: We do consider and review the regulations Statewide regarding species protected under the Endangered Species Act, and all other federally authorized or funded activities. In the case of the Steller's eider, the regulations apply during the subsistence harvest, when the listed population of Steller's eiders are migrating and breeding on the North Slope.

Comment: One commenter explained that they did not like how Steller's eiders were shot in Barrow in 2008, but that the outlying communities of Point Lay, Wainwright, and Point Hope should not have been punished with additional regulations for what happened in Barrow.

Service Response: We have limited the Steller's eider specific regulations to the villages in the geographic area used by migrating, and possibly nesting, Alaska-breeding Steller's eiders (the listed population). Although approximately 60% of the listed population is thought to nest within 60 kilometers of Barrow, the four coastal villages are included because the listed population migrates past all those villages twice during the subsistence harvest. We would like to know more about the actual risk to listed eiders from shooting in the villages of Point Lay, Point Hope, and Wainwright and would welcome collection of village-specific subsistence harvest information to assist in setting future regulations.

Statutory Authority

We derive our authority to issue these regulations from the Migratory Bird Treaty Act of 1918, 16 U.S.C. 712(1),

which authorizes the Secretary of the Interior, in accordance with the treaties with Canada, Mexico, Japan, and Russia, to "issue such regulations as may be necessary to assure that the taking of migratory birds and the collection of their eggs, by the indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential needs, as determined by the Secretary of the Interior, during seasons established so as to provide for the preservation and maintenance of stocks of migratory birds."

Required Determinations

Regulatory Planning and Review (Executive Order 12866)

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of \$100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial regulatory flexibility analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. The rule legalizes a pre-existing subsistence activity, and the resources harvested will be consumed by the harvesters or persons within their local community.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Will not have an annual effect on the economy of \$100 million or more. It will legalize and regulate a traditional subsistence activity. It will not result in a substantial increase in subsistence harvest or a significant change in

harvesting patterns. The commodities being regulated under this rule are migratory birds. This rule deals with legalizing the subsistence harvest of migratory birds and, as such, does not involve commodities traded in the marketplace. A small economic benefit from this rule derives from the sale of equipment and ammunition to carry out subsistence hunting. Most, if not all, businesses that sell hunting equipment in rural Alaska would qualify as small businesses. We have no reason to believe that this rule will lead to a disproportionate distribution of benefits.

(b) Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. This rule does not deal with traded commodities and, therefore, does not have an impact on prices for consumers.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rule deals with the harvesting of wildlife for personal consumption. It does not regulate the marketplace in any way to generate effects on the economy or the ability of businesses to compete.

Unfunded Mandates Reform Act

We have determined and certified under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) that this rule will not impose a cost of \$100 million or more in any given year on local, State, or tribal governments or private entities. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act is not required. Participation on regional management bodies and the Co-management Council will require travel expenses for some Alaska Native organizations and local governments. In addition, they will assume some expenses related to coordinating involvement of village councils in the regulatory process. Total coordination and travel expenses for all Alaska Native organizations are estimated to be less than \$300,000 per year. In the Notice of Decision (65 FR 16405; March 28, 2000), we identified 12 partner organizations (Alaska Native nonprofits and local governments) to administer the regional programs. The Alaska Department of Fish and Game will also incur expenses for travel to Co-management Council and regional management body meetings. In

addition, the State of Alaska will be required to provide technical staff support to each of the regional management bodies and to the Co-management Council. Expenses for the State's involvement may exceed \$100,000 per year, but should not exceed \$150,000 per year. When funding permits, we make annual grant agreements available to the partner organizations and the Alaska Department of Fish and Game to help offset their expenses.

Takings (Executive Order 12630)

Under the criteria in Executive Order 12630, this rule does not have significant takings implications. This rule is not specific to particular land ownership, but applies to the harvesting of migratory bird resources throughout Alaska. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. We discuss effects of this rule on the State of Alaska in the Unfunded Mandates Reform Act section above. We worked with the State of Alaska to develop these regulations. Therefore, a Federalism Assessment is not required.

Civil Justice Reform (Executive Order 12988)

The Department, in promulgating this rule, has determined that it will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Government-to-Government Relations With Native American Tribal Governments

Because eligibility to hunt under these regulations is not limited to tribal members, but rather extends to all indigenous inhabitants of the subsistence harvest areas, we are not required to engage in formal consultation with tribes. However, in keeping with the spirit of the President's memorandum of April 29, 1994, "Government-to-Government Relations With Native American Tribal Governments" (59 FR 22951), and Executive Order 13175 (65 FR 67249; November 6, 2000), concerning consultation and coordination with Indian Tribal Governments, we conducted meetings with the affected tribes and tribal nonprofit organizations to discuss the changes in the regulations and determine possible effects on tribes or trust resources, and have determined

that there are no significant effects. The rule will legally recognize the subsistence harvest of migratory birds and their eggs for indigenous inhabitants including tribal members. In 1998, we began a public involvement process to determine how to structure management bodies in order to provide the most effective and efficient involvement of subsistence users. We began by publishing in the **Federal Register** stating that we intended to establish management bodies to implement the spring and summer subsistence harvest (63 FR 49707, September 17, 1998). We held meetings with the Alaska Department of Fish and Game and the Native Migratory Bird Working Group to provide information regarding the amended treaties and to listen to the needs of subsistence users. The Native Migratory Bird Working Group was a consortium of Alaska Natives formed by the Rural Alaska Community Action Program to represent Alaska Native subsistence hunters of migratory birds during the treaty negotiations. We held forums in Nome, Kotzebue, Fort Yukon, Allakaket, Naknek, Bethel, Dillingham, Barrow, and Copper Center. We led additional briefings and discussions at the annual meeting of the Association of Village Council Presidents in Hooper Bay and for the Central Council of Tlingit & Haida Indian Tribes in Juneau.

On March 28, 2000, we published in the **Federal Register** (65 FR 16405) the Notice of Decision entitled, "Establishment of Management Bodies in Alaska To Develop Recommendations Related to the Spring/Summer Subsistence Harvest of Migratory Birds." This notice described the way in which management bodies would be established and organized. Based on the wide range of views expressed on the options document, the decision incorporated key aspects of two of the modules. The decision established one statewide management body consisting of 1 Federal member, 1 State member, and 7–12 Alaska Native members, with all components serving as equals.

Paperwork Reduction Act

This rule has been examined under the Paperwork Reduction Act of 1995 and does not contain any new collections of information that require Office of Management and Budget approval. OMB has approved our collection of information associated with the voluntary annual household surveys used to determine levels of subsistence take. The OMB control number is 1018–0124, which expires March 31, 2010. An agency may not conduct or sponsor and a person is not

required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act Consideration

The annual regulations and options were considered in the environmental assessment, "Managing Migratory Bird Subsistence Hunting in Alaska: Hunting Regulations for the 2010 Spring/Summer Harvest," October 9, 2009. Copies are available from the person listed under **FOR FURTHER INFORMATION CONTACT** or at <http://www.regulations.gov>.

Energy Supply, Distribution, or Use (Executive Order 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This is not a significant regulatory action under this Executive Order; it would allow only for traditional subsistence harvest and would improve conservation of migratory birds by allowing effective regulation of this harvest. Further, this rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action under Executive Order 13211, and no Statement of Energy Effects is required.

Administrative Procedure Act

The Administrative Procedure Act (5 U.S.C. 553(d)) requires an agency to publish a final rule in most cases at least 30 days before the rule is to become effective. The Act also allows publication less than 30 days before the effective date if the agency finds that there is a good cause for doing so. (5 U.S.C. 553(d)(3)) The Department of the Interior finds that good cause exists for making this rule effective upon publication because:

- This rule is necessary to allow continuation of customary and traditional subsistence uses of migratory birds in Alaska; and
- Delaying publication of this rule would impose hardship upon those who harvest migratory birds for subsistence use.

List of Subjects in 50 CFR Part 92

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Subsistence, Treaties, Wildlife.

■ For the reasons set out in the preamble, we amend title 50, chapter I, subchapter G, of the Code of Federal Regulations as follows:

PART 92—MIGRATORY BIRD SUBSISTENCE HARVEST IN ALASKA

■ 1. The authority citation for part 92 continues to read as follows:

Authority: 16 U.S.C. 703–712.

Subpart D—Annual Regulations Governing Subsistence Harvest

■ 2. In subpart D, add § 92.31 to read as follows:

§ 92.31 Region-specific regulations.

The 2010 season dates for the eligible subsistence harvest areas are as follows:

- (a) *Aleutian/Pribilof Islands Region*.
 - (1) Northern Unit (Pribilof Islands):
 - (i) Season: April 2–June 30.
 - (ii) Closure: July 1–August 31.
 - (2) Central Unit (Aleut Region's eastern boundary on the Alaska Peninsula westward to and including Unalaska Island):
 - (i) Season: April 2–June 15 and July 16–August 31.
 - (ii) Closure: June 16–July 15.
 - (iii) Special Black Brant Season Closure: August 16–August 31, only in Izembek and Moffet lagoons.
 - (iv) Special Tundra Swan Closure: All hunting and egg gathering closed in units 9(D) and 10.
 - (3) Western Unit (Umnak Island west to and including Attu Island):
 - (i) Season: April 2–July 15 and August 16–August 31.
 - (ii) Closure: July 16–August 15.
 - (b) *Yukon/Kuskokwim Delta Region*.
 - (1) Season: April 2–August 31.
 - (2) Closure: 30-day closure dates to be announced by the Service's Alaska Regional Director or his designee, after consultation with local subsistence users, field biologists, and the Association of Village Council President's Waterfowl Conservation Committee. This 30-day period will occur between June 1 and August 15 of each year. A press release announcing the actual closure dates will be forwarded to regional newspapers and radio and television stations and posted in village post offices and stores.
 - (3) Special Black Brant and Cackling Goose Season Hunting Closure: From the period when egg laying begins until young birds are fledged. Closure dates to be announced by the Service's Alaska Regional Director or his designee, after consultation with field biologists and the Association of Village Council President's Waterfowl Conservation Committee. A press release announcing the actual closure dates will be forwarded to regional newspapers and radio and television stations and posted in village post offices and stores.
 - (c) *Bristol Bay Region*.

(1) Season: April 2–June 14 and July 16–August 31 (general season); April 2–July 15 for seabird egg gathering only.

(2) Closure: June 15–July 15 (general season); July 16–August 31 (seabird egg gathering).

(d) *Bering Strait/Norton Sound Region*.

(1) Stebbins/St. Michael Area (Point Romanof to Canal Point):

(i) Season: April 15–June 14 and July 16–August 31.

(ii) Closure: June 15–July 15.

(2) Remainder of the region:

(i) Season: April 2–June 14 and July 16–August 31 for waterfowl; April 2–July 19 and August 21–August 31 for all other birds.

(ii) Closure: June 15–July 15 for waterfowl; July 20–August 20 for all other birds.

(e) *Kodiak Archipelago Region*, except for the Kodiak Island roaded area, which is closed to the harvesting of migratory birds and their eggs. The closed area consists of all lands and waters (including exposed tidelands) east of a line extending from Crag Point in the north to the west end of Saltery Cove in the south and all lands and water south of a line extending from Termination Point along the north side of Cascade Lake extending to Anton Larson Bay. Waters adjacent to the closed area are closed to harvest within 500 feet from the water's edge. The offshore islands are open to harvest.

(1) Season: April 2–June 30 and July 31–August 31 for seabirds; April 2–June 20 and July 22–August 31 for all other birds.

(2) Closure: July 1–July 30 for seabirds; June 21–July 21 for all other birds.

(f) *Northwest Arctic Region*.

(1) Season: April 2–June 9 and August 15–August 31 (hunting in general); waterfowl egg gathering May 20–June 9 only; seabird egg gathering May 20–July 12 only; hunting molting/non-nesting waterfowl July 1–July 31 only.

(2) Closure: June 10–August 14, except for the taking of seabird eggs and molting/non-nesting waterfowl as provided in paragraph (f)(1) of this section.

(g) *North Slope Region*.

(1) Southern Unit (Southwestern North Slope regional boundary east to Peard Bay, everything west of the longitude line 158°30' W and south of the latitude line 70°45' N to the west bank of the Ikpikpuk River, and everything south of the latitude line 69°45' N between the west bank of the Ikpikpuk River to the east bank of Sagavinirktok River):

(i) Season: April 2–June 29 and July 30–August 31 for seabirds; April 2–June

19 and July 20–August 31 for all other birds.

(ii) Closure: June 30–July 29 for seabirds; June 20–July 19 for all other birds.

(iii) Special Black Brant Hunting Opening: From June 20–July 5. The open area would consist of the coastline, from mean high water line outward to include open water, from Nokotlek Point east to longitude line 158°30' W. This includes Peard Bay, Kugrua Bay, and Wainwright Inlet, but not the Kuk and Kugrua river drainages.

(2) Northern Unit (At Peard Bay, everything east of the longitude line 158°30' W and north of the latitude line 70°45' N to west bank of the Ikpikpuk River, and everything north of the latitude line 69°45' N between the west bank of the Ikpikpuk River to the east bank of Sagavinirktok River):

(i) Season: April 6–June 6 and July 7–August 31 for king and common eiders; April 2–June 15 and July 16–August 31 for all other birds.

(ii) Closure: June 7–July 6 for king and common eiders; June 16–July 15 for all other birds.

(3) Eastern Unit (East of eastern bank of the Sagavanirktok River):

(i) Season: April 2–June 19 and July 20–August 31.

(ii) Closure: June 20–July 19.

(4) All Units: Yellow-billed loons.

Annually, up to 20 yellow-billed loons total for the region may be inadvertently entangled in subsistence fishing nets in the North Slope Region and kept for subsistence use. Individuals must report each yellow-billed loon inadvertently entangled while subsistence gill net fishing to the North Slope Borough Department of Wildlife Management by the end of the season.

(5) North Coastal Zone (Cape Thompson north to Point Hope and east along the Arctic Ocean coastline around Point Barrow to Ross Point, including Iko Bay, and 5 miles inland).

(i) Migratory bird hunting is permitted from one-half hour before sunrise until sunset, during August.

(ii) No person may at any time, by any means, or in any manner, possess or have in custody any migratory bird or part thereof, taken in violation of subpart C and D of this part.

(iii) Upon request from a Service law enforcement officer, hunters taking, attempting to take, or transporting migratory birds taken during the subsistence harvest season must present them to the officer for species identification.

(h) *Interior Region*.

(1) Season: April 2–June 14 and July 16–August 31; egg gathering May 1–June 14 only.

(2) Closure: June 15–July 15.

(i) *Upper Copper River Region* (Harvest Area: Units 11 and 13) (Eligible communities: Gulkana, Chitina, Tazlina, Copper Center, Gakona, Mentasta Lake, Chistochina and Cantwell).

(1) Season: April 15–May 26 and June 27–August 31.

(2) Closure: May 27–June 26.

(3) The Copper River Basin communities listed above also documented traditional use harvesting birds in Unit 12, making them eligible to hunt in this unit using the seasons specified in paragraph (h) of this section.

(j) *Gulf of Alaska Region*.

(1) Prince William Sound Area (Harvest area: Unit 6 [D]), (Eligible Chugach communities: Chenega Bay, Tatitlek).

(i) Season: April 2–May 31 and July 1–August 31.

(ii) Closure: June 1–30.

(2) Kachemak Bay Area (Harvest area: Unit 15[C] South of a line connecting the tip of Homer Spit to the mouth of Fox River) (Eligible Chugach Communities: Port Graham, Nanwalek).

(i) Season: April 2–May 31 and July 1–August 31.

(ii) Closure: June 1–30.

(k) *Cook Inlet* (Harvest area: Portions of Unit 16[B] as specified below) (Eligible communities: Tyonek only).

(1) Season: April 2–May 31—That portion of Unit 16(B) south of the

Skwentna River and west of the Yentna River, and August 1–31—That portion of Unit 16(B) south of the Beluga River, Beluga Lake, and the Triumvirate Glacier.

(2) Closure: June 1–July 31.

(l) *Southeast Alaska*.

(1) Community of Hoonah (Harvest area: National Forest lands in Icy Strait and Cross Sound, including Middle Pass Rock near the Inian Islands, Table Rock in Cross Sound, and other traditional locations on the coast of Yakobi Island. The land and waters of Glacier Bay National Park remain closed to all subsistence harvesting (50 CFR 100.3(a)).

(i) Season: Glaucous-winged gull egg gathering only: May 15–June 30.

(ii) Closure: July 1–August 31.

(2) Communities of Craig and Hydaburg (Harvest area: Small islands and adjacent shoreline of western Prince of Wales Island from Point Baker to Cape Chacon, but also including Coronation and Warren islands).

(i) Season: Glaucous-winged gull egg gathering only: May 15–June 30.

(ii) Closure: July 1–August 31.

(3) Community of Yakutat (Harvest area: Icy Bay (Icy Cape to Point Riou), and coastal lands and islands bordering the Gulf of Alaska from Point Manby southeast to Dry Bay).

(i) Season: Glaucous-winged gull egg gathering: May 15–June 30.

(ii) Closure: July 1–August 31.

■ 3. In subpart D, add § 92.32 to read as follows:

§ 92.32 Emergency regulations to protect Steller's eiders.

Upon finding that continuation of these subsistence regulations would pose an imminent threat to the conservation of threatened Steller's eiders (*Polysticta stelleri*), the U.S. Fish and Wildlife Service Alaska Regional Director, in consultation with the Co-management Council, will immediately under § 92.21 take action as is necessary to prevent further take. Regulation changes implemented could range from a temporary closure of duck hunting in a small geographic area to large-scale regional or State-wide long-term closures of all subsistence migratory bird hunting. These closures or temporary suspensions will remain in effect until the Regional Director, in consultation with the Co-management Council, determines that the potential for additional Steller's eiders to be taken no longer exists.

Dated: April 1, 2010.

Thomas L. Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010-8382 Filed 4-12-10; 8:45 am]

BILLING CODE 4310-55-P

Proposed Rules

Federal Register

Vol. 75, No. 70

Tuesday, April 13, 2010

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2007-29176; Directorate Identifier 2007-NE-38-AD]

RIN 2120-AA64

Airworthiness Directives; McCauley Propeller Systems Model 4HFR34C653/L106FA Propellers

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

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

SUMMARY: This supplemental NPRM revises an earlier proposed airworthiness directive (AD), for McCauley Propeller Systems model 4HFR34C653/L106FA propellers. That proposed AD would have required a onetime fluorescent penetrant inspection (FPI) and eddy current inspection (ECI) of the propeller hub for cracks. That proposed AD resulted from reports of 3 hubs found cracked during propeller overhaul. This supplemental NPRM would require the same inspections. This supplemental NPRM results from reports of 7 additional hubs found cracked during propeller overhaul, totaling 10 cracked hubs. We are proposing this supplemental AD to prevent failure of the propeller hub, which could cause blade separation, damage to the airplane, and loss of control of the airplane.

DATES: We must receive any comments on this proposed AD by June 14, 2010.

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

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the online instructions for sending your comments electronically.
- **Mail:** Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building

Ground Floor, Room W12-140, Washington, DC 20590-0001.

- **Hand Delivery:** Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- **Fax:** (202) 493-2251.

You can get the service information identified in this proposed AD from McCauley Propeller Systems, P.O. Box 7704, Wichita, KS 67277-7704; phone (800) 621-7767.

FOR FURTHER INFORMATION CONTACT: Jeff Janusz, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, Small Airplane Directorate, 1801 Airport Road, Wichita, KS 67209; e-mail: jeff.janusz@faa.gov; phone: (316) 946-4148; fax: (316) 946-4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2007-29176; Directorate Identifier 2007-NE-38-AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78).

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday,

except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (phone (800) 647-5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Discussion

On September 24, 2007, we issued a proposal to amend part 39 of the Code of Federal Regulations (14 CFR part 39) to add an AD, for McCauley Propeller Systems model 4HFR34C653/L106FA propellers. The proposed AD published as an NPRM in the **Federal Register** on September 28, 2007 (72 FR 55120). That NPRM proposed to require a onetime FPI and ECI of the propeller hub for cracks. That NPRM resulted from reports of 3 hubs found cracked during propeller overhaul.

Since we issued that NPRM, we received reports of 7 additional hubs found cracked during propeller overhaul. That brings the total of hubs that have had cracks located in the hub socket region, in the area of the outer bearing race press-fit surfaces, to 10. To date, the cause of these cracks appears to be fretting damage between the outer bearing race and the hub surface. This condition, if not corrected, could result in failure of the propeller hub, which could cause blade separation, damage to the airplane, and loss of control of the airplane.

Also since we issued that NPRM, we eliminated the reporting requirement to McCauley Propeller Systems.

Comments

We provided the public the opportunity to participate in the development of that proposed AD. We have considered the comment received on the original NPRM.

Proposed AD Should Also Set a Time Limit

One commenter, a private citizen, recommends that the proposed AD also set a time limit on when inspections should take place. The commenter recommends an hour limit, and a year-old limit. We infer that the commenter is asking for a calendar time limit as well as the proposed operating hour time-since-new limit, to ensure the

inspection occurs in a more timely manner.

We do not agree. The hub failure mechanism appears to be fretting damage which results in crack formation and subsequent growth. Propellers that are not operating do not accumulate fretting damage. Therefore, we cannot justify the use of calendar time. We did not change the proposed AD.

Relevant Service Information

We have reviewed and approved the technical contents of McCauley Propeller Systems Alert Service Bulletin (ASB) No. ASB254, dated August 20, 2007. That ASB describes procedures for a onetime FPI and ECI of propeller hubs for cracks.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require a onetime FPI and ECI of propeller hubs for cracks. The proposed AD would require you to use the service information described previously to perform these actions.

Interim Action

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

Costs of Compliance

We estimate that this supplemental proposed AD would affect 128 propellers installed on airplanes of U.S. registry. We also estimate that it would take about 41.5 work-hours per propeller to perform the proposed actions, and that the average labor rate is \$85 per work-hour. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be \$451,520.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures

the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed AD:

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McCauley Propeller Systems: Docket No. FAA-2007-29176; Directorate Identifier 2007-NE-38-AD.

Comments Due Date

- (a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by June 14, 2010.

Affected ADs

- (b) None.

Applicability

(c) This AD applies to McCauley Propeller Systems model 4HFR34C653/L106FA propellers.

Unsafe Condition

(d) This AD results from reports of 10 hubs found cracked during propeller overhaul. We are issuing this AD to prevent failure of the propeller hub, which could cause blade separation, damage to the airplane, and loss of control of the airplane.

Compliance

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

(f) For propeller hubs with 6,000 or more operating hours time-since-new (TSN) on the effective date of this AD, perform the procedures in paragraphs (h) through (k) of this AD within 100 operating hours time-in-service (TIS) after the effective date of this AD.

(g) For propeller hubs with fewer than 6,000 operating hours TSN on the effective date of this AD, perform the procedures in paragraphs (h) through (k) of this AD before the propeller hub reaches 6,100 operating hours TSN.

Onetime Propeller Hub Inspection

(h) Remove and disassemble the propeller, and etch the propeller hub, using paragraphs 1.A. through 2.D. of the Accomplishment Instructions of McCauley Propeller Systems Alert Service Bulletin No. ASB254, dated August 20, 2007.

(i) Perform a onetime fluorescent penetrant inspection (FPI) of the propeller hub, using paragraphs 3.A. through 3.G. of the Accomplishment Instructions of McCauley Propeller Systems Alert Service Bulletin No. ASB254, dated August 20, 2007.

(j) For hubs that pass the FPI, perform a onetime eddy current inspection of the propeller hub, using paragraphs 4.A. through 4.F. of the Accomplishment Instructions of McCauley Propeller Systems Alert Service Bulletin No. ASB254, dated August 20, 2007.

(k) Remove cracked hubs from service and any other propeller parts found cracked.

Previous Credit

(l) If you performed the onetime inspection of the propeller hub using McCauley Propeller Systems Service Bulletin No. SB238A, or Alert Service Bulletin ASB254, both dated August 20, 2007, before the effective date of this AD, you have satisfied the inspection requirements of this AD.

Interim Action

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

Alternative Methods of Compliance

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

Special Flight Permits

(o) Under 14 CFR part 39.23, we are limiting the special flight permits for this AD as follows:

- (1) The propeller must have no signs of external oil leakage from the hub; and
- (2) The propeller has no current reports of abnormal operation or vibration.

Related Information

(p) McCauley Propeller Systems, Service Bulletin No. ASB254, dated August 20, 2007, pertains to the subject of this AD. Contact McCauley Propeller Systems, P.O. Box 7704, Wichita, KS 67277-7704; phone (800) 621-7767, for a copy of this service information.

(q) Contact Jeff Janusz, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, Small Airplane Directorate, 1801 Airport Road, Wichita, KS 67209; e-mail: jeff.janusz@faa.gov; phone: (316) 946-4148; fax: (316) 946-4107, for more information about this AD.

Issued in Burlington, Massachusetts, on April 7, 2010.

Peter A. White,

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

[FR Doc. 2010-8380 Filed 4-12-10; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2009-0931]

RIN 1625-AA11

Regulated Navigation Area; Galveston Channel, TX

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a regulated navigation area across the entire width of the Galveston Channel in the vicinity of Sector Field Office (SFO) Galveston. This regulated navigation area would require vessels to navigate at no wake speeds within this area. Vessel transits at greater than minimum safe speed and causing wake in this area would be prohibited unless specifically authorized by the Captain of the Port Houston-Galveston or a designated representative. This regulated navigation area is needed to protect the Coast Guard Sector Field Office (SFO) Galveston vessels, break wall, and piers from further damage associated with excessive wake and to protect ongoing base construction.

DATES: Comments and related material must reach the Coast Guard on or before May 13, 2010.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG-2009-0931 using any one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>.
- **Fax:** 202-493-2251.
- **Mail:** Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

• **Hand delivery:** Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT:

Lieutenant junior grade Margaret Brown, Coast Guard Sector Houston-Galveston, telephone (713) 678-9001, or e-mail margaret.a.brown@uscg.mil if you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2009-0931), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via www.regulations.gov, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by

the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG-2009-0931" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2009-0931" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please

explain why you believe a public meeting 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 Coast Guard proposes to establish a regulated navigation area in Galveston Channel to protect the surrounding areas from the harmful effects of excessive wake. This regulated navigation area would require vessels to navigate at minimum safe speeds which produce no wake within the area of the Coast Guard SFO Galveston, Texas. Vessel transits at greater than minimum safe speed and causing wake in this area would be prohibited unless specifically authorized by the Captain of the Port Houston-Galveston or a designated representative. This regulated navigation area is needed to protect the Coast Guard vessels, break wall, and piers from further damage associated with excessive wake and to protect ongoing base construction.

Discussion of Proposed Rule

The Coast Guard proposes to establish a regulated navigation area in Galveston Channel within the area from Latitude 29°20'19" N, Longitude 094°46'36" W, east to Latitude 29°20'06" N, Longitude 094°46'15" W, south to Latitude 29°19'4" N, Longitude 094°46'27" W, west to Latitude 29°19'51" N, Longitude 094°46'45" W, and north to Latitude 29°20'19" N, Longitude 094°46'36" W. Vessel transits at greater than minimum safe speed in this area would be prohibited unless specifically authorized by the Captain of the Port Houston-Galveston (COTP) or a designated representative.

Vessels can contact the COTP through Vessel Traffic Service Houston/Galveston on VHF Channel 5A, by telephone at (713) 671-5103, or by facsimile at (713) 671-5159.

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

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. We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. The basis of this finding is that the proposed regulated navigation area covers a small area and vessels are allowed to travel through it at a minimum safe speed so as not to delay vessel traffic in and around the Port of Galveston.

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 not have a significant economic impact on a substantial number of small entities for the following reason: The extent of the proposed regulated navigation area is limited in size and would not create undue delay to vessel traffic in and around the Port of Galveston.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed 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 Lieutenant junior grade Margaret Brown at (713) 678–9001. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

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 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 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.

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. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule would not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 0023.1 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves establishing a regulated navigation area in Galveston Channel. We seek any comments or information that may lead to the

discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add new § 165.827 to read as follows:

§ 165.827 Regulated Navigation Area; Galveston Channel, Texas.

(a) *Location.* The following area is a regulated navigation area: All waters of the Galveston Channel within the area from Latitude 29°20'19" N, Longitude 094°46'36" W, east to Latitude 29°20'06" N, Longitude 094°46'15" W, south to Latitude 29°19'47" N, Longitude 094°46'27" W, west to Latitude 29°19'51" N, Longitude 094°46'45" W, and north to Latitude 29°20'19" N, Longitude 094°46'36" W.

(b) *Regulations.* (1) Vessels navigating this area must do so at a minimum safe speed so as to not cause any wake.

(2) Vessels may proceed at greater than a minimum safe speed with permission of the Captain of the Port Houston-Galveston or a designated representative.

(3) To request permission as required by these regulations, contact the Sector Houston-Galveston Command Center by telephone at (713) 671–5113.

Dated: March 24, 2010.

Mary E. Landry,

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

[FR Doc. 2010–8372 Filed 4–12–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0153]

RIN 1625–AA00

Safety Zone; Ocean City Air Show 2010, Atlantic Ocean, Ocean City, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a temporary safety zone on the Atlantic Ocean in the vicinity of Ocean City, Maryland to support the Ocean City Air Show. This action is intended to restrict vessel traffic movement on the Atlantic Ocean to protect mariners and the public from the hazards associated with air show events.

DATES: Comments and related material must be received by the Coast Guard on or before May 13, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2010–0153 using any one of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail LT Tiffany Duffy, Chief, Waterways Management Division, Sector Hampton Roads, Coast Guard; telephone 757–668–5580, e-mail Tiffany.A.Duffy@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–0153), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the “submit a comment” box, which will then become highlighted in blue. In the “Document Type” drop down menu select “Proposed Rule” and insert “USCG–2010–0153” in the “Keyword” box. Click “Search” then click on the balloon shape in the “Actions” column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the “read comments” box, which will then

become highlighted in blue. In the “Keyword” box insert “USCG–2010–0153” and click “Search.” Click the “Open Docket Folder” in the “Actions” column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting 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**.

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact LT Tiffany Duffy at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Background and Purpose

On June 4, 5, and 6, 2010 Ocean City, Maryland will host an air show event on the Atlantic Ocean between Talbot Street and 33rd Street in Ocean City, MD. In recent years, there have been unfortunate instances of jets and planes crashing during performances at air shows. Along with the jet or plane crash, there is typically a wide area of scattered debris that also damages property and could cause significant injury or death to mariners observing the air shows. Due to the need to protect mariners and the public transiting the Atlantic Ocean immediately below the air show from hazards associated with the air show, the Coast Guard proposes establishing a temporary safety zone, restricting access to the area for public safety purposes.

Discussion of Proposed Rule

The Coast Guard proposes establishing a temporary safety zone on specified waters of the Atlantic Ocean bound by the following coordinates: 38°–21′–38″ N / 075°–04′–04″ W, 38°–21′–27″ N / 075°–03′–29″ W, 38°–19′–35″ N / 075°–04′–19″ W, 38°–19′–45″ N / 075°–04′–54″ W (NAD 1983), in the vicinity of Ocean City, Maryland. The safety zone forms a box, beginning 500 feet seaward from the shoreline out 2000 feet and extends 6000 feet from Talbot St. to 33rd St. The NE corner, SE corner, NW corner, and SW corner will be marked with buoys in accordance with (IAW) Coast Guard District 5. This safety zone is proposed in the interest of public safety during the Ocean City Air Show and will be enforced daily from 10 a.m. to 4 p.m. on June 4, 5, and 6, 2010. Access to the safety zone will be restricted during the specified date and times. Except for vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the safety zone.

The Coast Guard expects the temporary final rule will be effective less than 30 days after publication in the **Federal Register** because delaying the effective date would be contrary to the public interest due to the need to protect the public from the dangers associated with air shows.

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

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. Although this proposed regulation restricts access to the safety zone, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration; (ii) the zone is of limited size; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

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 intending to transit or anchor on the Atlantic Ocean in the vicinity of Ocean City, MD from 10 a.m. to 4 p.m. on June 4 through June 6, 2010.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) The safety zone will only be in place for a limited duration. (ii) Before the effective period of June 4, 2010 to June 6, 2010, maritime advisories will be issued allowing mariners to adjust their plans accordingly.

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 LT Tiffany Duffy, Chief Waterways Management Division, Sector Hampton Roads, Coast Guard; telephone 757–668–5580, e-mail *Tiffany.A.Duffy@uscg.mil*. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

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 (adjusted for inflation) 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 proposed rule would not cause 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.

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. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. Therefore, this rule is categorically excluded under section 2.B.2. Figure 2–1, paragraph 34(g), of the Instruction and neither an environmental assessment nor an environmental impact statement is required. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves a temporary safety zone to protect the public from

the dangers associated with air show activities. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6 and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05–XXXX to read as follows:

§ 165.T05–XXXX Safety Zone; Ocean City Air Show 2010, Atlantic Ocean, Ocean City, MD.

(a) *Regulated Area.* The following area is a safety zone: specified waters of the Atlantic Ocean bound by the following coordinates: 38°–21′–38″ N / 075°–04′–04″ W, 38°–21′–27″ N / 075°–03′–29″ W, 38°–19′–35″ N / 075°–04′–19″ W, 38°–19′–45″ N / 075°–04′–54″ W (NAD 1983), in the vicinity of Ocean City, Maryland. The safety zone forms a box, beginning 500 feet seaward from the shoreline out 2000 feet and extends 6000 feet from Talbot St. to 33rd St. The NE corner, SE corner, NW corner, and SW corner will be marked with buoys IAW USCG District 5.

(b) *Definition.* For the purposes of this part, Captain of the Port Representative: means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(c) *Regulations.* (1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer

on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads can be reached through the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia at telephone Number (757) 668–5555.

(4) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF–FM marine band radio channel 13 (165.65Mhz) and channel 16 (156.8 Mhz).

(d) *Effective Period.* This regulation will be in effect from 10 a.m. to 4 p.m. on June 4 through June 6, 2010.

Dated: March 17, 2010.

M.S. Ogle,

Captain, U.S. Coast Guard, Captain of the Port, Hampton Roads.

[FR Doc. 2010–8374 Filed 4–12–10; 8:45 am]

BILLING CODE 9110–04–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Parts 1191, 1193, and 1194

[Docket No. 2010–1]

RIN 3014–AA37

Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Telecommunications Act Accessibility Guidelines; Electronic and Information Technology Accessibility Standards

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of hearing.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) will hold a public hearing on its refresh of accessibility criteria for information and communication technologies covered by the Rehabilitation Act (section 508) and the Telecommunications Act (section 255). The hearing will focus on a draft of updated standards and guidelines made available for public comment on March 22. As part of this rulemaking, the Board proposes to supplement its Americans with Disabilities Act Accessibility Guidelines to address access to self-service machines such as point-of-sales machines and ticketing kiosks.

DATES: The hearing will be on May 12, 2010 from 9 a.m. until 12 p.m.

ADDRESSES: The hearing will be held at the Embassy Suites, DC Convention Center, 900 10th Street, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Tim Creagan, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number: 202–272–0016 (voice); 202–272–0082 (TTY). Electronic mail address: creagan@access-board.gov.

SUPPLEMENTARY INFORMATION: On March 22, 2010, the Access Board published an advance notice of proposed rulemaking in the **Federal Register** to begin the process of updating its standards for electronic and information technology covered by section 508 of the Rehabilitation Act Amendments of 1998 and its guidelines for telecommunications equipment covered by Section 255 of the Telecommunications Act of 1996. As part of this rulemaking, the Board is proposing to revise its Americans with Disabilities Act Accessibility Guidelines to address access to self-service machines used for ticketing, check-in or check-out, seat selection, boarding passes, or ordering food in restaurants and cafeterias. 75 FR 13457 (March 22, 2010). The Board has released for public comment a draft of updated standards and guidelines which is available on the Board's Web site (<http://www.access-board.gov/508.htm>).

The Board is responsible for developing and keeping up to date standards for electronic and information technology covered by section 508 of the Rehabilitation Act. Section 508 requires access to electronic and information technology developed, procured, maintained, or used by Federal agencies and departments to the extent that it does not impose an undue burden. The Board's section 508 standards, which were originally published in 2000 and are part of the Federal government's procurement regulations, provide technical and functional performance criteria for technologies covered by the law. Section 508 requires the Board to periodically review and amend the standards to reflect technological advances or changes in electronic and information technology.

The Board is updating its Telecommunications Act Accessibility Guidelines jointly with its refresh of the section 508 standards to harmonize both documents and to facilitate compliance. Section 255 of the Telecommunications Act requires telecommunications equipment and customer premises equipment to be accessible to and usable by individuals with disabilities when it is readily achievable to do so.

The Board is responsible for developing and periodically updating accessibility guidelines for telecommunications equipment and customer premises equipment covered by section 255 in conjunction with the Federal Communications Commission. The Board first issued its guidelines under section 255 in 1998.

The Board is also proposing to amend the Americans with Disabilities Act Accessibility Guidelines (ADAAG) to address access to self-service machines used for ticketing, check-in or check-out, seat selection, boarding passes, or ordering food in restaurants and cafeterias.

The draft standards and guidelines are available for public comment until June 21, 2010. The Board will hold a hearing in Washington, DC that will provide the public an opportunity to comment on the draft rule. This hearing will take place during the Access Board's regularly scheduled Board meeting on May 12, 2010 from 9 a.m. until 12 p.m. at the Embassy Suites, DC Convention Center, 900 10th Street, NW., Washington, DC 20001. The Board previously held a hearing on the draft rule in San Diego, CA on March 25, 2010 in conjunction with the 25th Annual International Technology and Persons with Disabilities Conference.

The hearing location is accessible to individuals with disabilities. Sign language interpreters and real-time captioning will be provided. For the comfort of other participants, persons attending the hearing are requested to refrain from using perfume, cologne, and other fragrances. To pre-register to testify, please contact Kathy Johnson at (202) 272-0041, (202) 272-0082 (TTY), or johnson@access-board.gov.

David M. Capozzi,
Executive Director.

[FR Doc. 2010-8309 Filed 4-12-10; 8:45 am]

BILLING CODE 8150-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2009-0118; FRL-9125-1]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; Alternate Monitoring Requirements for Indianapolis Power and Light—Harding Street Station

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to Indiana's State Implementation Plan alternative monitoring requirements for Indianapolis Power and Light Company (IPL) at its Harding Street Generating Station. On December 31, 2008, Indiana requested approval of alternative monitoring requirements that allow the use of a particulate matter continuous emissions monitoring system in place of a continuous opacity monitor.

DATES: Comments must be received on or before May 13, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2009-0118, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* damico.genevieve@epa.gov.
- *Fax:* (312) 385-5501.
- *Mail:* Genevieve Damico, Acting Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

• *Hand Delivery:* Genevieve Damico, Acting Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6524, rau.matthew@epa.gov.

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse

comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: February 25, 2010.

Walter W. Kovalick Jr.,

Acting Regional Administrator, Region 5.

[FR Doc. 2010-8294 Filed 4-12-10; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R8-ES-2010-0016]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List Thorne's Hairstreak Butterfly as Endangered

Correction

In **Federal Register** document 2010-7547 beginning on page 17062 in the issue of April 5, 2010, make the following correction:

On page 17062, proposed rule document 2010-7547 was inadvertently published in the Rules section of the issue of April 5, 2010, beginning on page 17062. It should have appeared in the Proposed Rules section.

[FR Doc. C1-2010-7547-Filed 4-12-10; 8:45 am]

BILLING CODE 1505-01-D

Notices

Federal Register

Vol. 75, No. 70

Tuesday, April 13, 2010

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

Transfer of Land to the Department of Interior

AGENCY: Forest Service, USDA.

ACTION: Notice of land transfer.

SUMMARY: Public Law 108–190 provides for the transfer of approximately 157 acres of National Forest System lands to the administrative jurisdiction of the National Park Service, to be thereafter permanently incorporated in and administered by the Secretary of the Interior as part of the Montezuma Castle National Monument.

DATES: This notice becomes effective April 13, 2010.

FOR FURTHER INFORMATION CONTACT: Louisa Herrera, National Title Program Manager, (202) 205–1255, Lands and Realty Management.

SUPPLEMENTARY INFORMATION: Section 3 of Public Law 108–190 (117 Stat. 2867), authorized the federal acquisition by the Secretary of Agriculture of approximately 157 acres of land depicted on a map dated May 2002, and entitled “Montezuma Castle Contiguous Lands”. Upon acquisition, section 5(e) of Public Law 108–190 provides that the land “shall be transferred to the administrative jurisdiction of the National Park Service, and shall be thereafter permanently incorporated in, and administered by the Secretary of the Interior as part of, the Montezuma Castle National Monument.” (117 Stat. 2870). The Montezuma Castle Contiguous Lands have been acquired for the United States by the Forest Service by deed dated December 6, 2007, and recorded December 10, 2007, in the land records of Yavapai County at Book 4560, Page 216. The lands are described as follows:

Coconino National Forest

Gila and Salt River Meridian, Yavapai County, Arizona

T.14 N., R. 5 E.

Sec. 9, SW ¼, less and excepting Lot 1, containing 3.75 acres, previously conveyed to the United States of America, National Park Service, by warranty deed dated May 16, 1973, and recorded July 18, 1973, Book 852, Page 179 of official records of Yavapai County, Arizona.

The area described contains 156.25 acres, Yavapai County, Arizona.

As provided by Public Law 108–190, and acting pursuant to the authority delegated to the Chief, Forest Service, at Title 7, Code of Federal Regulations, section 2.60(a)(2), these described lands are hereby transferred to the administrative jurisdiction of the National Park Service to be permanently incorporated in, and administered by the Secretary of the Interior.

Dated: April 2, 2010.

Thomas L. Tidwell,

Chief, Forest Service.

[FR Doc. 2010–8377 Filed 4–12–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit 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 Oceanic and Atmospheric Administration (NOAA).

Title: Processed Products Family of Forms.

OMB Control Number: 0648–0018.

Form Number(s): NOAA 88–13 and 88–13c.

Type of Request: Regular submission.

Number of Respondents: 1,320.

Average Hours Per Response: Annual processors report, 30 minutes; monthly products report, 15 minutes.

Burden Hours: 681.

Needs and Uses: As part of a Fishery Management Plan developed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, the National Oceanic and Atmospheric Administration (NOAA)

annually collects information from seafood and industrial fishing processing plants on the volume and value of their processed fishery products and their monthly employment figures. NOAA also collects monthly information on the production of fish meal and oil. The information gathered is used by NOAA in the economic and social analyses used when proposing and evaluating fishery management actions.

Affected Public: Business or other for-profit organizations.

Frequency: Annually and monthly.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

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, FAX number (202) 395–7285, or David_Rostker@omb.eop.gov.

Dated: April 8, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–8400 Filed 4–12–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

Middle East Public Health Mission; Application Deadline Extended

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (<http://www.ita.doc.gov/>)

doctm/tmcal.html) and other Internet Web sites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. CS Saudi Arabia and CS Qatar will work in conjunction with Global Trade Programs, which will serve as a key facilitator in establishing strong commercial ties to the U.S. companies in the targeted sectors nationwide.

Recruitment for the mission will begin immediately and conclude no later than Friday, April 16, 2010. The U.S. Department of Commerce will review all applications immediately after the deadline. We will inform applicants of selection decisions as soon as possible after Friday 16, 2010. Applications received after the deadline will be considered only if space and scheduling constraints permit.

Contacts

Ms. Jeanne Townsend, Baltimore U.S. Export Assistance Center, Tel: 410-962-4518, Fax: 410-962-4529, E-mail: Jeanne.Townsend@trade.gov.
Ms. Lisa C. Huot, U.S. Department of Commerce, Washington, DC 20230, Tel: 202-482-2796, Fax: 202-482-0115, E-Mail: Lisa.Huot@trade.gov.

Sean Timmins,

Global Trade Programs, Commercial Service Trade Missions Program.

[FR Doc. 2010-8436 Filed 4-12-10; 8:45 am]

BILLING CODE 3510-FP-P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number: [100311135-0139-01]

FY 2010 NIST Center for Neutron Research (NCNR) Comprehensive Grants Program

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) announces that the NIST Center for Neutron Research (NCNR) Comprehensive Grants Program is soliciting applications for financial assistance for Fiscal Year (FY) 2010. The NIST Center for Neutron Research (NCNR) Comprehensive Grants Program is seeking proposals for significant research involving Neutron Research and Spectroscopy specifically aimed at assisting visiting researchers at the NIST Center for Neutron Research, developing

new instrumentation for Neutron Research, conducting collaborative research with NIST scientists, and to conduct other outreach and educational activities that advance the use of neutrons by U.S. university and industrial scientists.

DATES: All applications must be received no later than 5 p.m. Eastern Daylight Savings Time on Friday, May 7, 2010. Please see "Application Submission Information" for more information.

ADDRESSES: Paper copies of full proposals must be submitted to the address below. Paper submissions require an original and two copies: Tanya Burke, NIST Center for Neutron Research; National Institute of Standards and Technology; 100 Bureau Drive, Stop 6100; Gaithersburg, Maryland 20899-6100. Electronic submissions of full proposals must be submitted to: <http://www.grants.gov>.

FOR FURTHER INFORMATION CONTACT:

Tanya Burke, NIST Center for Neutron Research, National Institute of Standards and Technology, 100 Bureau Drive, Stop 6100, Gaithersburg, Maryland 20899-6100. Tel (301) 975-4711, E-Mail: tanya.burke@nist.gov.

SUPPLEMENTARY INFORMATION: Electronic access: Applications are strongly encouraged to read the Federal Funding Opportunity (FFO) available at <http://www.grants.gov> for complete information about this program, all program requirements, and instructions for applying by paper or electronically.

Authority: 15 U.S.C. § 272(b) and (c), 15 U.S.C. § 278g-1(a), (b), 15 U.S.C. § 7501(b)
Catalog of Federal Domestic Assistance (CFDA) Number: 11.609

Program Description

Program Objectives

The mission of the NIST Center for Neutron Research is to assure the availability of neutron measurement capabilities to meet the needs of U.S. researchers from industry, academia and other government agencies. The primary program objectives of the NIST Center for Neutron Research (NCNR) Comprehensive Grants Program are:

1. To advance, through cooperative efforts with one or more recipients, research consistent with the mission of NIST, and NCNR specifically. See <http://www.nist.gov/ncnr/> and 15 U.S.C. 271 *et seq.*

2. To encourage significant research involving Neutron Research and Spectroscopy specifically aimed at assisting visiting researchers at the NIST Center for Neutron Research.

3. To develop new instrumentation for Neutron Research.

4. To conduct collaborative research with NIST scientists and to conduct other outreach and educational activities that advance the use of neutrons by U.S. academic and industrial scientists.

The NCNR intends this financial assistance program to address all of these objectives through one or more Cooperative Agreements. An eligible applicant is not prohibited from including any collaborating subrecipients in its application.

Additional information about the NCNR can be found at: <http://www.nist.gov/ncnr>.

Additional information about the NIST Center for Neutron Research (NCNR) Comprehensive Grants Program NCNR may be found in the Federal Funding Opportunity (FFO) announcement for this program.

Funding Availability: NIST anticipates making 1-3 awards for a period of performance of up to 5 years at \$1,500,000-\$2,000,000 per year per award.

Total Amount to be Awarded: Up to \$25 million in Cooperative Agreements.

The funding instrument used in this program will be a Cooperative Agreement.

Proposals will be considered for Cooperative Agreements with durations of up to five years, funded in one year increments, subject to the availability of funds, satisfactory progress, and the continuing relevance to the objectives of the NIST Center for Neutron Research. The anticipated level of funding is up to \$2,000,000 per year and one or more awards may be approved. Between one and three awards are likely. Projects are expected to start by October 1, 2010.

NIST will determine whether to fund one award for the full amount; to divide available funds into multiple awards of any size, and negotiate scopes of work and budgets as appropriate; or not to select any proposal for funding, upon completing the selection process described below.

Cost Share Requirements: None.

Eligibility: This program is open to institutions of higher education; hospitals; nonprofit organizations; commercial organizations; state, local, and Indian tribal governments; foreign governments; organizations under the jurisdiction of foreign governments; and international organizations.

Evaluation Criteria

The applications will be evaluated and scored on the basis of the following evaluation criteria:

1. Qualifications and experience of the Principal Investigator in neutron scattering research, as demonstrated by extensive publications and invited lectures in condensed matter physics, chemistry, material science, macromolecular science or related fields (10%).

2. Qualifications and experience of the Applicant's proposed staff in neutron scattering research or in related scientific or engineering areas that are key to the activities contained in the proposal, as demonstrated by resumes of staff proposed for this program (30%).

3. Quality of the proposed research and development plan and its potential impact on neutron scattering science, particularly in the areas of macromolecular science, condensed matter physics, and chemistry (20%).

4. Quality of the plan in terms of providing research assistance to U.S. neutron researchers using the NCNR facilities, including related training, education, and outreach (30%).

5. Quality of the plan to integrate the applicant's staff effectively into the activities of the NCNR facility, including establishing robust communications between the university and the NCNR (10%).

Selection Factors: The Selecting Official shall recommend award based upon the rank order and recommendations of the reviewers, but may select out of rank order based on one or more of the following factors:

- a. Availability of Federal funds;
- b. Balance/distribution of funds to ensure research opportunities for all types of NCNR scientific research areas described in the Funding Opportunity Description section of this Notice; and
- c. Applicant's prior award performance.

Therefore, the highest scoring proposals may not necessarily be selected for an award. If an award is made to an applicant that deviates from the scores of the reviewers, the Selecting Official will justify the selection in writing based on selection factors described above.

Review and Selection Process

All timely submitted applications received in response to this announcement will be reviewed to determine whether they are complete and responsive to the scope of the stated objectives of the Program. Incomplete or non-responsive applications will not be reviewed for technical merit. NIST will retain one copy of each incomplete or non-responsive application for three years for record keeping purposes. The remaining copies will be destroyed.

Each complete and responsive application will be reviewed by at least four independent, objective NIST employees, who are knowledgeable in the subject matter of this announcement and its objectives and who are able to conduct a review based on the evaluation criteria for the Program as described in this notice. The reviewers will reach a consensus score resulting in a rank order of applications and make recommendations for funding to the Selecting Official. In making final selections, the Selecting Official (Director, NCNR) will select funding recipients based upon the rank order of the proposals, but may select out of rank order based on one or more of the Selection Factors. The final award of Cooperative Agreements will be made by the NIST Grants Officer in Gaithersburg, Maryland, based on compliance with application requirements as published in this notice, compliance with applicable legal and regulatory requirements, and whether the recommended applicants are determined to be responsible. Unsatisfactory performance on any previous Federal award may result in an application not being considered for funding. Applicants may be asked to modify objectives, work plans, or budgets, and provide supplemental information required by the agency prior to award. The decision of the Grants Officer is final.

Timely submission of an application, whether submitted electronically or in paper format, is the responsibility of the applicant.

Application Submission Information: All applicants should be aware that adequate time must be factored into applicant schedules for delivery of the application for both electronic and paper submission. Applicants who submit electronic applications are advised that volume on Grants.gov may be extremely heavy, and if Grants.gov is unable to accept applications electronically in a timely fashion, applicants are encouraged to exercise their option to submit applications in paper format.

Applications must be received on time, as the review process is expected to begin shortly after the deadline.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements, which are contained in the **Federal Register** Notice of February 11, 2008 (73 FR 7696), are applicable to this notice. On the form SF-424 items 8.b. and 8.c., the applicant's 9-digit Employer/

Taxpayer Identification Number (EIN/TIN) and 9-digit Dun and Bradstreet Data Universal Numbering System (DUNS) number must be consistent with the information on the Central Contractor Registration (CCR) (<http://www.ccr.gov>) and Automated Standard Application for Payment System (ASAP). For complex organizations with multiple EIN/TIN and DUNS numbers, the EIN/TIN and DUNS numbers MUST be the numbers for the applying organization. Organizations that provide incorrect/inconsistent EIN/TIN and DUNS numbers may experience significant delays in receiving funds if their proposal is selected for funding. Please confirm that the EIN/TIN and DUNS numbers are consistent with the information on the CCR and ASAP.

Collaborations with NIST Employees: Collaboration with NIST is presumed in the NIST Center for Neutron Research (NCNR) Comprehensive Grants Program. If any applicant proposes any activities involving specific NIST employees, the statement of work should include a statement of this intention, a description of the collaboration, and prominently identify the NIST employee(s) involved. Any collaboration by a NIST employee must be approved by appropriate NIST management and approval is at the sole discretion of NIST. Prior to beginning the merit review process, NIST will verify the approval of the proposed collaboration. Any unapproved collaboration will be stricken from the proposal prior to the merit review.

Use of NIST Intellectual Property: If the applicant anticipates using any NIST-owned intellectual property to carry out the work proposed, the applicant should identify such intellectual property. This information will be used to ensure that no NIST employee involved in the development of the intellectual property will participate in the review process for that competition. In addition, if the applicant intends to use NIST-owned intellectual property, the applicant must comply with all statutes and regulations governing the licensing of Federal government patents and inventions, described at 35 U.S.C. 200-212, 37 CFR part 401, 15 CFR 14.36, and in Section B.21 of the Department of Commerce Pre-Award Notification Requirements, 73 FR 7696 (Feb. 11, 2008). Questions about these requirements may be directed to the Chief Counsel for NIST, 301-975-2803.

Any use of NIST-owned intellectual property by a proposer is at the sole discretion of NIST and will be negotiated on a case-by-case basis if a project is deemed meritorious. The applicant should indicate within the

statement of work whether it already has a license to use such intellectual property or whether it intends to seek one.

If any invention made in whole or in part by a NIST employee arises in the course of an award made pursuant to this notice, the United States government may retain its ownership rights in any such invention. Licensing or other disposition of NIST's rights in such invention will be determined solely by NIST, and include the possibility of NIST putting NIST's rights in the intellectual property into the public domain.

Collaborations making use of Federal Facilities: All applications should include a description of any work proposed to be performed using Federal Facilities.

If an applicant proposes use of NIST facilities, the statement of work should include a statement of this intention and a description of the facilities. Any use of NIST facilities must be approved by appropriate NIST management and is at the sole discretion of NIST. Prior to beginning the merit review process, NIST will verify the availability of the facilities and approval of the proposed usage. Any unapproved facility use will be stricken from the proposal prior to the merit review. Examples of some facilities that may be available for collaborations are listed on the NIST Technology Services Web site, <http://ts.nist.gov/>.

Paperwork Reduction Act: The standard forms in the application kit involve a collection of information subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, 424 (R&R), SF-LLL, and CD-345 has been approved by OMB under the respective Control Numbers 0348-0043, 0348-0044, 0348-0040, 4040-0001, 0348-0046, and 0605-0001. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a valid OMB Control Number.

Research Projects Involving Human Subjects, Human Tissue, Data or Recordings Involving Human Subjects: Any proposal that includes research involving human subjects, human tissue, data or recordings involving human subjects must meet the requirements of the Common Rule for the Protection of Human Subjects (Common Rule), codified for the Department of Commerce at 15 CFR part 27. In addition, any proposal that

includes research on these topics must be in compliance with any statutory requirements imposed upon the Department of Health and Human Services (DHHS) and other federal agencies regarding these topics, all regulatory policies and guidance adopted by DHHS, the Food and Drug Administration, and other Federal agencies on these topics, and all Presidential statements of policy on these topics. NIST will accept the submission of human subjects protocols that have been approved by Institutional Review Boards (IRBs) possessing a current registration filed with DHHS and to be performed by institutions possessing a current, valid Federal-Wide Assurance (FWA) from DHHS. NIST will not issue a Single Project Assurance (SPA) for any IRB reviewing any human subjects protocol proposed to NIST.

President Obama has issued Executive Order No. 13,505 (74 FR 10667, March 9, 2009), revoking previous Executive Orders and Presidential statements regarding the use of human embryonic stem cells in research. On July 30, 2009, President Obama issued a memorandum directing that agencies that support and conduct stem cell research adopt the "National Institutes of Health Guidelines for Human Stem Cell Research" (NIH Guidelines), which became effective on July 7, 2009, "to the fullest extent practicable in light of legal authorities and obligations." On September 21, 2009, the Department of Commerce submitted to the Office of Management and Budget a statement of compliance with the NIH Guidelines. In accordance with the President's memorandum, the NIH Guidelines, and the Department of Commerce statement of compliance, NIST will support and conduct research using only human embryonic stem cell lines that have been approved by NIH in accordance with the NIH Guidelines and will review such research in accordance with the Common Rule, as appropriate. NIST will not support or conduct any type of research that the NIH Guidelines prohibit NIH from funding. NIST will follow any additional policies or guidance issued by the Administration on this topic.

Research Projects Involving Vertebrate Animals: Any proposal that includes research involving vertebrate animals must be in compliance with the National Research Council's "Guide for the Care and Use of Laboratory Animals" which can be obtained from National Academy Press, 2101 Constitution Avenue, NW., Washington, DC 20055. In addition, such proposals must meet the requirements of the Animal Welfare Act (7 U.S.C. 2131 *et seq.*), 9 CFR parts 1, 2, and 3, and if

appropriate, 21 CFR part 58. These regulations do not apply to proposed research using pre-existing images of animals or to research plans that do not include live animals that are being cared for, euthanized, or used by the project participants to accomplish research goals, teaching, or testing. These regulations also do not apply to obtaining animal materials from commercial processors of animal products or to animal cell lines or tissues from tissue banks.

Limitation of Liability: Funding for the programs listed in this notice is contingent upon the availability of Fiscal Year 2010 appropriations. Publication of this announcement does not oblige NIST or the Department of Commerce to award any specific project or to obligate any available funds.

Executive Order 12866 (Regulatory Planning and Review): This funding notice was determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism): It has been determined that this notice does not contain policies with federalism implications as that term is defined in Executive Order 13132.

Executive Order 12372 (Intergovernmental Review of Federal Programs): Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Administrative Procedure Act/Regulatory Flexibility Act: Notice and comment are not required under the Administrative Procedure Act (5 U.S.C. 553) or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)). Because notice and comment are not required under 5 U.S.C. 553, or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this notice, 5 U.S.C. 601 *et seq.*

Reporting: Recipients will be required to submit, on a semi-annual basis, for the periods ending March 31 and September 30 of each year, a technical progress report and a SF-269, Financial Status Report. From time to time, and in accordance with the Uniform Administrative Requirements and other terms and conditions governing the award, the recipient may need to submit property and patent reports.

Anticipated Announcement and Award Date

NIST plans to make awards by September 30, 2010.

Dated: April 1, 2010.

Marc G. Stanley,

Acting Deputy Director.

[FR Doc. 2010-8411 Filed 4-12-10; 8:45 am]

BILLING CODE 3510-13-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1674]

Grant of Authority for Subzone Status; The Swatch Group (U.S.) Inc. (Watch and Jewelry Warehousing and Distribution), Secaucus, NJ

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for “* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,” and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board’s regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Port Authority of New York and New Jersey, grantee of Foreign-Trade Zone 49, has made application to the Board for authority to establish a special-purpose subzone at the warehouse and distribution facility of The Swatch Group (U.S.) Inc., located in Secaucus, New Jersey (FTZ Docket 34-2009, filed 8/7/09);

Whereas, notice inviting public comment has been given in the **Federal Register** (74 FR 41382, 8/17/09) and the application has been processed pursuant to the FTZ Act and the Board’s regulations; and,

Whereas, the Board adopts the findings and recommendation of the examiner’s report, and finds that the requirements of the FTZ Act and Board’s regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status for activity related to watch and jewelry warehousing and distribution at the facility of The Swatch Group (U.S.) Inc., located in Secaucus, New Jersey

(Subzone 49L), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board’s regulations, including Section 400.28.

Signed at Washington, DC, this April 1, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010-8423 Filed 4-12-10; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Advisory Committee on Earthquake Hazards Reduction Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Earthquake Hazards Reduction (ACEHR or Committee), will hold a meeting on Wednesday, April 28, 2010 from 3 p.m. to 5 p.m. Eastern Daylight Time (EDT). The primary purpose of this meeting is to review the Committee’s draft report to the NIST Director. The draft report will be posted on the NEHRP Web site at <http://nehrrp.gov/>. Interested members of the public will be able to participate in the meeting from remote locations by calling into a central phone number.

DATES: The ACEHR will hold a meeting on Wednesday, April 28, 2010, from 3 p.m. until 5 p.m. Eastern Daylight Time (EDT). The meeting will be open to the public. Interested parties may participate in the meeting from their remote location.

ADDRESSES: Questions regarding the meeting should be sent to National Earthquake Hazards Reduction Program Director, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8630, Gaithersburg, Maryland 20899-8630. For instructions on how to participate in the meeting, please see the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Dr. Jack Hayes, National Earthquake Hazards Reduction Program Director, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8630, Gaithersburg, Maryland 20899-8630. Dr. Hayes’ e-mail address is jack.hayes@nist.gov and his phone number is (301) 975-5640.

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the requirements of Section 103 of the NEHRP Reauthorization Act of 2004 (Pub. L. 108-360). The Committee is composed of 15 members appointed by the Director of NIST, who were selected for their technical expertise and experience, established records of distinguished professional service, and their knowledge of issues affecting the National Earthquake Hazards Reduction Program. In addition, the Chairperson of the U.S. Geological Survey (USGS) Scientific Earthquake Studies Advisory Committee (SESAC) serves in an ex-officio capacity on the Committee. The Committee assesses:

- Trends and developments in the science and engineering of earthquake hazards reduction;
- The effectiveness of NEHRP in performing its statutory activities (improved design and construction methods and practices; land use controls and redevelopment; prediction techniques and early-warning systems; coordinated emergency preparedness plans; and public education and involvement programs);
- Any need to revise NEHRP; and
- The management, coordination, implementation, and activities of NEHRP.

Background information on NEHRP and the Advisory Committee is available at <http://nehrrp.gov/>.

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Advisory Committee on Earthquake Hazards Reduction (ACEHR) will hold a meeting on Wednesday, April 28, 2010, from 3 p.m. until 5 p.m. Eastern Daylight Time (EDT). There will be no central meeting location. The public is invited to participate in the meeting by calling in from remote locations. The primary purpose of this meeting is to review the Committee’s draft report to the NIST Director. The draft report will be posted on the NEHRP Web site at <http://nehrrp.gov/>.

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee’s affairs are invited to request detailed instructions on how to dial in from a remote location to participate in the meeting. Approximately fifteen minutes will be reserved from 4:45 p.m.–5 p.m. Eastern Daylight Time (EDT) for public comments, and speaking times will be assigned on a first-come, first-serve basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be

about 3 minutes each. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated, and those who were unable to participate are invited to submit written statements to the ACEHR, National Institute of Standards and Technology, 100 Bureau Drive, MS 8630, Gaithersburg, Maryland 20899–8630, via fax at (301) 975–5433, or electronically by e-mail to info@nehrrp.gov.

All participants of the meeting are required to pre-register to be admitted. Anyone wishing to participate must register by close of business Wednesday, April 21, 2010, in order to be admitted. Please submit your name, time of participation, e-mail address, and phone number to Tina Faেকে. At the time of registration, participants will be provided with detailed instructions on how to dial in from a remote location in order to participate. Non-U.S. citizens must also submit their country of citizenship, title, employer/sponsor, and address with their registration. Tina Faেকে's e-mail address is tina.faecke@nist.gov, and her phone number is (301) 975–5911.

Dated: April 6, 2010.

Marc G. Stanley,

Acting Deputy Director.

[FR Doc. 2010–8406 Filed 4–12–10; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Malcolm Baldrige National Quality Award Panel of Judges and Board of Overseers

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a joint meeting of the Panel of Judges and the Board of Overseers of the Malcolm Baldrige National Quality Award on June 16, 2010. The Panel of Judges and the Board of Overseers are each composed of twelve members prominent in the fields of quality, innovation, and performance management and appointed by the Secretary of Commerce, assembled to advise the Secretary of Commerce on the conduct of the Baldrige Award. The purpose of this meeting is to discuss

and review information received from the National Institute of Standards and Technology and from the Chair of the Judges Panel of the Malcolm Baldrige National Quality Award. The agenda will include: Baldrige Program (BNQP) Update, Baldrige Fellows Program Discussion, Baldrige Program Changes in 2010 and 2011, and Implementation of the Strategic Plan Actions.

DATES: The meeting will convene June 16, 2010, at 8:30 a.m. and adjourn at 3 p.m. on June 16, 2010.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Lecture Room A, Gaithersburg, Maryland 20899. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Please submit your name, time of arrival, e-mail address and phone number to Diane Harrison no later than Monday, June 14, 2010, and she will provide you with instructions for admittance. Ms. Harrison's e-mail address is diane.harrison@nist.gov and her phone number is (301) 975–2361.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, Baldrige National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

Dated: April 5, 2010.

Marc G. Stanley,

Acting Deputy Director.

[FR Doc. 2010–8409 Filed 4–12–10; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Malcolm Baldrige National Quality Award Panel of Judges

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a meeting of the Panel of Judges of the Malcolm Baldrige National Quality Award on June 15, 2010. The Panel of Judges is composed of twelve members prominent in the fields of quality, innovation, and performance management and appointed by the Secretary of Commerce, assembled to advise the Secretary of Commerce on the conduct of the Baldrige Award. The purpose of this meeting is to discuss

and review information received from the National Institute of Standards and Technology and from the Chair of the Judges Panel of the Malcolm Baldrige National Quality Award. The agenda will include: Review of the 2009 Judging Process, Baldrige Program and Judging Process Changes in 2010.

DATES: The meeting will convene June 15, 2010, at 8:30 a.m. and adjourn at 3 p.m. on June 15, 2010. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Lecture Room A, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, Baldrige National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on December 3, 2009, that the meeting of the Judges Panel will be closed 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, Public Law 94–409. The meeting, which involves examination of Award applicant data from U.S. companies and other organizations and a discussion of these data as compared to the Award criteria in order to recommend Award recipients, may be closed to the public in accordance with Section 552b(c)(4) of Title 5, United States Code, because the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person which is privileged or confidential.

Dated: April 6, 2010.

Marc G. Stanley,

Acting Deputy Director.

[FR Doc. 2010–8418 Filed 4–12–10; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–502]

Circular Welded Carbon Steel Pipes and Tubes from Thailand: Preliminary Results and Rescission, in Part, of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on circular welded carbon steel pipes and tubes from Thailand, in response to requests from Allied Tube and Conduit Corporation (Allied Tube) and Wheatland Tube Company (Wheatland) (collectively, petitioners). This review covers the period March 1, 2008 through February 28, 2009. We preliminarily determine that U.S. sales of subject merchandise have been made by Saha Thai Steel Pipe (Public) Company, Ltd. (Saha Thai) below normal value (NV). If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties based on the difference between the export price (EP) and the NV. We are also rescinding the administrative review of Pacific Pipe Company Limited (Pacific Pipe). We will instruct CBP to assess antidumping duties on entries of this merchandise produced by Pacific Pipe at the cash deposit rate required at the time of entry. Interested parties are invited to comment on these preliminary results. See the "Preliminary Results of Review" section of this notice.

EFFECTIVE DATE: April 13, 2010.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-5255.

SUPPLEMENTARY INFORMATION:

Background

On March 11, 1986, the Department published in the **Federal Register** an antidumping duty order on circular welded carbon steel pipes and tubes from Thailand. See *Antidumping Duty Order: Circular Welded Carbon Steel Pipes and Tubes from Thailand*, 51 FR 8341 (March 11, 1986). On March 2, 2009, the Department published a notice of opportunity to request an administrative review of this order covering the period March 1, 2008 through February 28, 2009. See *Antidumping or Countervailing Duty Order, Finding or Suspended Investigation; Opportunity to Request Administrative Review*, 74 FR 9077 (March 2, 2009). On April 27, 2009, in response to timely requests by Saha Thai and Wheatland with respect to exports by Saha Thai during the period of review (POR), and to a timely request by Allied Tube with respect to exports by Pacific Pipe, the Department

published a notice of initiation of this antidumping duty administrative review. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 19042 (April 27, 2009).

On May 5, 2009, Pacific Pipe reported that it did not have any shipments or sales of subject merchandise for the last five months of the POR, from October 1, 2008 to February 28, 2009. The Department subsequently completed a new shipper review for Pacific Pipe covering the period March 1, 2008 through September 30, 2008. See *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty New Shipper Review*, 75 FR 4529 (January 28, 2010) (*New Shipper Final Results*).

On June 3, 2009, we sent questionnaires to Saha Thai and Pacific Pipe. We received timely responses to our questionnaire from Saha Thai on July 13, 2009 and July 27, 2009. We sent supplemental questionnaires to Saha Thai on September 17, 2009 and December 9, 2009. We received timely responses to our supplemental questionnaires on October 6, 2009, October 19, 2009, January 5, 2010, and January 14, 2010.

On November 25, 2009, we published a **Federal Register** notice extending the deadline for these preliminary results of review by 120 days to March 31, 2010. See *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 61657 (November 25, 2009). Subsequently the Department exercised its discretion to toll deadlines because of the closure of the Federal Government from February 5, 2010 through February 12, 2010. Thus, all deadlines in this segment of the proceeding were extended by seven days. See Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010. The revised deadline for the preliminary results of this review is April 7, 2010.

Scope of the Order

The products covered by this antidumping order are certain welded carbon steel pipes and tubes from Thailand. The subject merchandise has an outside diameter of 0.375 inches or more, but not exceeding 16 inches. These products, which are commonly referred to in the industry as "standard pipe" or "structural tubing" are hereinafter designated as "pipes and

tubes." The merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085 and 7306.30.5090. Although the HTSUS subheadings are provided for the convenience and purposes of CBP, our written description of the scope is dispositive.

Partial Rescission of Review

Section 351.213(d)(3) of the Department's regulations stipulates that the Secretary may rescind an administrative review of a producer if there were no entries, exports, or sales of the subject merchandise by that producer during the period covered by the review. Pacific Pipe, in a letter dated May 5, 2009, reported that it did not make any shipments or sales of subject merchandise for the last five months of the POR, from October 1, 2008 to February 28, 2009. The one shipment that Pacific Pipe did make during the first seven months of the POR, March 1, 2008 through September 30, 2008, was concurrently under review in a new shipper review. See *New Shipper Review Final Results*, 75 FR at 4529-4530 (January 28, 2010). Allied Tube responded to Pacific Pipe's letter on May 8, 2009, by arguing that the Department's regulations and recent practice permit the rescission of the new shipper review and continuance of the administrative review. Allied Tube argued that the Department should follow its practice in *Cut-to-Length Carbon Steel Plate from the People's Republic of China: Notice of Rescission of Antidumping Duty New Shipper Review*, 74 FR 15930 (April 8, 2009), where the Department rescinded the new shipper review and continued the administrative review. On September 4, 2009, the Department issued a "No Shipment Inquiry" to CBP and confirmed that there were no shipments or entries of circular welded carbon steel pipes and tubes from Thailand exported by Pacific Pipe from October 1, 2008 through February 28, 2009.

Record evidence establishes that there were no entries of subject merchandise produced by Pacific Pipe from October 1, 2008 through February 29, 2009, the final five months of this POR. Further, the sale and entry made by Pacific Pipe during the period from March 1, 2008 through September 30, 2008 was the subject of a new shipper review. See *New Shipper Review Final Results*, 75 FR at 4529-4530 (January 28, 2010). Therefore, the Department is rescinding the administrative review with respect to Pacific Pipe pursuant to 19 CFR

351.213(d)(3). The Department will issue appropriate assessment instructions to CBP within 15 days of publication of this notice.

Analysis

Date of Sale

Saha Thai reported contract date as the date of sale for U.S. sales. The Department considers invoice date to be the presumptive date of sale. *See* section 351.401(i) of the Department's regulations. For purposes of this review, we examined whether invoice date or another date better represents the date on which the final material terms of sale were established. The Department examined sales documentation, including contracts and invoices, provided by Saha Thai for its U.S. sales and has preliminarily found that the material terms of sale are set on the contract date. Where there was a change in material terms for four sales subsequent to the original contract, Saha Thai issued an amended contract and the amended contract date was reported as date of sale.

We preliminarily determine that contract date (or amended contract date) is the appropriate date of sale for U.S. sales in this administrative review because it better represents the date upon which the final material terms of sale were established. This is consistent with the most recently completed administrative reviews of this order. *See Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 73 FR 61019 (October 15, 2008) (2006–2007 AR Final Results); *see Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 71 FR 54266 (September 14, 2006) (2004–2005 AR Final Results).

In the home market, the date of invoice is when the material terms of sale are established. Therefore, we are using the invoice date as the date of sale for home market sales.

Export Price

In accordance with section 772(a) of the Tariff Act of 1930, as amended (the Act), export price is the price at which the subject merchandise is first sold (or agreed to be sold) by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser prior to the date of importation. We classified all of Saha Thai's sales to its U.S. customers as EP sales because, as in previous administrative reviews of this order, we found that Saha Thai is not affiliated with its distributors, which are the first

purchasers in the United States. *See, e.g., 2006–2007 AR Final Results and 2004–2005 AR Final Results.*

In accordance with section 772(c)(2) of the Act, we made deductions from the gross unit price for foreign inland freight, foreign brokerage and handling, foreign inland insurance, foreign warehousing, ocean freight, lighterage charges, U.S. brokerage and handling charges, and U.S. duties.

Section 772(c)(1)(B) of the Act states that EP should be increased by the amount of any import duties “imposed by the country of exportation which have been rebated, or which have not been collected by reason, of the exportation of the subject merchandise to the United States. . . .” Saha Thai claimed an adjustment to EP for the duties exempted on its imports of inputs (hot-rolled steel coil and zinc) into a bonded warehouse. In determining whether an adjustment should be made to EP for this exemption, we look for a reasonable link between the duties imposed and those rebated or exempted. We do not require that the imported input be traced directly from importation through exportation. We do require, however, that the company meet our “two-pronged” test in order for this addition to be made to EP. The first element is that the import duty and its rebate or exemption be directly linked to, and dependent upon, one another; the second element is that the company must demonstrate that there were sufficient imports of the imported material to account for the duty drawback or exemption granted for the export of the manufactured product. *See, e.g., 2006–2007 AR Final Results; see also Mittal Steel USA Inc. v. United States*, 31 CIT 1395, 1412–1413 (2007); and *Rajinder Pipes Ltd. v. United States*, 70 F. Supp. 2d 1350, 1358 (Ct. Intl. Trade, 1999).

Saha Thai has provided information that demonstrates that it meets both prongs of our “two-pronged” test. Therefore, for these preliminary results, we are making an upward adjustment to export price for these duty exemptions. *See* “Analysis Memorandum of Saha Thai Steel Pipe (Public) Company, Ltd. for the Preliminary Results of the Antidumping Duty Administrative Review of Circular Welded Carbon Steel Pipes and Tubes from Thailand for the Period 03/01/2008 through 02/28/2009, dated concurrently with this notice, (*Preliminary Analysis Memorandum*); *see also 2006–2007 AR Final Results.*

Normal Value

A. Cost Averaging Methodology

The Department's normal practice is to calculate an annual weighted-average cost for the POR. *See, e.g., Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review*, 65 FR 77852 (December 13, 2000), and accompanying Issues and Decision Memorandum at Comment 18; and *Notice of Final Results of Antidumping Duty Administrative Review of Carbon and Certain Alloy Steel Wire Rod from Canada*, 71 FR 3822 (January 24, 2006), and accompanying Issues and Decision Memorandum at Comment 5 (explaining the Department's practice of computing a single weighted-average cost for the entire period). However, the Department recognizes that possible distortions may result if our normal annual average cost method is used during a period of significant cost changes. In determining whether to deviate from our normal methodology of calculating an annual weighted average cost, the Department evaluates the case-specific record evidence using two primary factors: (1) the change in the cost of manufacturing (COM) recognized by the respondent during the POR must be deemed significant; and (2) the record evidence must indicate that sales during the shorter averaging periods could be reasonably linked with the cost of production (COP) or constructed value (CV) during the same shorter averaging periods. *See, e.g., Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review* 75 FR 6631 (February 10, 2010) (*SSSS from Mexico*); *see also Stainless Steel Plate in Coils From Belgium: Final Results of Antidumping Duty Administrative Review*, 73 FR 75398 (December 11, 2008) and accompanying Issues and Decision Memorandum at Comment 4 (*SSPC from Belgium*).

1. Significance of Cost Changes

In prior cases, the Department established 25 percent as the threshold (between the high and low quarter COM) for determining that the changes in COM are significant enough to warrant a departure from our standard annual costing approach. *See SSPC from Belgium* at Comment 4. In the instant case, record evidence shows that Saha Thai experienced significant changes (*i.e.*, changes that exceeded 25 percent) between the high and low quarterly COM during the POR and that the change in COM is primarily attributable to the price volatility for hot-rolled coil, a major input consumed in the production of the carbon steel pipes and

tubes and used to produce the merchandise under consideration. See “Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results-Saha Thai Steel Pipe (Public) Company, Ltd.,” dated concurrently with this notice (*Preliminary Cost Calculation Memorandum*). We found that hot-rolled coil prices changed significantly throughout the POR and consequently directly affected the cost of the material inputs consumed by Saha Thai. See *Preliminary Cost Calculation Memo*. Specifically, the record data shows that the percentage difference between the high and the low quarterly COM clearly exceeded the 25 percent threshold for four of five control numbers (CONNUMs) sold in the home market and all five CONNUMs sold in the United States during the POR. See *Preliminary Cost Calculation Memo*. As a result, we have determined for the preliminary results that the changes in Saha Thai’s COM for hot-rolled coil are significant enough to warrant a departure from our standard cost approach, as these significant cost changes create distortions in the Department’s sales-below-cost test, as well as in the overall margin calculation.

2. Linkage between Cost and Sales Information

Consistent with past precedent, if the Department finds changes in costs to be significant in a given period of review, the Department subsequently evaluates whether there is evidence of linkage between the cost changes and the sales prices during the POR. The Department’s definition of linkage does not require direct traceability between specific sales and their specific production costs, but rather relies on whether there are elements that would indicate a reasonable correlation between the underlying costs and the final sales prices levied by the company. See, *SSPC from Belgium* at Comment 4. These correlative elements may be measured and defined in a number of ways depending on the associated industry and the overall production and sales processes. The Department acknowledges that being able to reasonably link sales prices and costs during a shorter cost period is important in deciding whether to depart from our annual average cost methodology. We believe that requiring too strict a standard for linkage, however, would unreasonably preclude this remedy for commodity-type products where there is no pricing mechanism in place and it may be very difficult to precisely link production costs to specific sales. We

requested that Saha Thai provide comparisons for its top five home market and its top five US CONNUMs over the twelve months of the POR. Saha Thai provided this information in its October 6, 2009 and January 14, 2010 responses. To determine whether a reasonable correlation existed between the sales prices and their underlying costs during the POR, we compared weighted-average quarterly prices to the corresponding quarterly COM for the five highest-volume home market CONNUMs. After reviewing this information and determining that the sales and costs generally trend in the same direction, we preliminarily determine that there is linkage between Saha Thai’s cost changes and sales prices during the POR. See *Preliminary Cost Calculation Memo*. See, e.g., *SSSS from Mexico*; see also *SSPC from Belgium*.

Because we have found significant cost changes in COM as well as reasonable linkage between costs and sales prices, we have preliminarily determined that a quarterly costing approach would lead to more appropriate comparisons in our antidumping duty calculation for Saha Thai.

B. Home Market Viability

In accordance with section 773(a)(1) of the Act, to determine whether there was sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Saha Thai’s volume of home market sales of foreign like product to the volume of U.S. sales of subject merchandise. Pursuant to section 773(a)(1) of the Act and section 351.404(b) of the Department’s regulations, because the volume of Saha Thai’s home market sales of foreign like product was greater than five percent of the volume of U.S. sales of the subject merchandise during the POR, we determine that the home market is viable. Therefore, we used home market sales as the basis for NV in accordance with section 773(a)(1).

C. Affiliated Party Transactions and Arm’s-Length Test

The Department’s practice with respect to the use of home market sales to affiliated parties for NV is to determine whether such sales are at arm’s-length prices. To examine whether home market sales were made at arm’s length, we compared the starting price of sales to affiliated customers to the starting price of sales to unaffiliated customers, net of all movement charges, direct selling expenses, discounts and packing. We made this comparison on a quarterly

basis consistent with our preliminary decision to use a quarterly costing approach. Where the price to the affiliated party was, on average, within a range of 98 to 102 percent of the same or comparable merchandise to the unaffiliated parties, we determined that the sales made to the affiliated parties were at arm’s length. See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002). In accordance with the Department’s practice, in our margin analysis, we included only those sales to affiliated parties that were made at arm’s length. Where the affiliated party transactions did not pass the arm’s-length test, these sales were excluded from the NV calculation.

For each affiliated reseller, we requested Saha Thai to report the first sale to an unaffiliated customer. When the sale to the affiliated reseller did not pass the arm’s-length test and was therefore excluded from the normal value calculation, we included the sale by the affiliated reseller to the first unaffiliated customer in our margin analysis.

D. COP Analysis

We found that Saha Thai made sales below the COP in the most recently completed segment of this proceeding in which Saha Thai was examined, and such sales were disregarded. Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that Saha Thai made sales of the subject merchandise in its comparison market at prices below the COP in the current review period. Pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by Saha Thai. For our complete analysis, see *Preliminary Cost Calculation Memo*.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated Saha Thai’s COP based on the sum of its costs of materials and conversion for foreign like product, plus an amount for home market SG&A expenses, interest expenses and packing costs. See the “Test of Comparison Market Sales Prices” section below for the treatment of comparison market selling expenses. We relied on home market sales and COP information provided by Saha Thai in its questionnaire responses, except where noted below:

a. We have adjusted Saha Thai’s cost of carbon steel hot-rolled coils obtained from an affiliated supplier to reflect the higher of transfer or market price in accordance with section 773(f)(2) of the

Act (transactions disregarded). Because we have determined that quarterly average costs are appropriate for the COP analysis, we have applied the transactions disregarded analysis and calculated the related adjustments on a quarterly basis.

b. We revised Saha Thai's general and administrative (G&A) expenses to reflect a rate calculated on non-consolidated producer-specific financial statements, rather than the consolidated financial statements.

c. We adjusted the cost of goods sold denominators used in the G&A and financial expense rates to reflect transactions disregarded adjustments and to include the cost of services.

d. We revised Saha Thai's reported duty exemptions on hot-rolled coil and zinc inputs to apply the adjustments as a ratio of the exempted duty amounts to total purchases of the respective input.

For more detail on these adjustments, refer to Preliminary Cost Calculation Memorandum.

E. Cost Test

In accordance with section 773(b) of the Act, we compared the quarterly COP to the home market sales price (less any applicable movement charges and discounts) by quarter, of the foreign like product on a product-specific basis in order to determine whether home market sales had been made at prices below COP.

In determining whether to disregard sales below COP, we examined, in accordance with sections 773(b)(1)(A) and whether such sales were made in substantial quantities, and whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. As noted in section 773(b)(1)(D) of the Act, prices are considered to provide for recovery of costs if such prices are above the weighted average per-unit COP for the period of investigation or review. In the instant case, we have relied on a quarterly costing approach. Similar to that used by the Department in cases of high-inflation (*see, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from Indonesia*, 64 FR 73164 (December 29, 1999) at Comment (1), this methodology restates the quarterly material costs on a year-end equivalent basis, calculates an annual weighted-average cost for the POR and then restates it to each respective quarter. We find that this quarterly costing method meets the requirements of section 773(b)(2)(D) of the Act.

Where less than 20 percent of the respondent's home market sales of a given model were at prices below the COP, we did not disregard any below-cost sales of that model because we determined that the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of the respondent's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because: (1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of prices to the indexed weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

Our cost test for Saha Thai revealed that, for home market sales of certain models, less than 20 percent of the sales of those models were at prices below the COP. Therefore, we retained all such sales in our analysis and used them as the basis for determining NV. Our cost test also indicated that for home market sales of other models, more than 20 percent were sold at prices below the COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we excluded these below-cost sales from our analysis and used the remaining above-cost sales as the basis for determining NV.

F. Home Market Price

To calculate Saha Thai's home market net price, we deducted discounts and movement expenses, which included inland freight and warehousing where appropriate. Pursuant to section 773(a)(6)(C)(iii) of the Act and section 351.410(c) of the Department's regulations, we made a circumstance of sale adjustment for home market and U.S. credit expenses, as well as U.S. bank charges. In addition, pursuant to section 773(a)(6)(A) of the Act, we deducted home market packing costs and added U.S. packing costs. In addition, where applicable, we made adjustments for differences in costs attributable to physical characteristics pursuant to section 773(a)(6)(C)(ii) of the Act and section 351.410 of the Department's regulations.

Level of Trade

Pursuant to section 773(a)(1)(B)(i) of the Act, to the extent practicable, NV is normally the price in the home market

that is at the same level of trade (LOT) as the EP. The NV LOT is that of the starting-price sale in the comparison market, or when NV is based on CV, that of the sales from which we derive SG&A and profit. For EP, the U.S. LOT is the level of the starting-price sale, which is usually from exporter to importer. To determine whether NV sales are at a different LOT than EP sales, we examine stages in the marketing and selling functions along the chain of distribution between the producer and unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects the price comparability, as manifested in a pattern of consistent price differences between sales at different levels of trade in the country in which NV is determined, we make an LOT adjustment under section 773(a)(7)(A) of the Act and under section 351.410(c) of the Department's regulations. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

For the U.S. market, Saha Thai reported only one LOT for its EP sales. For its home market sales, Saha Thai reported that its sales to unaffiliated customers were at the same level of trade as its U.S. sales. However, Saha Thai reported that, if the Department used the downstream sales of any of its affiliated resellers, these sales were made at a distinct level of trade, and Saha Thai's home market would consist of two levels of trade.

For Saha Thai's sales made through affiliated resellers, we consider the relevant functions to be the selling functions of both the producer and the reseller (*i.e.*, the cumulative selling functions along the chain of distribution) for purposes of comparing the selling activities related to each affiliate's sale with those related to the producer's sale to its unaffiliated customers. If the reseller performs selling functions that add substantial selling activity in making the sale, we may find that sales by the reseller are made at a different LOT than the sales made by the producer.

Saha Thai provided information about the marketing and selling functions performed by the affiliated resellers for its sales to unaffiliated customers. This information is sufficient to conduct an analysis of whether Saha Thai's sales in the home market were made at more than one LOT. For those affiliated resellers whose sales did not pass the arm's length test, we have analyzed the information that Saha Thai provided regarding the marketing and selling

functions for both Saha Thai and the affiliated resellers. We examined the information reported by Saha Thai and its affiliated resellers with respect to the selling and marketing functions, the freight functions, technical services/warranties functions, and inventory management functions of Saha Thai and its resellers. We examined the selling functions and the level of intensity at which Saha Thai performs those selling functions, as described in the narrative response and Exhibit 9 of Saha Thai's July 13, 2009 questionnaire response and Exhibit 8 of Saha Thai's October 19, 2009 supplemental questionnaire response. Information about the specific selling functions we examined, the intensity at which Saha Thai and its affiliated resellers performed them, and our analysis is business proprietary, and is detailed in the "Level of Trade" section in the *Preliminary Analysis Memorandum*.

Based on the facts and our analysis, we have concluded that Saha Thai's home market sales were made at two distinct levels of trade: sales directly from Saha Thai to its unaffiliated customers and sales from Saha Thai through its affiliated resellers to unaffiliated customers. See "Level of Trade" section in the *Preliminary Analysis Memorandum*; see also 2006–2007 AR Final Results.

Saha Thai reported that its U.S. sales are made at only one level of trade, to unaffiliated resellers in the United States. For the U.S. market, we also examined the information reported by Saha Thai with respect to the selling and marketing functions, the freight functions, technical services/warranties functions, and inventory management functions performed by Saha Thai for sales to its unaffiliated resellers. We examined the selling functions and the level of intensity at which Saha Thai performs these selling functions as described in its narrative response and Exhibit 9 of Saha Thai's July 13, 2009 Section questionnaire response and Exhibit 8 of Saha Thai's October 19, 2009 supplemental questionnaire response. Information about the specific selling functions we examined, the intensity at which Saha Thai performs those selling functions for its U.S. sales (to unaffiliated resellers) and our analyses is business proprietary, and is detailed in the "Level of Trade" section in the *Preliminary Analysis Memorandum*.

Based on the facts and our analyses, we preliminarily determine that all U.S. sales are made at one LOT. Furthermore, we find that the U.S. sales are at the same LOT as Saha Thai's home market sales to unaffiliated customers. For our

complete analysis, see "Level of Trade" section in the *Preliminary Analysis Memorandum*; see also 2006–2007 AR Final Results.

While we have preliminarily determined that there are two distinct levels of trade in the home market (LOT 1 and LOT 2) and that the LOT in the U.S. market matches LOT 1 in the home market, we must consider whether an LOT adjustment is warranted for those U.S. sales for which there is not a match in the home market at LOT 1. In accordance with section 773(a)(7)(A)(ii) of the Act, such an adjustment is warranted when the difference in LOT is demonstrated to affect price comparability, based on a pattern of consistent price differences, on both a CONNUM and a quantity basis, between sales at different levels of trade in the home market (the basis for NV). However, our decision to apply the quarterly cost methodology and to perform quarterly price-to-price comparisons, raises a novel issue with respect to the LOT analysis of pattern of price differences and any possible LOT adjustment based on that analysis. Therefore, we request parties comment on whether the application of the quarterly cost methodology necessarily requires an evaluation on a quarterly basis of the pattern of price differences and how any such differences should be analyzed for purposes of determining whether there is a pattern of price differences. In addition, we invite parties to comment on whether, if a pattern of price differences is found to exist, any LOT adjustment should be done on a yearly basis or on a quarterly basis. These comments should be submitted no later than ten days from the date of publication of this notice in the **Federal Register**.

Currency Conversion

We made currency conversions pursuant to section 351.415 of the Department's regulations based on rates certified by the Federal Reserve.

Preliminary Results of Review

Manufacturer/Exporter	Margin (percent)
Saha Thai Steel Pipe (Public) Company, Ltd.	4.35

Assessment

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries in accordance with section 351.212 of the Department's regulations. The Department intends to issue assessment instructions for Saha Thai directly to

CBP 15 days after the date of publication of the final results of this administrative review.

The Department clarified its "automatic assessment" regulation on May 6, 2003 (68 FR 23954). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for any intermediate company involved in the transaction. For a full discussion of this clarification, *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 239254 (May 6, 2003).

Cash Deposit Requirements

The following cash deposit rates will be effective with respect to all shipments of subject merchandise entered, or withdrawn from warehouse for consumption, on or after the publication date of the final results, as provided for by section 751(a)(1) of the Act: (1) for Saha Thai, the cash deposit rate will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will 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 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 subject merchandise; and (4) if neither the exporter nor the manufacturer of the subject merchandise is a firm covered by this review, a prior review, or the LTFV investigation, the cash deposit rate shall be the "all other" rate established in the LTFV investigated, which is 15.67 percent. These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Public Comment

Pursuant to section 351.224(b) of the Department's regulations, the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to section 351.309 of the Department's regulations, interested parties may submit written comments in response to those preliminary results.

Unless extended by the Department, case briefs are to be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, are to be submitted no later than five days after the time limit for filing case briefs. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) statement of the issues; and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with section 351.303(f) of the Department's regulations.

Also, pursuant to section 351.310(c) of the Department's regulations, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. Parties will be notified of the time and location.

The Department will publish the final results of the administrative review, including the results of its analysis of issues raised in any case or rebuttal brief, no later than 120 days after publication of the preliminary results, unless extended. *See* section 351.213(h) of the Department's regulations.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under section 351.402(f) of the Department's regulations 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 double antidumping duties.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 7, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010-8420 Filed 4-12-10; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-351-840]

Certain Orange Juice From Brazil: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request by the petitioners and two producers/exporters of the subject merchandise, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain orange juice (OJ) from Brazil of those two producers/exporters of the subject merchandise to the United States. This is the third period of review (POR), covering March 1, 2008, through February 28, 2009.

We have preliminarily determined that sales to the United States have been made below normal value (NV). If these preliminary results are adopted in the final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries.

DATES: *Effective Date:* April 13, 2010.

FOR FURTHER INFORMATION CONTACT:

Elizabeth Eastwood or Hector Rodriguez, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3874 or (202) 482-0629, respectively.

SUPPLEMENTARY INFORMATION:

Background

In March 2006, the Department published in the **Federal Register** an antidumping duty order on certain orange juice from Brazil. *See Antidumping Duty Order: Certain Orange Juice from Brazil*, 71 FR 12183 (Mar. 9, 2006) (*OJ Order*). Subsequently, on March 2, 2009, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order of certain orange juice from Brazil for the period March 1, 2008, through February 28, 2009. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 74 FR 9077 (Mar. 2, 2009).

In accordance with 19 CFR 351.213(b)(2), in March 2009, the

Department received requests to conduct an administrative review of the antidumping duty order on OJ from Brazil from two producers/exporters of the subject merchandise, Fischer S.A. Comercio, Industria, and Agricultura (Fischer) and Sucocitrico Cutrale, S.A. (Cutrale). In Cutrale's request for an administrative review, Cutrale also requested revocation of the antidumping duty order with respect to its sales of subject merchandise, pursuant to 19 CFR 351.222(b).

In accordance with 19 CFR 351.213(b)(1), also in March 2009, the petitioners (Florida Citrus Mutual, A. Duda & Sons, Citrus World Inc., and Southern Gardens Citrus Processing Corporation), requested that the Department conduct an administrative review for Cutrale and Fischer. In April 2009, the Department initiated an administrative review for each of these companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 19042 (Apr. 27, 2009). In May 2009, we issued questionnaires to Cutrale and Fischer.

In June 2009, we received responses to section A of the questionnaire (*i.e.*, the section covering general information) from Cutrale and Fischer, as well as responses to sections B and C of the questionnaire (*i.e.*, the sections covering sales in the home market and United States) and section D (*i.e.*, the section covering cost of production (COP)/constructed value (CV)).

In June, August, and September 2009, we issued four supplemental sales questionnaires to Fischer, three supplemental questionnaires to Cutrale and one cost questionnaire and supplemental each to Cutrale and Fischer. We received responses to these supplemental questionnaires from July through October 2009.

In September and October 2009, the Department verified the U.S. sales data reported by Fischer's U.S. affiliate, Citrusuco North America Inc. (CNA), and the COP/CV data reported by Fischer, respectively.

On October 28, 2009, the Department extended the deadline for the preliminary results in this review until no later than March 31, 2010. *See Certain Orange Juice from Brazil: Notice of Extension of Time Limits for the Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 55540 (Oct. 28, 2009).

In November and December 2009, the Department verified Cutrale's and Fischer's sales information in Brazil and the U.S. sales data reported by Cutrale's U.S. affiliate, Citrus Products Inc (CPI). Also, in November, we issued and

received a final cost supplemental questionnaire from Cutrale.

In January 2010, the Department verified Cutrale's COP/CV data reported by Cutrale. In February 2010, as explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. The revised deadline for the preliminary results of this review is now April 7, 2010. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

In March 2010, at the request of the Department, Cutrale and Fischer submitted revised U.S. and home market sales databases. Also in March 2010, the Department requested that Cutrale report U.S. sales data related to exports of subject merchandise produced by unaffiliated Brazilian producers. In April 2010, Cutrale informed the Department that it did not have any such sales to unaffiliated customers in the United States during the POR.

Scope of the Order

The scope of this order includes certain orange juice for transport and/or further manufacturing, produced in two different forms: (1) Frozen orange juice in a highly concentrated form, sometimes referred to as frozen concentrated orange juice for manufacture (FCOJM); and (2) pasteurized single-strength orange juice which has not been concentrated, referred to as not-from-concentrate (NFC). At the time of the filing of the petition, there was an existing antidumping duty order on frozen concentrated orange juice (FCOJ) from Brazil. *See Antidumping Duty Order; Frozen Concentrated Orange Juice from Brazil*, 52 FR 16426 (May 5, 1987). Therefore, the scope of this order with regard to FCOJM covers only FCOJM produced and/or exported by those companies which were excluded or revoked from the pre-existing antidumping order on FCOJ from Brazil as of December 27, 2004. Those companies are Cargill Citrus Limitada, Coinbra-Frutesp (SA), Cutrale, Fischer, and Montecitrus Trading S.A.

Excluded from the scope of the order are reconstituted orange juice and frozen concentrated orange juice for

retail (FCOJR). Reconstituted orange juice is produced through further manufacture of FCOJM, by adding water, oils and essences to the orange juice concentrate. FCOJR is concentrated orange juice, typically at 42 Brix, in a frozen state, packed in retail-sized containers ready for sale to consumers. FCOJR, a finished consumer product, is produced through further manufacture of FCOJM, a bulk manufacturer's product.

The subject merchandise is currently classifiable under subheadings 2009.11.00, 2009.12.25, 2009.12.45, and 2009.19.00 of the Harmonized Tariff Schedule of the United States (HTSUS). These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive. Rather, the written description of the scope of the order is dispositive.

Determination Not to Revoke Order, in Part

The Department may revoke, in whole or in part, an antidumping duty order upon completion of a review under section 751 of the Tariff Act of 1930, as amended (the Act). While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia*, that a company requesting revocation must submit the following: (1) A certification that the company has sold the subject merchandise at not less than NV in the current review period and that the company will not sell subject merchandise at less than NV in the future; (2) a certification that the company sold commercial quantities of the subject merchandise to the United States in each of the three years forming the basis of the request; and (3) an agreement to immediate reinstatement of the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV. *See* 19 CFR 351.222(e)(1). Upon receipt of such a request, the Department will consider: (1) Whether the company in question has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) whether the company has agreed in writing to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Department concludes that the company, subsequent to the revocation, sold the subject merchandise at less than NV; and (3) whether the continued application of the antidumping duty order is otherwise

necessary to offset dumping. *See* 19 CFR 351.222(b)(2)(i).

On March 31, 2009, Cutrale requested revocation of the antidumping duty order with respect to its sales of subject merchandise, pursuant to 19 CFR 351.222(b). This request was accompanied by certification that: (1) Cutrale sold the subject merchandise at not less than NV during the current POR and will not sell the merchandise at less than NV in the future; and (2) it sold subject merchandise to the United States in commercial quantities for a period of at least three consecutive years. Cutrale also agreed to immediate reinstatement of the antidumping duty order, as long as any exporter or producer is subject to the order, if the Department concludes that, subsequent to the revocation, it sold the subject merchandise at less than NV.

After analyzing Cutrale's request for revocation, we preliminarily find that it does not meet all of the criteria under 19 CFR 351.222(b). In this case, our preliminary margin calculation shows that Cutrale sold the subject merchandise at less than NV during the current review period. *See* "Preliminary Results of the Review" section below. Moreover, Cutrale's certification, which predated our final results of the second administrative review, was based on the erroneous belief that it would receive a zero or *de minimis* margin in their second administrative review. However, Cutrale received antidumping duty margins above *de minimis* in the second administrative review. *See Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review*, 74 FR 40167 (Aug. 11, 2009). Therefore, we preliminarily determine that Cutrale does not qualify for revocation of the order on orange juice pursuant to 19 CFR 351.222(b)(2), and that the order with respect to merchandise produced and exported by Cutrale should not be revoked.

Comparisons to Normal Value

To determine whether sales of OJ by Cutrale and Fischer to the United States were made at less than NV, we compared constructed export price (CEP) to the NV, as described in the "Constructed Export Price" and "Normal Value" sections of this notice.

Pursuant to section 777A(d)(2) of the Act, we compared the CEPs of individual U.S. transactions to the weighted-average NV of the foreign like product where there were sales made in the ordinary course of trade, as discussed in the "Cost of Production Analysis" section below.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Cutrale and Fischer covered by the description in the "Scope of the Order" section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Pursuant to 19 CFR 351.414(e)(2), we compared U.S. sales of OJ to sales of OJ in the home market within the contemporaneous window period, which extends from three months prior to the month of the first U.S. sale until two months after the last U.S. sale. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: Product type and organic designation. Where there were no sales of identical or similar merchandise, we made product comparisons using CV, as discussed in the "Calculation of Normal Value Based on Constructed Value" section below. See section 773(a)(4) of the Act.

Constructed Export Price

For all U.S. sales made by Cutrale and Fischer, we used the CEP methodology specified in section 772(b) of the Act because the subject merchandise was sold for the account of these respondents by their U.S. subsidiaries in the United States to unaffiliated purchasers.

A. Cutrale

In accordance with section 772(b) of the Act, we calculated CEP for those sales where the merchandise was first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. In this case, we are treating all of Cutrale's U.S. sales as CEP sales because they were made in the United States by Cutrale's U.S. affiliate, CPI, on behalf of Cutrale, within the meaning of section 772(b) of the Act.

We based CEP on the packed delivered prices to unaffiliated purchasers in the United States. For sales made pursuant to futures contracts, we adjusted the reported gross unit price (*i.e.*, the notice price) to

include gains and losses incurred on the futures contract which resulted in the shipment of subject merchandise. Where appropriate, we made adjustments for billing adjustments and rebates.

In addition, we made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act. These included, where appropriate, foreign inland freight; foreign warehousing expenses; foreign brokerage and handling expenses; ocean freight; U.S. brokerage and handling (offset by customer-specific reimbursements); U.S. customs duties, harbor maintenance fees and merchandise processing fees (offset by U.S. duty drawback and customs duty reimbursements); U.S. inland freight expenses (*i.e.*, freight from port to warehouse); and U.S. warehousing expenses. We capped reimbursements for brokerage and handling expenses by the amount of brokerage and handling expenses incurred on the subject merchandise, in accordance with our practice. See *Certain Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 46584 (Aug. 11, 2008), and accompanying Issues and Decision Memorandum (2005–2007 OJ from Brazil) at Comment 7; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review*, 74 FR 40167 (Aug. 11, 2009), and accompanying Issues and Decision Memorandum at Comment 3 (2007–2008 OJ from Brazil). We also capped U.S. customs duty reimbursements, as well as U.S. duty drawback, by the amount of U.S. customs duties incurred on the subject merchandise, in accordance with our practice. *Id.*

In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, bank charges, commissions, imputed credit expenses, and repacking (offset by pallet revenue)), and indirect selling expenses (including inventory carrying costs and other indirect selling expenses). We capped U.S. pallet revenue by the amount of repacking expenses, in accordance with our practice. In addition, we recalculated inventory carrying costs using the manufacturing costs reported in Cutrale's most recent cost response, adjusted as noted in the "Calculation of Cost of Production" section of this notice, below.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive

at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Cutrale and its U.S. affiliate on their sales of the subject merchandise in the United States and the profit associated with those sales.

For further discussion of the changes made to Cutrale's reported U.S. sales data, see the April 7, 2010, memorandum from Blaine Wiltse, Analyst, to the File, entitled "Calculation Adjustments for Sucocitrico Cutrale Ltda. for the Preliminary Results" (Cutrale Sales Calculation Memo).

B. Fischer

In accordance with section 772(b) of the Act, we calculated CEP for those sales where the merchandise was first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. In this case, we are treating all of Fischer's U.S. sales as CEP sales because they were made in the United States by Fischer's U.S. affiliate, CNA, on behalf of Fischer, within the meaning of section 772(b) of the Act.

We based CEP on the packed delivered prices to unaffiliated purchasers in the United States. Where appropriate, we made adjustments for billing adjustments and rebates. We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight expenses; foreign warehousing expenses; foreign brokerage and handling expenses; ocean freight expenses; bunker fuel surcharges; marine insurance expenses; U.S. brokerage and handling expenses; U.S. customs duties, harbor maintenance fees and merchandise processing fees (offset by U.S. duty drawback and customs duty reimbursements); U.S. inland freight expenses (*i.e.*, freight from port to customer); and U.S. warehousing expenses. We capped reimbursements for U.S. customs duties, as well as U.S. duty drawback, by the amount of U.S. customs duties incurred on the subject merchandise, in accordance with our practice. See *2005–2007 OJ from Brazil* at Comment 7 and *2007–2008 OJ from Brazil* at Comment 3. Further, we determined that the international freight expenses provided by Fischer's affiliated freight provider were not at arm's length. Therefore, for all sales shipped by Fischer's affiliate, we assigned the international freight rate

charged by Fischer's affiliate to an unaffiliated party to restate them on an arm's-length basis. For further discussion, see the April 7, 2010, memorandum to the file from Hector Rodriguez, Analyst, entitled "Calculations Performed for Fischer S.A. Comercio, Industria, e Agricultura for the Preliminary Results in the 08–09 Antidumping Duty Administrative Review of Certain Orange Juice from Brazil" (Fischer Sales Calculation Memo).

In accordance with sections 772(d)(1) and (2) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, additional processing expenses, imputed credit expenses, and repacking), and indirect selling expenses (including inventory carrying costs, other indirect selling expenses, and storage insurance expenses).

We made no adjustment to the price for CEP profit, pursuant to section 772(d)(3) of the Act, because Fischer incurred a loss during the POR and it is the Department's practice to not use "negative profit" rates in its calculations. *See, e.g., Low Enriched Uranium from France: Final Results of Antidumping Duty Administrative Review*, 71 FR 52318 (Sept. 5, 2006), and accompanying Issues and Decision Memorandum at Comment 8; and *Frozen Concentrated Orange Juice From Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 64 FR 43650, 43653 (Aug. 11, 1999).

Normal Value

A. Home Market Viability and Selection of Comparison Markets

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

We determined that the aggregate volume of home market sales of the foreign like product for both respondents was sufficient to permit a proper comparison with its U.S. sales of the subject merchandise.

B. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the export price (EP) or CEP. Sales are

made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.* *See also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (Nov. 19, 1997) (*Plate from South Africa*). In order to determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),¹ we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Plate from South Africa*, 62 FR at 61732–33.

In this administrative review, we obtained information from each respondent regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution. Company-

specific LOT findings are summarized below.

1. Cutrale

Cutrale reported that it made CEP sales through one channel of distribution in the United States (*i.e.*, sales via an affiliated reseller) and thus the selling activities it performed did not vary by the type of customer. We examined the selling activities performed for this channel and found that Cutrale performed the following selling functions: Maintaining weekly contact with the customer; preparing quarterly and annual sales forecasts and corresponding shipping schedules; packing; arranging delivery to the port of exportation and the provision of customs clearance/brokerage services; and maintaining inventory at the port of exportation. *See* the February 25, 2010, memorandum to the file from Elizabeth Eastwood, Senior Analyst, Office 2, entitled "Verification of the Sales Response of Sucocitrico Cutrale Ltda. (Cutrale) in the 2008–2009 Antidumping Duty Administrative Review of Certain Orange Juice from Brazil" (Cutrale home market sales verification report).

Selling activities can be generally grouped into four selling function categories for analysis: (1) Sales and marketing; (2) freight and delivery; (3) inventory maintenance and warehousing; and (4) warranty and technical support. *See 2007–2008 OJ from Brazil* at Comment 2 and *Certain Frozen Warmwater Shrimp From India: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 9991, 9996 (Mar. 9, 2009), unchanged in *Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 33409 (July 13, 2009). Based on these selling function categories, we find that Cutrale performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for U.S. sales. Because all sales in the United States are made through a single distribution channel, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the home market, Cutrale reported that it made sales through one channel of distribution (*i.e.*, direct sales to soft drink manufacturers). We examined the selling activities performed for home market sales, and found that Cutrale performed the following selling functions: Maintaining weekly contact with customers; visiting the customer and permitting the customer to visit the factory; preparing

¹ Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, general and administrative (G&A) expenses, and profit for CV, where possible.

sales estimates five times a year; order processing; advertising via sponsorship of a soccer team and signs placed on tankers; packing; inventory maintenance at the factory; and arranging delivery to home market customers. *See* Cutrale home market sales verification report at pages 7–10. In addition to these functions, Cutrale also claimed that it offered engineering services, technical assistance, and guarantees to home market customers. However, at verification, Cutrale acknowledged that it did not in fact provide any of these services during the POR. *Id.*

Accordingly, based on the four selling function categories listed above, we find that Cutrale performed sales and marketing, and inventory maintenance and warehousing for home market sales. Because all home market sales are made through a single distribution channel, we preliminarily determine that there is one LOT in the home market for Cutrale.

Finally, we compared the CEP LOT to the home market LOT and found that the selling functions performed for U.S. and home market customers do not differ significantly. Specifically, we found that the differences were limited to the following activities: (1) Visits with customers in the home market but not to/from CPI; (2) Cutrale performed limited advertising in the home market (such as the sponsorship of a local soccer team in Brazil and advertising related to the company's fortieth anniversary); and (3) Cutrale input orders into the company's computer system for home market sales (vs. the shipment of merchandise from a quarterly shipping schedule for U.S. sales).

According to 19 CFR 351.412(c)(2), the Department will determine that sales are made at different levels of trade if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing. Therefore, because we determine that substantial differences in Cutrale's selling activities do not exist across markets, we determine that sales to the U.S. and home markets during the POR were made at the same LOT. As a result, neither an LOT adjustment nor a CEP offset is warranted for Cutrale. This determination is consistent with findings in previous reviews. *See, e.g., 2005–2007 OJ from Brazil* at Comment 5, and *2007–2008 OJ from Brazil*.

2. Fischer

Fischer reported that it made CEP sales through one channel of distribution in the United States (*i.e.*,

sales via an affiliated reseller) and thus the selling activities it performed did not vary by the type of customer. We examined the selling activities performed for this channel and found that Fischer performed the following selling functions: Customer contact and price negotiation; order processing; arranging for freight and the provision of customs clearance/brokerage services; and inventory maintenance. Selling activities can be generally grouped into four selling function categories for analysis: (1) Sales and marketing; (2) freight and delivery; (3) inventory maintenance and warehousing; and (4) warranty and technical support. Accordingly, based on these selling function categories, we find that Fischer performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for U.S. sales. Because all sales in the United States are made through a single distribution channel, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the home market, Fischer reported that it made sales through one channel of distribution and that the selling activities it performed did not vary by the type of customer. We examined the selling activities performed for home market sales, and found that Fischer performed the following selling functions: Customer contact and price negotiation; order processing; arranging for freight; cold storage and inventory maintenance; sales and marketing support; and technical assistance. Accordingly, based on the selling function categories listed above, we find that Fischer performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty and technical support for home market sales. Because all home market sales are made through a single distribution channel, we preliminarily determine that there is one LOT in the home market for Fischer.

Finally, we compared the CEP LOT to the home market LOT and found that the selling functions performed for U.S. and home market customers do not differ significantly. Therefore, we determine that sales to the U.S. and home markets during the POR were made at the same LOT, and as a result, neither a LOT adjustment nor a CEP offset is warranted for Fischer.

C. Cost of Production Analysis

We found that both Cutrale and Fischer made sales below the COP in the 2005–2007 administrative review, the most recently completed segment of this proceeding as of the date of

initiation of this review, and such sales were disregarded. *See 2005–2007 OJ from Brazil*, 73 FR at 46585. Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that Cutrale and Fischer made home market sales at prices below the cost of producing the merchandise in the current POR.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the respondents' COPs based on the sum of their costs of materials and conversion for the foreign like product, plus amounts for G&A expenses and interest expenses (*see* "Test of Comparison Market Sales Prices" section, below, for treatment of home market selling expenses).

The Department relied on the COP data submitted by each respondent in its most recently submitted cost database for the COP calculation, except in the following instances:

a. Cutrale

i. In accordance with the transactions disregarded rule (*i.e.*, section 773(f)(2) of the Act) we adjusted Cutrale's cost of manufacturing (COM) to reflect the market value of oranges that were purchased from an affiliate as well as the market value of by-products that were sold to affiliated parties;

ii. We adjusted Cutrale's reported COM to remove ICMS taxes from the by-product revenue;

iii. We revised Cutrale's general and administrative expense rate to include the net loss on routine disposals of fixed assets in the numerator and reduce the cost of goods sold (COGS), used as the denominator, by the by-product revenue; and

iv. We revised Cutrale's financial expense rate to reduce the COGS, used as the denominator, by packing expenses and the by-product revenue. For further discussion of these adjustments, *see* the April 7, 2010, Memorandum from Angie Sepulveda, Accountant, to Neal M. Halper, Director, Office of Accounting, entitled "Cost of Production and Constructed Value Adjustments for the Preliminary Results—Sucocitrico Cutrale Ltda."

b. Fischer

i. We adjusted Fischer's COM to reflect market price for the sale of certain by-products to an affiliated party;

ii. We revised Fischer's G&A calculation to include "other" operating expenses related to provisions and disposal of fixed assets; and

iii. We adjusted Fischer's financial ratio numerator to include long-term interest expense from an affiliated party

and exchange rate variations (net), and we adjusted the financial ratio denominator for selling expenses and by-product sales.

See the April 7, 2010, Memorandum from Christopher J. Zimpo, Accountant, to Neal M. Halper, Director Office of Accounting, entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Fischer S.A. Comercio, Industria and Agricultura."

2. Test of Comparison Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sales prices were below the COP. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices (inclusive of billing adjustments, where appropriate) were exclusive of any applicable movement charges, direct and indirect selling expenses and packing expenses. We revised Cutrale's selling expenses as discussed below under the "Calculation of Normal Value Based on Comparison Market Prices" section.

3. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act: (1) Whether, within an extended period of time, such sales were made in substantial quantities; and (2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. Where less than 20 percent of the respondent's home market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales when: (1) They were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain products, more than 20 percent of Cutrale's and Fischer's home market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales from our analysis. We used the remaining sales as the basis for determining NV for Cutrale, in accordance with section 773(b)(1) of the Act. However, because all of Fischer's home market sales failed the cost test, we based NV on CV for this company.

D. Calculation of Normal Value Based on Comparison Market Prices

For Cutrale, we calculated NV based on ex-factory prices to unaffiliated customers. We adjusted the reported prices to account for the difference between the standard and actual brix levels at which the foreign like product was sold, using facts available under section 776(a) of the Act. As facts available, we used the highest actual brix level observed at verification for any reported home market sale. We find that facts available is warranted in this instance because to date Cutrale failed to provide useable data related to its actual brix levels. Nonetheless, we have afforded Cutrale a final opportunity to provide the necessary information, and we will consider this information, if submitted in a timely manner for the final results in this review.

We made adjustments, where appropriate, to the starting price for billing adjustments, in accordance with 19 CFR 351.401(c). We also made adjustments, where appropriate, to the starting price for Brazilian taxes, in accordance with section 773(a)(6)(B)(iii) of the Act. We made deductions to the starting price for foreign warehousing expenses (offset by warehousing revenue) in accordance with section 773(a)(6)(B)(ii) of the Act. We capped warehousing revenue by the amount of warehousing expenses incurred on home market sales, in accordance with our practice. See 2007–2008 OJ from Brazil at Comment 3. We made deductions from the starting price for home market credit expenses (offset by interest revenue) pursuant to section 773(a)(6)(C) of the Act. We recalculated credit expenses to base the home market interest rate on Cutrale's actual borrowings during the POR. Where applicable, in accordance with 19 CFR 351.410(e), we offset any commission paid on a U.S. sale by reducing the NV by the amount of home market indirect selling expenses and inventory carrying costs, up to the amount of the U.S. commission. We calculated home market inventory carrying costs using

the manufacturing costs reported in Cutrale's most recent cost response, adjusted as noted in the "Calculation of Cost of Production" section of this notice, above. For further discussion of these adjustments, see the Cutrale Sales Calculation Memo.

We deducted home market packing costs and added U.S. packing costs, where appropriate, in accordance with sections 773(a)(6)(A) and (B) of the Act.

Finally, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

E. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison market sales, NV may be based on CV. Accordingly, because Fischer made no home market sales in the ordinary course of trade, we based NV for Fischer on CV.

Section 773(e) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise, plus amounts for selling, general, and administrative (SG&A) expenses, profit, and U.S. packing costs. We calculated the cost of materials, fabrication and G&A financial expenses based on the methodology described in the "Cost of Production Analysis" section, above. Because Fischer did not have home market sales in the ordinary course of trade, the Department cannot determine profit under section 773(e)(2)(A) of the Act, which requires sales by the respondent in question in the ordinary course of trade in a comparison market. Likewise, because Fischer does not have sales of any product in the same general category of products as the subject merchandise, we are unable to apply alternative (i) of section 773(e)(2)(B) of the Act. Moreover, because the only respondent in this administrative review other than Fischer is Cutrale, we are unable to apply alternative (ii) of section 773(e)(2)(B) of the Act (*i.e.*, the weighted average of the actual amounts incurred and realized by exporters or producers that are subject to this review (other than the exporter or producer described in clause (i)), because using Cutrale's actual amounts would disclose Cutrale's business proprietary data.

Therefore, we calculated Fischer's CV profit and selling expenses based on alternative (iii) of this section, in accordance with section 773(e)(2)(B)(iii) of the Act. As a result, we calculated Fischer's CV profit and selling expenses using its own data for home market

sales in the ordinary course of trade in the most recently completed segment of this proceeding (*i.e.*, the 2007–2008 administrative review). For further discussion, see the Fischer Sales Calculation Memo.

For comparisons to CEP, we deducted home market direct selling expenses from CV. *Id.* We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions. See 19 CFR 351.410(e).

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of the Review

We preliminarily determine that weighted-average dumping margins exist for the respondents for the period March 1, 2008, through February 28, 2009, as follows:

Manufacturer/exporter	Percent margin
Sucocitrico Cutrale, S.A.	8.29
Fischer S.A. Comercio, Industria, and Agricultura	5.26

Disclosure and Public Hearing

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. See 19 CFR 351.224(b). Pursuant to 19 CFR 351.309, interested parties may submit cases briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the time limit for filing the case briefs. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. See 19 CFR 351.309(c)(2).

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *Id.* Issues raised in the hearing will be limited to those raised in the respective case briefs. The

Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department will issue appropriate appraisement instructions for the companies subject to this review directly to CBP 15 days after the date of publication of the final results of this review.

We will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the sales. We will instruct CBP 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*. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis*. See 19 CFR 351.106(c)(1). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

The Department clarified its “automatic assessment” regulation on May 6, 2003. See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediary involved in the transaction. See *Assessment Policy Notice* for a full discussion of this clarification.

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)(2)(C) of the Act: (1) The cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not participating in this review, 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, 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 16.51 percent, the all-others rate made effective by the LTFV investigation. See *OJ Order*, 71 FR at 12184. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 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 double antidumping duties.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: April 7, 2010.

Ronald K. Lorentzen,
Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–8422 Filed 4–12–10; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-428-602]

Brass Sheet and Strip From Germany: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on brass sheet and strip (BSS) from Germany. For the period of review (POR) March 1, 2008, through February 28, 2009, we have preliminarily determined that U.S. sales have not been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* April 13, 2010.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or George McMahon, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482-5973 or (202) 482-1167, respectively.

SUPPLEMENTARY INFORMATION:**Background**

The Department published in the **Federal Register** the antidumping duty order on BSS from Germany on March 6, 1987 (52 FR 6997), amended on September 23, 1987 (52 FR 35750).

On May 5, 2008, the Department published a notice of opportunity to request an administrative review of this order for the POR. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 74 FR 9077 (March 2, 2009). On March 30, 2009, the Department received a timely request for an administrative review of this antidumping duty order from Wieland-Werke AG (Wieland). On April 27, 2009, we published a notice initiating an administrative review of the antidumping duty order on BSS from Germany covering one respondent, Wieland. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 19042 (April 27, 2009).

On May 7, 2009, the Department issued an antidumping duty

questionnaire to Wieland. We received Wieland's response to Section A of the Department's questionnaire on June 11, 2009 (Section AQR), Sections B-C on July 1, 2009 (Section B-C QR), and Section D on July 21, 2009 (Section DQR). The Department received comments from the Petitioners¹ regarding Wieland's questionnaire responses on June 25, 2009, July 2, 2009, October 22, 2009, and February 4, 2010.

After reviewing the Sections A through D responses from Wieland, the Department issued supplemental questionnaires to Wieland. The Department issued additional supplemental questions, after reviewing Wieland's supplemental questionnaire responses. On November 18, 2009, the Department issued an extension of the deadline for the preliminary results of this antidumping duty administrative review from December 1, 2009, until March 31, 2010. *See Brass Sheet and Strip from Germany: Notice of Extension of Time Limit for Preliminary Results of Administrative Review*, 74 FR 59523 (November 18, 2009). As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. The revised deadline for the preliminary results of this antidumping duty administrative review is now April 7, 2010. *See Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm,"* dated February 12, 2010."

In letters to the Department dated March 4, 2010, and March 12, 2010, the Petitioners state that Wieland was the importer of record for the U.S. sale made during the POR and, therefore, Wieland is liable for any antidumping duties assessed. Pursuant to Wieland's role as the importer, the Petitioners allege that Wieland has put itself in a position to make payment or reimbursement of any antidumping duties related to its U.S. sale. As such, the Petitioners assert that the transaction in question is subject to a reduction in the export price, pursuant

to 19 CFR 351.402(f).² In a letter to the Department dated March 8, 2010, at page 6, Wieland rebuts the Petitioners' assertion that its single U.S. sale is subject to the aforementioned regulation, arguing that Wieland "was both the exporter and importer and thus cannot reimburse itself."

The Department has considered the facts of the instant review. Consistent with the Department's practice with respect to this issue, we do not find that Wieland's sale to the United States during the POR is subject to 19 CFR 351.402(f). Our decision as to reimbursement is based upon our interpretation of this regulation, which is that two separate corporate entities must exist to invoke the reimbursement regulation. *See Circular Welded Non-Alloy Steel Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review*, 63 FR 33041, 33044 (June 17, 1998). In this instance, though it is both an exporter and importer, there is still only one corporate entity, Wieland, not two.

Scope of the Order

The scope of this order covers shipments of brass sheet and strip, other than leaded and tinned, from Germany. The chemical composition of the covered products is currently defined in the Copper Development Association (C.D.A.) 200 Series or the Unified Numbering System (U.N.S.) C2000; this review does not cover products the chemical compositions of which are defined by other C.D.A. or U.N.S. series. In physical dimensions, the products covered by this review have a solid rectangular cross section over 0.006 inches (0.15 millimeters) through 0.188 inches (4.8 millimeters) in finished thickness or gauge, regardless of width. Coiled, wound-on-reels (transverse wound), and cut-to-length products are included. The merchandise is currently classified under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7409.21.00 and 7409.29.00. Although the HTSUS item numbers are provided for convenience and customs purposes, the Department's written description of the scope of this order remains dispositive.

Period of Review

The period of review is March 1, 2008, through February 28, 2009.

² 19 CFR 351.402(f) states: (f) Reimbursement of antidumping duties and countervailing duties—(1) In general. (i) In calculating the export price (or the constructed export price), the Secretary will deduct the amount of any AD duty or CVD duty which the exporter or producer: (A) Paid directly on behalf of the importer; or (B) Reimbursed to the importer.

¹ The Petitioners include GBC Metals, LLC of Global Brass and Copper, Inc., doing business as Olin Brass, Heyco Metals, Inc., Luvata Buffalo, Inc., PMX Industries, Inc., and Revere Copper Products, Inc.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), we intend to verify the information relied upon prior to the final results of the instant review. Our verification results will be outlined in the public version of our verification report, which will be on file in the Department's Central Records Unit (CRU), Room 1117 of the Main Commerce Building.

Analysis

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondent that are covered by the description contained in the "Scope of the Order" section above and were sold in the home market during the POR, to be the foreign like product for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product on the basis of the characteristics listed in Appendix V of the initial antidumping questionnaire we provided to Wieland.³ When there were no appropriate comparison market sales of comparable merchandise, we compared the merchandise sold in the United States to constructed value (CV), in accordance with section 773(a)(4) of the Act.

For purposes of the preliminary results, where appropriate, we have calculated the adjustment for differences in merchandise based on the difference in the variable cost of manufacturing (VCOM) between each U.S. model and the most similar home market model selected for comparison.

Normal Value Comparisons

To determine whether sales of subject merchandise to the United States were made at less than NV, we compared the export price (EP) to the NV, as described in the "Export Price" and "Normal Value" sections of this notice. During the POR, Wieland had only one shipment of BSS to the United States.

In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to the individual U.S. transaction price. In order to lessen the potential distortion to sales prices which result from significantly changing costs, we are using a quarterly costing approach; we have not made price-to-

price comparisons outside of a quarter. See below and Memorandum through James Terpstra from Dennis McClure, titled "Sales Analysis Memorandum—Wieland-Werke AG (Sales Analysis Memo—Wieland)," dated April 7, 2010, and available in the CRU.

Export Price

For the price to the United States, we used EP, in accordance with section 772(a) of the Act. We calculated EP when the merchandise was sold by the producer or exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation. We based EP on the reported delivery term to the first unaffiliated customer in, or for exportation to, the United States.

In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including inland freight from plant or warehouse to port of exportation, foreign brokerage, handling and loading charges, international freight, insurance, U.S. inland freight expenses, other transportation expenses for cargo scanning and port charges, and U.S. duties. See Sales Analysis Memo—Wieland.

As stated at 19 CFR 351.401(i), the Department will use the respondent's invoice date as the date of sale unless another date better reflects the date upon which the exporter or producer establishes the essential terms of sale. Wieland reported the order confirmation date as the date of sale for the U.S. market and the earlier of fabrication order confirmation date, shipment date, or invoice date as the sale date in the home market, claiming that these dates reflect the date on which the material terms of sale were finalized. See Section B–C QR at B–12–B–13 and C–7.

We have examined the information on the record and preliminarily find that the invoice date better reflects the date upon which the producer established its material terms of sale in both the U.S. and home markets. Specifically, Wieland reported that its "written general terms of delivery, applicable to both domestic and export sales, provide that Wieland is entitled to make excess or short deliveries up to 10 percent of the agreed weights or units. However, Wieland has unwritten understandings/established practices with certain customers allowing for greater variations without prior approval." See Wieland's Section A–C Supplemental Questionnaire Response (Section A–C SQR), dated September 29, 2010, at SAC–29. Thus, Wieland has reported sales transactions, in both the U.S. and

home markets, in which the quantity exceeds its standard tolerance, and the basis for such increases can only be supported by "unwritten understandings/established practices." Based on the fact that there is no written contract or sales agreement documenting agreement to the change in terms, the Department finds that the invoice date represents the date in which the material terms of sale are finalized.⁴ Because the data specific to the date of sale discussion are proprietary in nature, see the Department's sales calculation memorandum from Dennis McClure through James Terpstra to the File titled, "Sales Analysis Memo—Wieland" for additional details.

Normal Value

A. Home Market Viability

In accordance with section 773(a)(1)(C) of the Act, to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Wieland's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise. Pursuant to section 773(a)(1)(B) of the Act and 19 CFR 351.404(b), because Wieland's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable.

Arm's-Length Test

Sales to affiliated customers in the home market not made at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, we compared the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts, and packing. In accordance with the Department's practice, if the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise identical or most similar to that sold to the affiliated party, we consider the sales to be at arm's-length prices. See 19 CFR 351.403(c); see also *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Preliminary Results of the Antidumping Duty Administrative Review*, 74 FR

⁴ See *Notice of Final Determination of Sales at Less Than Fair Value: Citric Acid and Certain Citrate Salts from Canada*, 74 FR 16843 (April 13, 2009), and accompanying Issues and Decision Memorandum at Comment 1.

³ See the Department's Antidumping Duty Questionnaire issued to Wieland, dated May 7, 2009, on the record in the CRU.

46110, 46112 (September 8, 2009); unchanged in the final, *see Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Fifteenth Administrative Review*, 75 FR 13490 (March 22, 2010). Conversely, where the affiliated party did not pass the arm's-length test, all sales to that affiliated party have been excluded from the NV calculation. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002). For the arm's-length test, we matched only affiliated sales to unaffiliated sales within the same quarter in which the sale occurred, because we are using a quarterly costing approach, to lessen the potential distortion to sales prices which result from significantly changing costs.

B. Cost Reporting Period

The Department's normal practice is to calculate an annual weighted-average cost for the entire POR. *See, e.g., Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review*, 65 FR 77852 (December 13, 2000) (*Pasta from Italy*), and accompanying Issues and Decision Memorandum at Comment 18 and *Notice of Final Results of Antidumping Duty Administrative Review of Carbon and Certain Alloy Steel Wire Rod from Canada*, 71 FR 3822 (January 24, 2006) (*Wire Rod from Canada*), and accompanying Issues and Decision Memorandum at Comment 5 (explaining the Department's practice of computing a single weighted-average cost for the entire period). This methodology is predictable and generally applicable in all proceedings. However, the Department recognizes that possible distortions may result when our annual average cost method is used during a period of significant cost changes.

In these circumstances, in determining whether to deviate from our normal methodology, the Department has evaluated the case-specific record evidence using two primary factors: (1) the change in the cost of manufacturing (COM) recognized by the respondent during the POR must be deemed significant; and, (2) the record evidence must show that sales during the shorter averaging periods could be reasonably linked with the cost of production (COP) or CV during the same shorter averaging periods. *See, e.g., Stainless Steel Plate in Coils From Belgium: Final Results of Administrative Review*, 73 FR 75398, 75399 (December 11, 2008) (*SSPC from Belgium*) and *Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of*

Administrative Review, 74 FR 6365 (February 9, 2009) (*2006–2007 Final Results*).

a. Significance of Cost Changes

Record evidence indicates that Wieland experienced significant changes in the total COM during the POR and that the change in COM is primarily attributable to the price volatility for copper and zinc, major inputs consumed in the production of the merchandise under consideration. The record indicates that copper and zinc prices have decreased dramatically throughout the POR. Specifically, the record data show that the percentage difference between the high and low quarterly costs for brass products exceeded 25 percent during the POR. As a result, we have determined for the preliminary results that the changes in COM for Wieland are significant.

b. Linkage Between Cost and Sales Information

If the Department finds cost changes to be significant in a given administrative review or investigation, the Department subsequently evaluates whether there is evidence of linkage between the cost changes and the sales prices for the given POI/POR. Our definition of linkage does not require direct traceability between specific sales and their specific production cost, but rather relies on whether there are elements which would indicate a reasonable correlation between the underlying costs and the final sales prices levied by the company. These correlative elements may be measured and defined in a number of ways depending on the associated industry, and the overall production and sales processes.

In the instant case, Wieland's sales process is effectively the sale of two separate products: commodity metal (*i.e.*, copper and zinc) and fabrication. For metal, which represents a significant part of the total price, customers are charged a price that is determined, for the most part, on the London Metal Exchange (LME) metal price on the date of the customer's choosing (the "metal fixation date").

We find that, because both the metal costs and prices charged for the metal are reasonably linked to the market prices promulgated by the LME, there is a reasonable link between the underlying costs and sales prices.

In light of the two factors discussed above, we have preliminarily determined that a quarterly costing approach with respect to Wieland would lead to more accurate comparisons in our antidumping duty

calculations. Thus, we used quarterly indexed annual average direct material costs and annual weighted-average fabrication costs in the COP and CV calculations.

C. Cost of Production Analysis

Because we found that Wieland did not act to the best of its ability in providing information to the Department in the most recently completed administrative review in which it participated, we applied total adverse facts available which included a finding on that basis that Wieland's sales were made below cost. Therefore, the Department disregarded sales below the COP in the last completed review in which Wieland participated.⁵

Therefore, the Department finds reasonable grounds to believe or suspect, pursuant to section 773(b)(2)(A)(ii) of the Act, that sales of the foreign like product under consideration for the determination of NV in this review may have been made at prices below COP. Thus, pursuant to section 773(b)(1) of the Act, we examined whether sales from Wieland in the home market were made at prices below the COP.

We compared sales of the foreign like product in the home market with model-specific COP figures. In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus selling, general and administrative (SG&A) expenses, financial expenses and all costs and expenses incidental to placing the foreign like product in packed condition and ready for shipment.

In our sales-below-cost analysis, we relied on home market sales and COP information provided by Wieland in its questionnaire responses, except where noted below.

As discussed above, we used quarterly indexed annual average direct material costs and annual weighted-average conversion costs in the COP and CV calculations. *See Sales Analysis Memo—Wieland and Memorandum from Ernest Gziryan to Neal Halper "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Wieland-Werke AG (Wieland)," dated April 7, 2010 (Wieland Cost Calculation Memo—Wieland).*

Volatility in Raw Materials

Wieland explains that it offers three types of sales: single date (release)

⁵ *See Final Results of Antidumping Duty Administrative Review: Brass Sheet and Strip from Germany*, 64 FR 43342 (August 10, 1999).

pricing, split date pricing, and tolling. See Section AQR at 34–35. In its Section AQR, Wieland asserts that the volatility in daily commodity metal prices experienced during the POR poses unique issues that the Department's traditional antidumping methodology does not adequately account for. For example, Wieland states that in the case of split pricing sales in the home market, a U.S. sale with a metal fixation date occurring on one date would be compared with home market sales in which that metal fixation date falls, not only on a different date, but also in completely different months (since metal fixation can occur both before and after the fabrication order confirmation date). Wieland states that customers in the United States and Germany that purchased metal with the same metal fixation date will pay the same price for the LME metal price component of their metal purchase. However, Wieland asserts that if the price comparison is made such that sales with different metal fixation dates are compared, margins will be artificially created or masked simply because LME metal prices fluctuate.

Wieland asserts that, because the LME metal price is a full pass through to the customer, and is treated as such by Wieland both in its sales and cost accounting, the Department should make a circumstance of sale (COS) adjustment which adjusts for the price difference resulting from differences in metal fixation dates between U.S. and home market sales. More specifically, Wieland proposes that the Department adjust all U.S. and Home Market sales prices by the LME metal price for the alloy on the metal fixation date associated with the specific sale. In its letter dated June 25, 2009, at 14, the Petitioners state that the Department has never, to the best of its knowledge, adjusted metal pricing components as a circumstance of sale. The Petitioners state that if Wieland believes that changes in the prices of copper and zinc during the POR were (1) Very significant, (2) related to long-term changes and (3) that in and of themselves, (*i.e.*, apart from other cost factors), unduly changed total production costs, then the proper methodological remedy might be a potential change in the temporal structure of the cost of production. *Id.*

The Department does not find that a COS adjustment is warranted in the instant review, because it is the Department's practice to limit such adjustments to direct selling expenses. However, the Department preliminarily finds that, based on the sales pricing structure reported by Wieland and the

volatility experienced in commodity metal prices in this particular POR, the date of sale methodology and transaction-to-average price comparisons may not adequately account for the volatility in metal prices which occurred during the POR. Therefore, for these preliminary results, we are accounting for the volatility in commodity metal prices by ensuring that the home market sales selected for comparison purposes will first be matched based on the invoice date as the date of sale, and secondly, will have a metal fixation date in the same month as the metal fixation date of the U.S. sale. Absent a metal fixation date in the same month, we will make comparisons based on the same quarter of the POR as the metal fixation date reported for Wieland's U.S. sale. Absent such a match, we will use CV as the basis for comparison to Wieland's U.S. sale. We find that by limiting the comparisons to sales made within the same quarter of the POR and the same month for the metal fixation date, we reasonably account for the volatility experienced by Wieland during the POR associated with its split date pricing structure, thereby, preventing potential distortions in the Department's transaction-to-average price comparison methodology.

1. Calculation of COP

Before making any comparisons to NV, we conducted a quarterly COP analysis of Wieland pursuant to section 773(b) of the Act to determine whether Wieland comparison market sales were made at prices below the COP. We calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for SG&A expenses and packing, in accordance with section 773(b)(3) of the Act.

2. Test of Comparison Market Prices

As required under section 773(b)(2) of the Act, we compared the quarterly weighted-average COP to the per-unit price of the comparison market sales of the foreign like product based on the metal fixation date to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below-cost test by subtracting from the gross unit price any applicable movement charges, discounts, rebates, direct and indirect selling expenses (also subtracted from the COP), and packing

expenses. See Sales Analysis Memo—Wieland.

3. Results of COP Test

Where less than 20 percent of the respondent's home market sales of a given model were at prices below the COP, we did not disregard any below-cost sales of that model because we determined that the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of the respondent's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because: (1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of prices to the indexed POR weighted-average COPs, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

Therefore, for Wieland, we disregarded below-cost sales of a given product of 20 percent or more and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. See Sales Analysis Memo—Wieland.

D. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on the reported delivery terms to comparison market customers. We made deductions from the starting price, when appropriate, for handling, loading, inland freight, warehousing, inland insurance, discounts, and rebates. In accordance with sections 773(a)(6)(A) and (B) of the Act, we added U.S. packing costs and deducted comparison market packing, respectively. In addition, we made circumstance-of-sale adjustments for direct expenses, including imputed credit expenses, in accordance with section 773(a)(6)(C)(iii) of the Act. Where appropriate, we added other revenue and applied billing adjustments to the gross unit price.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacture (VCOM) for the foreign like product and subject merchandise, using weighted-average costs.

E. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). See 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997) (*Plate from South Africa*). Consistent with 19 CFR 351.412, to determine whether comparison market sales were at a different LOT than the U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated (or arm's-length) customers, including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale. If the comparison market sales were at a different LOT and the differences affect price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we will make an LOT adjustment under section 773(a)(7)(A) of the Act.

Wieland reported that its U.S. sale and home market sales were made at the same LOT. Wieland has two channels of distribution for U.S. sales: (1) manufacture to order and ship directly to customer, and (2) sales through Wieland Metals, Inc. The one sale occurring during the POR was made through channel (1) to an end-user. Wieland reported that during the POR, it sold subject merchandise through one channel of distribution in both the U.S. and home market, which is direct to the customer, to one customer category in the United States and three customer categories in the home market, consisting of OEM/end users, broker/distributors, and service center/slitting center.

Our analysis of the selling activities for Wieland shows that there is overlap in these activities for channels of distribution and customer categories. Wieland performs similar selling activities for all customer categories and channels of distribution. Wieland reports that its sales functions are basic services provided for all sales. For example, every sale involves packing,

order processing, the salesperson's time, and logistics support. Furthermore, Wieland states that its selling functions do not vary by type of customer. See Section AQR at Section A–C SQR at SAC–7.

In the U.S. market, Wieland reported that its sale was made through one channel of distribution to one customer category, and therefore, at one LOT. The Department has determined that Wieland's home market sales were made at one LOT and at the same stage of marketing as the U.S. sales LOT. Therefore, the Department will not make an LOT adjustment for Wieland's sale to the United States.

Currency Conversion

For purposes of these preliminary results, we made currency conversions in accordance with section 773A(a) of the Act, based on the official exchange rates published by the Federal Reserve Bank.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted-average percentage margin exists for the period March 1, 2008, through February 28, 2009, for Wieland:

Manufacturer/exporter	Margin (percent)
Wieland-Werke AG	0.00

The Department will disclose the calculations performed for these preliminary results within five days of the date of publication of this notice to the parties of this proceeding, in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. See 19 CFR 351.310(c). Pursuant to section 782(i) of the Act, the Department intends to verify the information upon which we will rely in making our final determination. As a result, we intend to establish the briefing schedule upon the completion of verification.

Pursuant to section 751(3)(A) of the Act and 19 CFR 351.213(h), the Department intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, or at a hearing, if requested, within 120 days of publication of these preliminary results.

Assessment Rate

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of the subject merchandise. Upon issuance of the final

results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (i.e., at or above 0.5 percent), the Department will issue appraisal instructions directly to CBP to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculated importer-specific assessment rates for the subject merchandise by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer. Where appropriate, to calculate the entered value, we subtracted international movement expenses (e.g., international freight) from the gross sales value.

The Department clarified its "automatic assessment" regulation on May 6, 2003 (68 FR 23954). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these preliminary results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

To calculate the cash deposit rate for Wieland, we divided its total dumping margin by the total net value of its sales during the review period. The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of BSS from Germany entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for companies subject to this review will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, no cash deposit will be required; (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 final results for a review in which that manufacturer or exporter participated; (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 final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 7.30 percent, the all-others rate established in the LTFV investigation. *See Antidumping Duty Order: Brass Sheet and Strip from the Federal Republic of Germany*, 52 FR 6997 (March 6, 1987), amended at 52 FR 35750 (September 23, 1987). These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 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 increase the subsequent assessment of the antidumping duties by the amount of antidumping duties reimbursed.

These preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: April 7, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[C-475-819]

Certain Pasta From Italy: Preliminary Results of the 13th (2008) Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("Department") is conducting an administrative review of the countervailing duty order on certain pasta from Italy for the period January 1, 2008, through December 31, 2008. We preliminarily find that Pastificio Lucio Garofalo S.p.A. ("Garofalo") received countervailable subsidies and that F.lli De Cecco di Filippo Fara San Martino

S.p.A. ("De Cecco Pastificio")/Molino e Pastificio De Cecco S.p.A. ("De Cecco Pescara"), members of the De Cecco group of companies, received *de minimis* countervailable subsidies. *See* the "Preliminary Results of Review" section, below. Interested parties are invited to comment on these preliminary results. *See* the "Public Comment" section of this notice.

DATES: *Effective Date:* April 13, 2010.

FOR FURTHER INFORMATION CONTACT:

Andrew McAllister or Anna Flaaten, AD/CVD Operations, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-1174 and (202) 482-5156, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1996, the Department published a countervailing duty order on certain pasta ("pasta" or "subject merchandise") from Italy. *See Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta From Italy*, 61 FR 38544 (July 24, 1996). On July 1, 2009, the Department published a notice of "Opportunity to Request Administrative Review" of this countervailing duty order for calendar year 2008, the period of review ("POR"). *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 74 FR 31406 (July 1, 2009). On July 2, 2009, we received such a request from De Cecco Pastificio. On July 31, 2009, we received additional review requests from De Matteis Agroalimentare S.p.A. ("De Matteis"); Agritalia S.r.L. ("Agritalia"); F. Divella S.p.A. ("Divella"); and Garofalo. In accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of this review on August 25, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 42873 (August 25, 2009).

On October 9, 2009, the Department selected De Cecco Pastificio and Garofalo as mandatory respondents. *See Memorandum to Susan H. Kuhbach, Senior Office Director, "Certain Pasta from Italy: Thirteenth Countervailing Duty Administrative Review—Respondent Selection,"* dated October 9, 2009 which is on file in the Department's Central Records Unit ("CRU") in Room 1117 of the main Department building.

On November 10, 2009, we issued countervailing duty questionnaires to

the Commission of the European Union ("EU"), the Government of Italy ("GOI"), De Cecco Pastificio and Garofalo. We received responses to our questionnaires in December 2009. We issued supplemental questionnaires to De Cecco Pastificio, Garofalo, and the GOI in January and March 2010, and we received responses to our supplemental questionnaires in February, March, and April 2010.

As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. The revised deadline for the preliminary results of this review is now June 7, 2010. *See Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm,"* dated February 12, 2010.

Period of Review

The POR for which we are measuring subsidies is January 1, 2008, through December 31, 2008.

Scope of the Order

Imports covered by the order are shipments of certain non-egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by the scope of the order is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of the order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Istituto Mediterraneo Di Certificazione, Bioagricoop S.r.l., QC&I International Services, Ecocert Italila, Consorzio per il Controllo dei Prodotti Biologici, Associazione Italiana per l'Agricoltura Biologica, or Codex S.r.l. In addition, based on publicly available information, the Department has determined that, as of August 4, 2004, imports of organic pasta from Italy that are accompanied by

the appropriate certificate issued by Bioagricert S.r.l. are also excluded from the order. *See* Memorandum from Eric B. Greynolds to Melissa G. Skinner, dated August 4, 2004, which is on file in the Department's CRU. In addition, based on publicly available information, the Department has determined that, as of March 13, 2003, imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by Istituto per la Certificazione Etica e Ambientale are also excluded from the order. *See* Memorandum from Audrey Twyman to Susan Kuhbach, dated February 28, 2006, entitled "Recognition of Istituto per la Certificazione Etica e Ambientale (ICEA) as a Public Authority for Certifying Organic Pasta from Italy" which is on file in the Department's CRU.

The merchandise subject to review is currently classifiable under items 1901.90.90.95 and 1902.19.20 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Scope Rulings

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling finding that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the antidumping and countervailing duty orders. *See* Memorandum from Edward Easton to Richard Moreland, dated August 25, 1997, which is on file in the CRU.

(2) On July 30, 1998, the Department issued a scope ruling finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the antidumping and countervailing duty orders. *See* Letter from Susan H. Kuhbach to Barbara P. Sidari, dated July 30, 1998, which is on file in the CRU.

(3) On May 24, 1999, the Department issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See* Memorandum from John Brinkmann to Richard Moreland, dated May 24, 1999, which is on file in the CRU.

(4) On April 27, 2000, the Department self-initiated an anti-circumvention inquiry to determine whether Pastificio

Fratelli Pagani S.p.A.'s importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention with respect to the antidumping and countervailing duty orders on pasta from Italy pursuant to section 781(a) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 351.225(b). *See Certain Pasta From Italy: Notice of Initiation of Anti-Circumvention Inquiry on the Antidumping and Countervailing Duty Orders*, 65 FR 26179 (May 5, 2000). On September 19, 2003, we published an affirmative finding of the anti-circumvention inquiry. *See Anti-Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta from Italy: Affirmative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders*, 68 FR 54888 (September 19, 2003).

Subsidies Valuation Information

Allocation Period

Pursuant to 19 CFR 351.524(b), benefits from non-recurring subsidies are allocated over a period corresponding to the average useful life ("AUL") of the renewable physical assets used to produce the subject merchandise. The Department's regulations create a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's Class Life Asset Depreciation Range System ("IRS Tables"). *See* 19 CFR 351.524(d)(2). For pasta, the most recent IRS Tables prescribe an AUL of 12 years. None of the responding companies or other interested parties objected to this allocation period. Therefore, we have used a 12-year allocation period.

Attribution of Subsidies

Pursuant to 19 CFR 351.525(b)(6), the Department will attribute subsidies received by certain companies to the combined sales of those companies.

In the instant review, De Cecco Pastificio has responded on behalf of itself and three other members of the De Cecco group of companies: De Cecco Pescara, Centrale Elettrica F.lli De Cecco S.r.l. ("Centrale"), and Consorzio Elettrico Imprese De Cecco ("C.E.I.D."). *See* De Cecco Pastificio's December 24, 2009 questionnaire response ("De Cecco Pastificio's QR") at 5.

De Cecco Pastificio manufactures pasta for sale in Italy, to third-country markets, and to the United States. *Id.* at 6. De Cecco Pescara manufactures pasta for sale to De Cecco Pastificio and to unaffiliated third parties in Italy. *Id.*; *see*

also De Cecco Pastificio's February 25, 2010 supplemental questionnaire response ("SQR") at 1. De Cecco Pastificio and De Cecco Pescara are majority owned by members of the De Cecco family, either directly or indirectly and hence, cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi). *See* De Cecco Pastificio's March 26, 2010 SQR; *see also* Business Proprietary Memorandum, "Information Concerning Respondents' Attribution," dated April 7, 2010 ("Respondents' Attribution Memo"). Therefore, in accordance with 19 CFR 351.525(b)(6)(ii), we are attributing subsidies received by De Cecco Pastificio and De Cecco Pescara to the combined sales of both, excluding inter-company sales.

Effective January 1, 1999, Molino F.lli De Cecco di Filippo S.p.A. ("De Cecco Molino"), another member of the De Cecco group on whose behalf De Cecco Pastificio responded in the fourth administrative review, was merged with De Cecco Pastificio and ceased to be a separate entity. *See Certain Pasta From Italy: Final Results of the Fourth Countervailing Duty Administrative Review*, 66 FR 64214 (December 12, 2001), and accompanying Issues and Decision Memorandum. The Department will continue to consider countervailable any benefits received by De Cecco Molino in past administrative review periods and allocated over a period that extends into or beyond the current POR as benefits attributable to De Cecco Pastificio.

Finally, De Cecco Pastificio has reported it purchased electricity from C.E.I.D. that was produced by Centrale. Centrale is majority owned by members of the De Cecco family. *See* De Cecco Pastificio's March 26, 2010 SQR. C.E.I.D. is a consortium consisting of Centrale and De Cecco Pastificio. However, neither Centrale nor C.E.I.D. received any subsidies during the POR or AUL period. *See* De Cecco Pastificio's QR at 5. Therefore, we do not need to reach the issue of whether cross-ownership exists or whether subsidies to Centrale or C.E.I.D. would be attributable to the pasta sold by De Cecco Pastificio under 19 CFR 351.525(b)(6).

Garofalo has reported and we confirm that Garofalo has no affiliates for which cross-ownership exists. *See* Garofalo's December 17, 2009 questionnaire response at 2-3; *see also* Respondents' Attribution Memo. Thus, we are attributing any subsidies received by Garofalo to Garofalo's sales only.

Benchmarks for Long-Term Loans and Discount Rates

Pursuant to 19 CFR 351.505(a), the Department will use the actual cost of comparable borrowing by a company as a loan benchmark, when available. According to 19 CFR 351.505(a)(2), a comparable commercial loan is defined as one that, when compared to the government-provided loan in question, has similarities in the structure of the loan (e.g., fixed interest rate v. variable interest rate), the maturity of the loan (e.g., short-term v. long-term), and the currency in which the loan is denominated.

Because no comparable commercial loans were taken out by the respondents in the years in which the GOI agreed to provide the subsidies, we used a national average interest rate for comparable commercial loans, pursuant to 19 CFR 351.505(a)(3)(ii). Consistent with past practice in this proceeding, for years prior to 1995, we used the Bank of Italy reference rate adjusted upward to reflect the mark-up an Italian commercial bank would charge a corporate customer. *See, e.g., Certain Pasta From Italy: Preliminary Results and Partial Rescission of the Eighth Countervailing Duty Administrative Review*, 70 FR 17971 (April 8, 2005), unchanged in final results, *Certain Pasta from Italy: Final Results of the Eighth Countervailing Duty Administrative Review*, 70 FR 37084 (June 28, 2005). For benefits received in 1995–2004, we used the Italian Bankers' Association ("ABI") prime interest rate (as reported by the Bank of Italy), increased by the average spread charged by banks on loans to commercial customers plus an amount for bank charges. *See Certain Pasta from Italy: Preliminary Results of the 12th (2007) Countervailing Duty Administrative Review*, 74 FR 25489, 25491 (May 28, 2009) ("12th (2007) Administrative Review Preliminary Results"), unchanged in final results, *Certain Pasta from Italy: Final Results of the 12th (2007) Countervailing Duty Administrative Review*, 74 FR 47204 (September 15, 2009). The Bank of Italy ceased reporting this rate in 2004. *See 12th (2007) Administrative Review Preliminary Results*, 74 FR at 25491. Because the ABI prime rate was no longer reported after 2004, for 2005–2008, we have used the "Bank Interest Rates on Euro Loans: Outstanding Amounts, Non-Financial Corporations, Loans With Original Maturity More Than Five Years" published by the Bank of Italy and provided by the GOI in its December 21, 2009, questionnaire response at Exhibits 3–6. *Id.* We

increased this rate by the mark-up and bank charges described above.

For discount rates, no company for which we need such rates took out any loans in the years in which the GOI agreed to provide the subsidies in question. Therefore, pursuant to 19 CFR 351.524(d)(3)(i)(B), we used the national average cost of long-term, fixed-rate loans to allocate non-recurring benefits over time.

Analysis of Programs

I. Programs Preliminarily Determined To Be Countervailable

A. Industrial Development Grants Under Law 64/86

Law 64/86 provided assistance to promote development in the Mezzogiorno (the south of Italy). Grants were awarded to companies constructing new plants or expanding or modernizing existing plants. Pasta companies were eligible for grants to expand existing plants but not to establish new plants because the market for pasta was deemed to be close to saturated. Grants were made only after a private credit institution chosen by the applicant made a positive assessment of the project.

In 1992, the Italian Parliament abrogated Law 64/86 and replaced it with Law 488/92 (*see* section I.B., below). This decision became effective in 1993. However, companies whose projects had been approved prior to 1993 were authorized to continue receiving grants under Law 64/86 after 1993. De Cecco Pastificio/De Cecco Pescara and Garofalo received grants under Law 64/86 that conferred a benefit during the POR.

In the *Pasta Investigation*,¹ the Department determined that these grants confer a

countervailable subsidy within the meaning of section 771(5) of the Act. They are a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant. *See* Section 771(5)(D)(i) of the Act; *see also* 19 CFR 351.504(a). Also, these grants were found to be regionally specific within the meaning of section 771(5A)(D)(iv) of the Act.

As stated in *Live Swine from Canada*,² "it is well-established that where the Department has determined that a program is * * * countervailable, it is the Department's policy not to re-

examine the issue of that program's countervailability in subsequent reviews unless new information or evidence of changed circumstances is submitted which warrants reconsideration." Also, this policy is reflected in the Department's standard questionnaire used in countervailing duty administrative reviews which states that "absent new information or evidence of changed circumstances, we do not intend to reexamine the countervailability of programs previously found to be countervailable."³

In this review, neither the GOI nor respondent companies have provided new information that would warrant reconsideration of our determination that these grants are countervailable subsidies.

In the *Pasta Investigation*, the Department treated the industrial development grants as non-recurring. No new information has been placed on the record of this review that would cause us to depart from this treatment. Therefore, we have followed the methodology described in 19 CFR 351.524(b), which directs us to allocate over time those non-recurring grants whose total authorized amount exceeds 0.5 percent of the recipient's sales in the year of authorization. Where the total amount authorized is less than 0.5 percent of the recipient's sales in the year of authorization, the benefit is countervailed in full ("expensed") in the year of receipt. We determine that grants received by De Cecco Pastificio/De Cecco Pescara and Garofalo under Law 64/86 exceeded 0.5 percent of their sales in the year in which the grants were approved.

We used the grant methodology described in 19 CFR 351.524(d) to allocate the benefit from those grants. We divided the benefit of De Cecco Pastificio/De Cecco Pescara in the POR by their combined total sales in the POR and divided the benefit of Garofalo in the POR by its total sales in the POR.

On this basis, we preliminarily determine the countervailable subsidy from the Law 64/86 industrial development grants to be 0.25 percent *ad valorem* for De Cecco Pastificio/De Cecco Pescara and 0.25 percent *ad valorem* for Garofalo. *See* Memorandum to the File, "2008 Preliminary Results Calculation Memorandum for F.lli De Cecco di Filippo Fara San Martino S.p.A./Molino e Pastificio De Cecco S.p.A.," dated April 7, 2010 ("De Cecco Pastificio/De Cecco Pescara Preliminary Calc Memo"); Memorandum to the File,

¹ *Final Affirmative Countervailing Duty Determination: Certain Pasta ("Pasta") From Italy*, 61 FR 30288 (June 14, 1996) ("Pasta Investigation").

² *Live Swine from Canada; Final Results of Countervailing Duty Administrative Reviews*, 61 FR 52408, 52420 (October 7, 1996) ("Live Swine from Canada").

³ *See* Department's November 10, 2009, letter to the Embassy of Italy, at enclosure.

“2008 Preliminary Results Calculation Memorandum for Pastificio Lucio Garofalo S.p.A.,” dated April 7, 2010 (“Garofalo Calc Memo”).

B. Industrial Development Grants Under Law 488/92

In 1986, the EU initiated an investigation of the GOI’s regional subsidy practices. As a result of this investigation, the GOI changed the regions eligible for regional subsidies to include depressed areas in central and northern Italy in addition to the Mezzogiorno. After this change, the areas eligible for regional subsidies are the same as those classified as Objective 1 (underdeveloped regions), Objective 2 (declining industrial regions), or Objective 5(b) (declining agricultural regions) areas by the EU. The new policy was given legislative form in Law 488/92 under which Italian companies in the eligible sectors (manufacturing, mining, and certain business services) may apply for industrial development grants.

Law 488/92 grants are made only after a preliminary examination by a bank authorized by the Ministry of Industry. On the basis of the findings of this preliminary examination, the Ministry of Industry ranks the companies applying for grants. The ranking is based on indicators such as the amount of capital the company will contribute from its own funds, the number of jobs created, regional priorities, *etc.* Grants are then made based on this ranking. De Cecco Pastificio/De Cecco Pescara and Garofalo received grants under Law 488/92 that conferred a benefit during the POR.

In the *Second Administrative Review*,⁴ the Department determined that these grants confer a countervailable subsidy within the meaning of section 771(5) of the Act. They are a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant. *See* Section 771(5)(D)(i) of the Act; *see also* 19 CFR 351.504(a). Also, these grants were found to be regionally specific within the meaning of section 771(5A)(D)(iv) of the Act. In the instant review, neither the GOI nor the respondent companies have provided new information which would warrant reconsideration of our determination that these grants are

countervailable subsidies. *See Live Swine from Canada*, 61 FR at 52420.

In the *Second Administrative Review*, the Department treated the industrial development grants as non-recurring. No new information has been placed on the record of this review that would cause us to depart from this treatment. Therefore, we have followed the methodology described in 19 CFR 351.524(b) which directs us to allocate over time those non-recurring grants whose total authorized amount exceeds 0.5 percent of the recipient’s sales in the year of authorization. Where the total amount authorized is less than 0.5 percent of the recipient’s sales in the year of authorization, the benefit is expensed in the year of receipt. We determine that grants received by De Cecco Pastificio/De Cecco Pescara and Garofalo under Law 488/92 exceeded 0.5 percent of its sales in the year in which the grants were approved.

We used the grant methodology described in 19 CFR 351.524(d) to allocate the benefits over time. We divided the benefit received by De Cecco Pastificio/De Cecco Pescara in the POR by their combined total sales in the POR and divided the benefit received by Garofalo in the POR by its total sales in the POR.

On this basis, we preliminarily determine the countervailable subsidy from the Law 488/92 industrial development grants to be 0.18 percent *ad valorem* for De Cecco Pastificio/De Cecco Pescara and 0.37 percent *ad valorem* for Garofalo. *See* De Cecco Pastificio/De Cecco Pescara Preliminary Calc Memo and Garofalo Preliminary Calc Memo.

C. Interest Contributions Under Law 488/92

In the second administrative review of this order, the Department found that “loans are not provided under Law 488/92.” *Second Administrative Review*, 64 FR at 17620. However, the GOI provided documentation that a May 14, 2005 Law at Article 80 and implementing decree changed this practice to permit companies to obtain loans, in addition to grants, for initiatives in the areas eligible for such assistance under Law 488/92. *See* GOI’s March 11, 2010 second supplemental questionnaire response. The preliminary examination of companies’ loan applications by an authorized bank, the ranking by the Ministry of Economic Development, and the award of loans based on the ranking are similar to the process described for Law 488/92 grants (*see* section I.B., above). *Id.* In addition, the bank is responsible for assessing the company’s credit. *Id.*

Under this modification to Law 488/92, the loans must have a duration not exceeding 15 years and not less than six years. *Id.* The fixed-interest rates on these long-term loans were set at a rate of 0.50 percent with the GOI covering the difference in interest amount between that rate and the market rate. *Id.* The modification to Law 488/92 provides for maximum and minimum investment limits based upon the economic sector (*i.e.*, industry, tourism, and trade). *Id.*

We preliminarily determine that these interest contributions are countervailable subsidies within the meaning of section 771(5) of the Act. They are a direct transfer of funds from the GOI providing a benefit in the amount of the difference between the benchmark interest rate and the interest rate paid by the companies. *See* Section 751(5)(E)(ii) of the Act. Also, these interest contributions are regionally specific within the meaning of section 771(5A)(D)(iv) of the Act because they are limited to companies located within regions which meet the criteria of Objective 1, Objective 2, and Objective 5(b) areas determined by the EU.

In accordance with 19 CFR 351.505(c)(2) and 351.508(c)(2), we calculated the benefit for the POR by computing the difference between the amount of interest paid during the POR by De Cecco Pastificio/De Cecco Pescara on their Law 488/92 loan and the amount of interest De Cecco Pastificio/De Cecco Pescara would have paid at the benchmark interest rate. We divided the benefit received by De Cecco Pastificio/De Cecco Pescara in the POR by their combined sales in the POR.

On this basis, we preliminarily determine the countervailable subsidy from the Law 488/92 interest contributions to be 0.01 percent *ad valorem* for De Cecco Pastificio/De Cecco Pescara. *See* De Cecco Pastificio/De Cecco Pescara Preliminary Calc Memo.

II. Programs Preliminarily Determined To Be Countervailable for Which There Is No Measurable Benefit

A. Social Security Reductions and Exemptions—Sgravi

Italian law allows companies, particularly those located in the Mezzogiorno, to use a variety of exemptions from and reductions of payroll contributions that employers make to the Italian social security system for health care benefits, pensions, *etc.* These social security reductions and exemptions, also known as *sgravi* benefits, are regulated by a complex set of laws and regulations,

⁴ *See Certain Pasta From Italy: Preliminary Results of Countervailing Duty Administrative Review*, 64 FR 17618, 17620 (April 12, 1999) (“*Second Administrative Review*”), unchanged in final results, *Certain Pasta From Italy: Final Results of the Second Countervailing Duty Administrative Review*, 64 FR 44489 (August 16, 1999).

and are sometimes linked to conditions such as creating more jobs. We have found in past segments of this proceeding that benefits under some of these laws (e.g., Law 1089) are available only to companies located in the Mezzogiorno and other disadvantaged regions. See *Pasta Investigation*, 61 FR at 30293. Certain other laws (e.g., Laws 407/90) provide benefits to companies all over Italy, but the level of benefits is higher for companies in the Mezzogiorno and other disadvantaged regions than for companies in other parts of the country. *Id.* at 30294. Still, other laws provide benefits that are not linked to any region.

In the *Pasta Investigation* and subsequent reviews, the Department determined that certain types of social security reductions and exemptions confer countervailable subsidies within the meaning of section 771(5) of the Act. They represent revenue foregone by the GOI bestowing a benefit in the amount of the savings received by the companies. See Section 771(5)(D)(ii) of the Act. Also, they were found to be regionally specific within the meaning of section 771(5A)(D)(iv) of the Act because they were limited to companies in the Mezzogiorno or because the higher levels of benefits were limited to companies in the Mezzogiorno.

In the instant review, no party in this proceeding challenged our past determinations in the *Pasta Investigation* and subsequent reviews that *sgravi* benefits, generally, were countervailable for companies located within the Mezzogiorno. See *Live Swine from Canada*, 61 FR at 52420. *Sgravi* benefits were provided during the POR under Law 407/90.

(1) Law 407/90

Law 407/90 grants an exemption from social security taxes for three years when a company hires a worker who (1) has received wage supplementation for a period of at least two years, or (2) has been previously unemployed for a period of two years. A 100-percent exemption is allowed for companies in the Mezzogiorno, while companies located in the rest of Italy receive a 50-percent reduction.

In the *Pasta Investigation*, we determined Law 407/90 confers a countervailable subsidy within the meaning of section 771(5) of the Act. See *Pasta Investigation*, 61 FR at 30294. The reduction or exemption of taxes is revenue foregone that is otherwise due and is, therefore, a financial contribution within the meaning of section 771(5)(D)(ii) of the Act. The benefit is the difference in the amount of the tax savings between companies

located in the Mezzogiorno and companies located in the rest of Italy, in accordance with 19 CFR 351.509(a). Additionally, the program is regionally specific within the meaning of section 771(5A)(D)(iv) of the Act because higher levels of benefits are limited to companies in the Mezzogiorno.

In accordance with 19 CFR 351.524(c), and consistent with our methodology in the *Pasta Investigation* and in subsequent administrative reviews, we have treated social security reductions and exemptions as recurring benefits. To calculate the countervailable subsidy for Garofalo, we divided the difference during the POR between the savings for the respondent company located in the Mezzogiorno and the savings a company located in the rest of Italy would have received. This amount was divided by Garofalo's total sales in the POR.

On this basis, we preliminarily determine the countervailable subsidy from Law 407/90 to be 0.00 percent *ad valorem* for Garofalo. See Garofalo Preliminary Calc Memo.

III. Programs Preliminarily Determined To Not Be Used

We examined the following programs and preliminarily determine that the producers and/or exporters of the subject merchandise under review did not apply for or receive benefits under these programs during the POR:

A. Industrial Development Loans under Law 64/86.

B. Grant Received Pursuant to the Community Initiative Concerning the Preparation of Enterprises for the Single Market ("PRISMA").

C. European Regional Development Fund ("ERDF") Programma Operativo Plurifondo ("P.O.P.") Grant.

D. European Regional Development Fund ("ERDF") Programma Operativo Multiregionale ("P.O.M.") Grant.

E. Certain Social Security Reductions and Exemptions—*Sgravi* (including Law 223/91, Article 8, Paragraph 4 and Article 25, Paragraph 9; and Law 196/97).

F. Law 236/93 Training Grants.

G. Law 1329/65 Interest Contributions ("Sabatini Law") (Formerly Lump-Sum Interest Payment under the Sabatini Law for Companies in Southern Italy).

H. Development Grants under Law 30 of 1984.

I. Law 908/55 Fondo di Rotazione Iniziative Economiche (Revolving Fund for Economic Initiatives) Loans.

J. Law 317/91 Benefits for Innovative Investments.

K. Brescia Chamber of Commerce Training Grants.

L. Ministerial Decree 87/02.

M. Law 10/91 Grants to Fund Energy Conservation.

N. Export Restitution Payments.

O. Export Credits under Law 227/77.

P. Capital Grants under Law 675/77.

Q. Retraining Grants under Law 675/77.

R. Interest Contributions on Bank Loans under Law 675/77.

S. Preferential Financing for Export Promotion under Law 394/81.

T. Urban Redevelopment under Law 181.

U. Industrial Development Grants under Law 183/76.

V. Interest Subsidies under Law 598/94.

W. Duty-Free Import Rights.

X. European Social Fund Grants.

Y. Law 113/86 Training Grants.

Z. European Agricultural Guidance and Guarantee Fund.

AA. Law 341/95 Interest Contributions on Debt Consolidation Loans (Formerly Debt Consolidation Law 341/95).

BB. Interest Grants Financed by IRI Bonds.

CC. Article 44 of Law 448/01.

DD. Law 289/02.

(1) Article 62—Investments in Disadvantaged Areas.

(2) Article 63—Increase in Employment.

EE. Law 662/96—Patti Territoriali.

FF. Law 662/96—Contratto di Programma.

IV. Preliminarily Terminated Programs

A. Social Security Reductions and Exemptions—*Sgravi*

(1) Law 196/97

Law 196/97 provides exemptions, for an additional 12-month period, for employers in the Mezzogiorno that hire employees under "skilling" contracts on a long-term (or permanent) basis. See *12th (2007) Administrative Review Preliminary Results*, 74 FR at 25492. Skilling contracts, as provided for under Law 863/84, occur when a company hires a worker under a non-renewable contract with a term of 24 months or less and the contract includes an educational or training component. *Id.* In the preliminary results of the 2007 administrative review, we determined that the last possible date to request exemptions under Law 196/97 was October 31, 2006. *Id.* at 25493. Moreover, because the exemption granted under Law 196/97 only lasts for 12 months, benefits were set to expire by October 31, 2007. *Id.* Because benefits expired during the 2007 POR, we preliminarily determined in the 2007 administrative review that Law 196/97 was terminated during that POR.

and there would be no subsidy benefits from this program after the 2007 POR. *Id.* Further, there was no indication of any substitute or replacement program. *Id.*

There are no facts on the record in the instant review that warrant reconsideration of our prior finding from the preliminary results of the 2007 administrative review that any benefits previously available under Law 196/97 terminated as of October 31, 2007. Thus, we preliminarily determine that Law 196/97 has been terminated.

V. Previously Terminated Programs

A. Regional Tax Exemptions under IRAP.

B. VAT Reductions under Laws 64/86 and 675/55.

C. Corporate Income Tax ("IRPEG").

D. Remission of Taxes on Export Credit Insurance under Article 33 of Law 227/77.

E. Export Marketing Grants under Law 304/90.

F. Tremonti Law 383/01.

G. Social Security Reductions and Exemptions—Sgravi.

(1) Article 44 of Law 448/01.

(2) Law 337/90.

(3) Law 863/84.

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated individual subsidy rates for the mandatory respondents, De Cecco Pastificio/De Cecco Pescara and Garofalo.

For the non-selected respondents, we have followed the Department's policy for antidumping duty and countervailing duty investigations, and antidumping duty administrative reviews which is to base the margin on an average of the margins calculated for those companies selected for individual review, excluding *de minimis* rates or rates based entirely on adverse facts available ("AFA"). See *Notice of Final Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube from Mexico*, 73 FR 35649, 35651 (June 24, 2008); see also *Certain Frozen Warmwater Shrimp From India: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 40492, 40495–98 (July 15, 2008), and *Lightweight Thermal Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323, 57325–26 (October 2, 2008). Therefore, we preliminarily determine to assign to the non-selected respondents in this review the rate calculated for Garofalo, which is the only rate in this review that is

neither *de minimis* nor based entirely on AFA.

For the period January 1, 2008, through December 31, 2008, we preliminarily find the net subsidy rate for the producers/exporters under review to be that specified in the chart below:

Producer/Exporter	Net subsidy rate (percent)
F.lli De Cecco di Filippo Fara San Martino S.p.A./Molino e Pastificio De Cecco S.p.A.	0.44 (de minimis)
Pastificio Lucio Garofalo S.p.A.	0.62
De Matteis Agroalimentare S.p.A.	0.62
Agritalia S.r.l.	0.62
F. Divella S.p.A.	0.62
All-Others Rate	3.85

Assessment Rates

If these preliminary results are adopted in our final results of this review, because the countervailing duty rate for De Cecco Pastificio/De Cecco Pescara is less than 0.5 percent and, thus, *de minimis*, the Department will instruct U.S. Customs and Border Protection ("CBP") to liquidate shipments of certain pasta by De Cecco Pastificio/De Cecco Pescara from January 1, 2008, through December 31, 2008, without regard to countervailing duties. For all entries by Garofalo, De Matteis, Agritalia, and Divella, we will instruct CBP to assess countervailing duties on all shipments at the net subsidy rates listed above.

For all other companies that were not reviewed (except Barilla G. e R. F.lli S.p.A., and Gruppo Agricoltura Sana S.r.l., which are excluded from the order, and Pasta Lensi S.r.l. which was revoked from the order), the Department has directed CBP to assess countervailing duties on all entries between January 1, 2008, and December 31, 2008, at the rates in effect at the time of entry.

The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this review.

Cash Deposit Instructions

The Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown above with the exception of De Cecco Pastificio/De Cecco Pescara. For De Cecco Pastificio/De Cecco Pescara, no cash deposits of estimated duties will be required because their rate is *de minimis*. For all non-reviewed firms (except Barilla G. e R. F.lli S.p.A. and Gruppo Agricoltura Sana S.r.l., which are excluded from the

order, and Pasta Lensi S.r.l. which was revoked from the order), we will instruct CBP to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of the public announcement of this notice.

Pursuant to 19 CFR 351.309(c)(ii), interested parties may submit written arguments in case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the date of filing the case briefs, in accordance with 19 CFR 351.309(d). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: (1) A statement of the issue, and (2) a brief summary of the argument with an electronic version included. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Interested parties may request a hearing within 30 days after the date of publication of this notice, pursuant to 19 CFR 351.310(c). Any hearing, if requested, will be held 42 days after the publication of this notice, or the first workday thereafter.

The Department will publish a notice of the final results of this administrative review within 120 days from the publication of these preliminary results, in accordance with section 751(a)(3) of the Act.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: April 7, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010-8410 Filed 4-12-10; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-894]

Certain Tissue Paper Products From the People's Republic of China: Preliminary Results of the 2008-2009 Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is currently conducting the 2008-2009 administrative review of the antidumping duty order on certain tissue paper products from the People's Republic of China (PRC). We preliminarily determine that sales have been made below normal value (NV) with respect to Max Fortune Industrial Limited and Max Fortune (FZ) Paper Products Co., Ltd. (Max Fortune Fuzhou)¹ (collectively, Max Fortune) but not with respect to Seaman Paper Asia Company, Ltd. (SPA).

If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise made during the period of review (POR).

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

DATES: *Effective Date:* April 13, 2010.

FOR FURTHER INFORMATION CONTACT:

Brian Smith or Gemal Brangman, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-1766 or (202) 482-3773, respectively.

Case History

On March 30, 2005, the Department published in the **Federal Register** the antidumping duty order on certain tissue paper products from the PRC. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Tissue Paper Products From the People's Republic of China*, 70 FR 16223 (March 30, 2005) (*Tissue Paper Order*).

¹ Max Fortune Fuzhou's former name is Max Fortune (FETDE) Paper Products Co., Ltd. (Max Fortune FETDE). Max Fortune FETDE changed its name to Max Fortune Fuzhou on October 31, 2008. *See* Exhibit 2 of Max Fortune's August 11, 2009, section A supplemental response (August 11 Response).

On March 2, 2008, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on certain tissue paper products from the PRC. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 74 FR 9077 (March 2, 2009).

On March 31, 2008, the Department received a timely request from SPA for an administrative review of this antidumping duty order with respect to its exports of subject merchandise to the United States, in accordance with 19 CFR 351.213. On March 31, 2008, the Department also received a timely request from the petitioner² for an administrative review of this order with respect to Max Fortune and Sunlake Décor Co., Ltd. (Sunlake).

On April 27, 2008, the Department published in the **Federal Register** a notice of initiation of the administrative review of the antidumping duty order on certain tissue paper products from the PRC for the three individually named firms above covering the period March 1, 2008, through February 28, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 19042 (April 27, 2009) (*Initiation Notice*).

On April 29, 2009, we issued Max Fortune and SPA the antidumping duty questionnaire.

On June 30, 2009, the petitioner withdrew its request for an administrative review with respect to Sunlake. *See* petitioner's July 30, 2009, letter to the Department. Also, on June 30, 2009, the Department requested entry documentation from CBP. *See* Memorandum from James P. Maeder, Jr., Office Director, to CBP, dated June 30, 2009.

During June 2009, SPA submitted its responses to sections A and C of the antidumping duty questionnaire³ and Max Fortune submitted its response to section A of the antidumping duty questionnaire.⁴

On July 1, 2009, the petitioner requested a 30-day extension until September 17, 2009, to submit new factual information in this review in accordance with 19 CFR 351.302. On

² The petitioner is the Seaman Paper Company of Massachusetts, Inc.

³ Section A of the questionnaire covers general information about the company and section C covers U.S. sales.

⁴ *See* SPA's June 10, 2009, response to section A of the Department's antidumping questionnaire and June 23, 2009, response to section C of the Department's antidumping questionnaire; and Max Fortune's June 8, 2009, response to section A of the Department's antidumping questionnaire.

July 24, 2009, we granted the petitioner's extension request.

On July 6, 2009, Max Fortune submitted its response to sections C and D⁵ of the antidumping duty questionnaire.

On July 16, 2009, we requested that the Import Administration's Office of Policy (the Office of Policy) issue a surrogate-country memorandum for the selection of the appropriate surrogate country in this review,⁶ and the Office of Policy provided us with a list of six countries at a level of economic development comparable to that of the PRC.⁷

On July 17, 2009, the Department invited interested parties participating in this review to submit comments on surrogate-country selection and to submit publicly-available information as surrogate values (SVs) for purposes of calculating NV.⁸

On July 20, 2009, SPA submitted its response to section D of the antidumping duty questionnaire.

The Department issued a sections A and C supplemental questionnaire to SPA on July 10, 2009, and received SPA's supplemental questionnaire response on July 24, 2009.

The Department issued a section D supplemental questionnaire to SPA on July 29, 2009, and received SPA's supplemental questionnaire response on August 14, 2009.

The Department issued a section A supplemental questionnaire to Max Fortune on July 29, 2009, and received Max Fortune's supplemental questionnaire response on August 11, 2009.

The Department issued sections C and D supplemental questionnaires to Max Fortune on August 7 and 17, 2009, and received Max Fortune's supplemental questionnaire responses on August 26 and September 21, 2009, respectively.

On August 24, 2009, the Department placed on the record the CBP data it requested from CBP on June 30, 2009. *See* Memorandum from Gemal

⁵ Section D of the questionnaire covers factors of production (FOP).

⁶ *See* the Department's memorandum entitled, "Request for Surrogate Country Selection," dated July 16, 2009.

⁷ *See* the Department's memorandum entitled, "Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Certain Tissue Paper Products From the People's Republic of China," dated July 16, 2009 (Policy Memorandum).

⁸ *See* the Department's letter regarding, "2008-2009 Administrative Review of Certain Tissue Paper Products from the People's Republic of China," requesting parties to provide comments on surrogate-country selection and surrogate FOP values from the potential surrogate countries (*i.e.*, India, Philippines, Indonesia, Colombia, Thailand and Peru).

Brangman, Analyst, to The File, dated August 24, 2009.

On August 25, 2009, the petitioner submitted surrogate-country comments in this administrative review.

On September 10, 2009, the petitioner requested a 35-day extension until October 23, 2009, to submit publicly-available information (PAI) in this review. We granted the petitioner's extension request on September 15, 2009.

On September 15, 2009, the petitioner placed on the record of this review a substantial amount of information supporting its allegations that, among other things, that Max Fortune did not report: (1) Multiple affiliates involved in the production and/or sale of the subject merchandise exported to the United States during the POR; and (2) multiple unaffiliated suppliers of raw materials and converting services involved in the production of the subject merchandise exported to the United States during the POR. The petitioner obtained the information supporting its allegations from a foreign market researcher (FMR).

On October 14, 2009, the Department rescinded this review with respect to Sunlake. *See Certain Tissue Paper Products from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 54030 (October 21, 2009).

On October 19, 2009, Max Fortune filed a submission in which it denied the petitioner's September 15, 2009, allegations.

On October 23, 2009, the petitioner submitted PAI in this administrative review.

On October 26, 2009, the Department met with the petitioner's counsel in order to get clarification of the information on which the petitioner based its September 15, 2009, allegations and the petitioner's analysis of that information.⁹

The Department issued additional supplemental questionnaires to SPA on October 29 and November 13, 2009, and received SPA's supplemental questionnaire responses on November 13 and 18, 2009, respectively.

On October 29, 2009, the Department requested additional entry documentation from CBP. *See Memorandum from James P. Maeder, Jr., Office Director, to CBP*, dated October 29, 2009.

On November 9, 2009, the Department issued to the petitioner a questionnaire seeking clarification of the information contained in its September 15, 2009,

submission. The petitioner submitted its response to this questionnaire in November and December 2009.¹⁰

On November 11, 2009, the Department postponed the preliminary results of this review until March 31, 2010. *See Certain Tissue Paper Products From the People's Republic of China: Extension of Time Limit for Preliminary Results of 2008–2009 Administrative Review*, 74 FR 59132 (November 17, 2009).

On November 24, 2009, the Department sent Max Fortune a questionnaire seeking clarification and additional information and documentation with respect to Max Fortune's October 19, 2009, submission. Max Fortune submitted its response to this questionnaire on December 11, 2009.

On December 2, 2009, the Department placed on the record the additional CBP data it requested from CBP on October 29, 2009. *See Memorandum from Brian Smith, Senior Analyst, to The File*, dated December 2, 2009.

On December 16, 2009, the Department conducted an interview by telephone with the FMR in order to confirm the FMR's credentials, and the procedures conducted to obtain the information, on which the petitioner's September 15, 2009, allegations were based.¹¹

On December 31, 2010, the Department issued verification outlines to Max Fortune, SPA, and another company whose information was included in the petitioner's September 15, 2009, submission.

SPA submitted pre-verification corrections related to its questionnaire responses on January 7, 2010.

Pursuant to section 782(i) of the Tariff Act of 1930, as amended (the Act), the Department conducted verification of the questionnaire responses submitted by Max Fortune and SPA in January 2010.¹² Furthermore, the Department conducted a verification of another

company's data included in the petitioner's September 15, 2009, submission.¹³ These verification reports are on file and available in the Central Records Unit (CRU), Room 1117 of the Department's main building.

Period of Review

The POR is March 1, 2008, through February 28, 2009.

Scope of the Order

The tissue paper products covered by this order are cut-to-length sheets of tissue paper having a basis weight not exceeding 29 grams per square meter. Tissue paper products subject to this order may or may not be bleached, dye-colored, surface-colored, glazed, surface decorated or printed, sequined, crinkled, embossed, and/or die cut. The tissue paper subject to this order is in the form of cut-to-length sheets of tissue paper with a width equal to or greater than one-half (0.5) inch. Subject tissue paper may be flat or folded, and may be packaged by banding or wrapping with paper or film, by placing in plastic or film bags, and/or by placing in boxes for distribution and use by the ultimate consumer. Packages of tissue paper subject to this order may consist solely of tissue paper of one color and/or style, or may contain multiple colors and/or styles.

The merchandise subject to this order does not have specific classification numbers assigned to them under the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may be under one or more of several different subheadings, including: 4802.30, 4802.54, 4802.61, 4802.62, 4802.69, 4804.31.1000, 4804.31.2000, 4804.31.4020, 4804.31.4040, 4804.31.6000, 4804.39, 4805.91.1090, 4805.91.5000, 4805.91.7000, 4806.40, 4808.30, 4808.90, 4811.90, 4823.90, 4802.50.00, 4802.90.00, 4805.91.90, 9505.90.40. The tariff classifications are provided for convenience and customs purposes; however, the written description of the scope of this order is dispositive.¹⁴

¹⁰ See the petitioner's submissions dated November 23 and December 22, 2009.

¹¹ See Memorandum to The File from Gemal Brangman, Analyst, entitled "Telephone Conversation with Foreign Market Researcher," dated January 5, 2010.

¹² See Memorandum to The File from Case Analysts entitled "Verification of the Sales and Factors Questionnaire Responses of Max Fortune (FZ) Paper Products Co., Ltd. and Max Fortune Industrial Limited in the Antidumping Duty Administrative Review of Certain Tissue Paper Products from the People's Republic of China," dated April 7, 2010 (Max Fortune Verification Report); and Memorandum to The File from Case Analysts entitled "Verification of the Sales and Factors Questionnaire Responses of Seaman Paper Asia Company Ltd. in the Antidumping Duty Administrative Review of Certain Tissue Paper Products from the People's Republic of China," dated April 7, 2010 (SPA Verification Report).

⁹ See Memorandum to The File from Brian Smith, Senior Analyst, entitled "Meeting with Counsel for the Petitioner," dated October 28, 2009.

¹³ See Memorandum to The File from Case Analysts entitled "Verification of the Data Submitted by {Anonymous Company} in the Antidumping Duty Administrative Review of Certain Tissue Paper Products from the People's Republic of China," dated April 7, 2010. This company's legal counsel has requested business proprietary treatment of the company's name pursuant to 19 CFR 351.105(c)(9), and under the circumstances presented in this case, we have agreed to this request. *See letter dated January 7, 2010.*

¹⁴ On January 30, 2007, at the direction of CBP, the Department added the following HTSUS classifications to the AD/CVD module for tissue paper: 4802.54.3100, 4802.54.6100, and

Excluded from the scope of this order are the following tissue paper products: (1) Tissue paper products that are coated in wax, paraffin, or polymers, of a kind used in floral and food service applications; (2) tissue paper products that have been perforated, embossed, or die-cut to the shape of a toilet seat, *i.e.*, disposable sanitary covers for toilet seats; (3) toilet or facial tissue stock, towel or napkin stock, paper of a kind used for household or sanitary purposes, cellulose wadding, and webs of cellulose fibers (HTSUS 4803.00.20.00 and 4803.00.40.00).

Separate Rates

In proceedings involving non-market economy (NME) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control, and thus, should be assigned a single antidumping duty deposit rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to its export activities. *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991). In this review, in support of its claim for a separate rate, Max Fortune and SPA each reported that it is a wholly foreign-owned company registered and located in Hong Kong.¹⁵ Our verification findings corroborated Max Fortune's and SPA's separate-rate claims. *See* Max Fortune Verification Report at page 7, and SPA Verification Report at page 4. Consequently, no additional separate-rate analysis is necessary for Max Fortune or SPA. *See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026 (April 30, 1996).

Application of Adverse Facts Available

For the reasons outlined below, we have preliminarily applied adverse facts available (AFA) to Max Fortune. Section 776(a)(2) of the Act, provides that, if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding

under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Furthermore, section 776(b) of the Act states 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 from the administering authority * * *, the administering authority * * *, in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available." *See also* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H. Rep. No. 103-316 at 870 (1994) (SAA). It is the Department's practice to make an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *Id.* An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. *See* section 776(b) of the Act.

In cases involving NME countries, such as the instant one, the respondent must supply the Department with complete and accurate U.S. sales and factors of production (FOP) data in order for the Department to accurately calculate the respondent's dumping margin. Where one, or both, of these data sets is so incomplete that it cannot serve as a reliable basis for reaching the applicable determination, the Department may decline to consider a respondent's information in its entirety, and apply adverse facts available under section 776(b) of the Act. *See, e.g., Steel Authority of India, Ltd. v. United States*, 149 F. Supp. 2d 921, 928 (CIT 2001). Based on our verification findings and analysis of the record information, as summarized below, we find that we cannot rely upon the data submitted by Max Fortune to calculate an accurate dumping margin. Consequently, we find it appropriate to base Max Fortune's preliminary dumping margin on AFA.

In this administrative review, the petitioner provided substantial information in its September 15, 2009, submission as the basis for alleging, among other things, that Max Fortune did not report multiple unaffiliated suppliers of raw materials and converting services involved in the production of the subject merchandise exported to the United States during the

POR. In its submissions to the Department, including its October 19, 2009, submission rebutting the allegations made by the petitioner, Max Fortune asserted that its PRC affiliate, Max Fortune Fuzhou, produced all of the tissue paper it reported it sold to the United States during the POR. After conducting verification of the data submitted on the record, we found that for certain U.S. sales reported by Max Fortune in its U.S. sales listing which we selected for examination at verification, Max Fortune Fuzhou was not the only producer of the tissue paper sold in those transactions, contrary to Max Fortune's representations throughout this review. *See* Memorandum from John M. Andersen, Acting Deputy Assistant Secretary for AD/CVD Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, entitled "Whether To Assign Max Fortune Industrial Limited (Max Fortune HK) and Max Fortune (FZ) Paper Products Co., Ltd. (Max Fortune Fuzhou) (collectively Max Fortune) a Margin Based on Adverse Facts Available in the Preliminary Results," dated April 7, 2010, for a full discussion of the Department's findings with respect to Max Fortune.

Accordingly, our verification findings demonstrate that Max Fortune withheld critical information (*i.e.*, the identities of additional tissue paper suppliers associated with the tissue paper it sold to the United States during the POR, and their respective FOP data), and in so doing, significantly impeded this proceeding and precluded the Department from being able to calculate an accurate antidumping margin for Max Fortune in this review based on its reported data. Further, based upon our verification of the companies, our experience in conducting such verifications, and our careful analysis of the record, we do not believe that the documentation supplied by Max Fortune can be the actual documents used in the transactions at issue. Therefore, the Department cannot state with confidence that it was able to verify any of Max Fortune's FOP data. Given the nature and extent of the information in Max Fortune's possession which Max Fortune withheld from disclosure (*i.e.*, the actual documentation associated with its U.S. sales transactions), we preliminarily find that it failed to cooperate by not acting to the best of its ability to comply with the Department's request for information in this review. Consequently, pursuant to sections 776(a)(2) and (b) of the Act, we find it

4823.90.6700. However, we note that the six-digit classifications for these numbers were already listed in the scope.

¹⁵ *See* SPA's June 10, 2009, response to section A of the Department's antidumping questionnaire at page A-2; and Max Fortune's June 8, 2009, response to section A of the Department's antidumping questionnaire at page 2.

appropriate to apply total AFA to Max Fortune for the preliminary results of this review. *See* Shanghai Taoen, International Trading Company v. United States, 360 F.Supp. 2d 1339, 1344 (CIT 2005) (finding that the application of total AFA was warranted in light of evidence on the record that the respondent “purposely withheld” and provided misleading information to avoid a higher dumping margin).

Selection of Adverse Facts Available Rate

As discussed above, section 776(b) of the Act authorizes the Department to use as AFA, information derived from the petition, the final determination in the less-than-fair-value (LTFV) investigation, any previous administrative review, or any information placed on the record. In selecting an AFA rate in reviews, the Department’s practice has been to assign the highest margin on the record of any segment of the proceeding. *See, e.g., Freshwater Crawfish Tail Meat from the People’s Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 68 FR 19504 (April 21, 2003). The Court of International Trade (CIT) and the Federal Circuit have consistently upheld the Department’s practice in this regard. *See Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990) (*Rhone Poulenc*); *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in a LTFV investigation); *see also Kompass Food Trading Int’l v. United States*, 24 CIT 678, 689 (July 31, 2000) (upholding a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd. v. United States*, 360 F. Supp. 2d 1339, 1348 (CIT 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

The Department’s practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse “as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.” *See Static Random Access Memory Semiconductors from Taiwan; Final Determination of Sales at Less than Fair Value*, 63 FR 8909, 8932 (February 23, 1998). The Department’s practice also ensures “that the party

does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.” *See* SAA at 870; *see also Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 22. In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent’s prior commercial activity, selecting the highest prior margin “reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.” *Rhone Poulenc*, 899 F.2d at 1190. Consistent with the statute, court precedent, and numerous other cases,¹⁶ as AFA, we are assigning Max Fortune the highest rate on the record of any segment of this proceeding, *i.e.*, 112.64 percent. As discussed further below, this rate has been corroborated.

Corroboration of Secondary Information Used as AFA

Section 776(c) of the Act provides that when the Department selects from among the facts otherwise available and relies on “secondary information,” the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department’s disposal. To corroborate the information, the Department seeks to determine that the information used has probative value. *See* SAA at 870. The Department has determined that to have probative value, information must be reliable and relevant. *See Certain Tissue Paper Products from the People’s Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 72 FR 58642 (October 16, 2007), and accompanying Issues and Decision Memorandum at Comment 6.

To be considered corroborated, information must be found to be both reliable and relevant. The AFA rate of 112.64 percent that we are applying in the current review represents the

highest rate from the petition in the LTFV investigation segment of this proceeding. *See Tissue Paper Order*. The Department corroborated the information used to calculate the 112.64 percent rate in the LTFV investigation. *See Notice of Final Determination of Sales at Less than Fair Value: Certain Tissue Paper Products from the People’s Republic of China*, 70 FR 7475 (February 14, 2005). Furthermore, the AFA rate we are applying for the current review was applied in reviews subsequent to the LTFV investigation, and no information has been presented in the current review that calls into question the reliability of this information. *See Certain Tissue Paper from the People’s Republic of China: Preliminary Results and Preliminary Rescission of the 2007–2008 Administrative Review and Intent Not to Revoke Order in Part*, 74 FR 15449 (April 6, 2009) (unchanged in *Certain Tissue Paper Products from the People’s Republic of China: Final Results and Partial Rescission of the 2007–2008 Antidumping Duty Administrative Review and Determination Not to Revoke in Part*, 74 FR 52176, 52177 (October 9, 2009) (*PRC Tissue Paper—3rd AR*)). Thus, the Department finds that the information is reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. *See Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company’s uncharacteristic business expense, resulting in an unusually high margin). Similarly, the Department does not apply a margin that has been discredited. *See D & L Supply Co. v. United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (finding that the Department cannot use a margin that has been judicially invalidated in its calculations). The AFA rate we are applying for the instant review was calculated based on export price information and production data from the petition, as well as the most appropriate surrogate value information available to the Department during the LTFV investigation. As there is no

¹⁶ *See e.g., Fresh Garlic from the People’s Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Preliminary Results of New Shipper Reviews*, 70 FR 69942, 69946 (November 18, 2005); and *Fresh Garlic from the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews*, 71 FR 26329, 26330 (May 4, 2006).

information on the record of this review that demonstrates this rate is not appropriate for use as AFA, we determine this rate has relevance.

Because the AFA rate, 112.64 percent, is both reliable and relevant, we determine that it has probative value. As a result, we determine that the 112.64 percent rate is corroborated to the extent practicable for the purposes of this administrative review, in accordance with section 776(c) of the Act, and may reasonably be applied as AFA to the exports of the subject merchandise by Max Fortune.

Non-Market Economy Country

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See, e.g., Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 58672 (October 7, 2005) (unchanged in *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 71 FR 7013 (February 10, 2006)). None of the parties in this administrative review has contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country

Section 773(c)(1) of the Act directs the Department to base NV on the NME producer's FOPs, valued in a surrogate market-economy (ME) country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall use, to the extent possible, the prices or costs of the FOPs in one or more ME countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the "Normal Value" section below. *See also* the Department's memorandum entitled, "Preliminary Results of the 2008–2009 Administrative Review of the Antidumping Duty Order on Certain Tissue Paper Products from the People's Republic of China: Factor Valuation for the Preliminary Results," dated April 7, 2010 (Surrogate Value Memorandum).

The Department determined that India, the Philippines, Indonesia, Colombia, Thailand, and Peru are countries comparable to the PRC in terms of economic development. *See* Policy Memorandum. Customarily, we select an appropriate surrogate country from the Policy Memorandum based on the availability and reliability of data from the countries that are significant producers of comparable merchandise. In this case, we found that India is at a comparable level of economic development to the PRC; is a significant producer of the subject merchandise (*i.e.*, tissue paper); and has publicly-available and reliable data. *See* April 7, 2010, Memorandum to The File entitled "2008–2009 Antidumping Duty Administrative Review on Certain Tissue Paper Products from the People's Republic of China: Selection of a Surrogate Country" (Surrogate Country Memorandum).

Accordingly, we selected India as the primary surrogate country for purposes of valuing the FOPs in the calculation of NV because it meets the Department's criteria for surrogate-country selection. *See* Surrogate Country Memorandum. We obtained and relied upon publicly-available information wherever possible.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in antidumping administrative reviews, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results.

Fair Value Comparisons

To determine whether sales of the subject merchandise by SPA to the United States were made at prices below NV, we compared SPA's export prices (EPs) to NV, as described in the "Export Price" and "Normal Value" sections of this notice below, pursuant to section 773 of the Act.

Export Price

Because SPA sold subject merchandise to an unaffiliated purchaser in the United States prior to importation into the United States and use of a constructed-export-price methodology was not otherwise indicated, we used EP in accordance with section 772(a) of the Act.

We calculated EP based on the reported terms of delivery to the first unaffiliated purchaser in the United States. We made deductions from the starting price (gross unit price) for foreign inland freight in the PRC and U.S. customs duties, pursuant to section

772(c)(2)(A) of the Act.¹⁷ Because foreign inland freight was provided by a PRC service provider or paid for in renminbi, we based that charge on a surrogate rate from India. *See* "Factor Valuations" section below for further discussion of surrogate rates.

In determining the most appropriate surrogate values (SVs) to use in a given case, the Department's practice is to use review period-wide price averages, prices specific to the input in question, prices that are net of taxes and import duties, prices that are contemporaneous with the POR, and publicly-available data. *See, e.g., Certain Cased Pencils from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 38366 (July 6, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

The Department valued inland truck freight expenses using a per-unit average rate calculated from August 2008 data on the following Web site: <http://www.infobanc.com/logistics/logtruck.htm>. The logistics section of this Web site contains inland freight truck rates between many large Indian cities. Because this average rate is contemporaneous with the POR, we did not adjust the rate for inflation. *See* Surrogate Value Memorandum.

Normal Value

Section 773(c)(1) of the Act provides that, in the case of an NME, the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home market prices, third country prices, or constructed value under section 773(a) of the Act. The Department will base NV on FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under our normal methodologies. Therefore, we calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

For purposes of calculating NV, we valued the FOPs in accordance with section 773(c)(1) of the Act. The FOPs include: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital

¹⁷ *See* the Department's memorandum entitled, "2008–2009 Administrative Review of the Antidumping Duty Order on Certain Tissue Paper Products from the People's Republic of China: Preliminary Results Margin Calculation for Seaman Paper Asia Company Ltd.," dated April 7, 2010 (*SPA Calculation Memo*).

costs, including depreciation. We used the FOP data reported by SPA for materials, energy, labor, and packing. See section 773(c)(3) of the Act.

In examining SVs, we selected, where possible, the publicly-available value, which was an average non-export value, representative of a range of prices within the POR or most contemporaneous with the POR, product-specific, and tax-exclusive. See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates from the People's Republic of China*, 69 FR 75294, 75300 (December 16, 2004) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China*, 70 FR 24502 (May 10, 2005)). For a detailed explanation of the methodology used to calculate SVs, see Surrogate Value Memorandum.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on the FOP data reported by SPA for the POR. We relied on the factor-specific data submitted by SPA for the production inputs in its questionnaire responses, where applicable, for purposes of selecting SVs. To calculate NV, we multiplied the reported per-unit factor consumption rates by publicly-available Indian SVs.

In selecting the SVs, consistent with our past practice, we considered the quality, specificity, and contemporaneity of the data. See, e.g., *Folding Metal Tables and Chairs from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 71 FR 71509 (December 11, 2006), and accompanying Issues and Decision Memorandum at Comment 9. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory, where appropriate. This adjustment is in accordance with the decision of the U.S. Court of Appeals for the Federal Circuit (Federal Circuit). See *Sigma Corp. v. United States*, 117 F. 3d 1401, 1408 (Fed. Cir. 1997). Where necessary, we adjusted the SVs for inflation/deflation using the Wholesale Price Index (WPI) as published in the International Monetary Fund's *International Financial Statistics*, available at <http://ifs.apdi.net/imf>.

We valued the raw material and packing material inputs using weighted-average unit import values derived from the *Monthly Statistics of the Foreign Trade of India (MSFTI)*, as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India, and compiled by the World Trade Atlas (WTA), available at <http://www.gtis.com/wta.htm>. The Indian WTA import data are reported in rupees and are contemporaneous with the POR.¹⁸ Indian SVs denominated in Indian rupees were converted to U.S. dollars using the applicable daily exchange rate for India for the POR. See <http://www.ia.ita.doc.gov/exchange/index.html>. Where appropriate, we converted the units of measure to kilograms. See Surrogate Value Memorandum.

Furthermore, with regard to the WTA Indian import-based SVs, we disregarded prices from NME countries¹⁹ and those we have reason to believe or suspect may be subsidized, because we have found in other proceedings that these exporting countries maintain broadly available, non-industry-specific export subsidies and, therefore, there is reason to believe or suspect that all exports to all markets from such countries may be subsidized.²⁰ We are also guided by the statute's legislative history that explains that it is not necessary to conduct a formal investigation to ensure that such prices are not subsidized. See H.R. Rep. No. 576 100th Cong., 2. Sess. 590–91 (1988). Rather, the Department was instructed by Congress to base its decision on information that is available to it at the time it is making its determination. Therefore, we excluded export prices from Indonesia, South Korea, Thailand, and India when calculating the Indian import-based SVs. See Surrogate Value Memorandum.

¹⁸ See Surrogate Value Memorandum at Attachment 1.

¹⁹ The NME countries are Armenia, Azerbaijan, Belarus, Georgia, Kyrgyz Republic, Moldova, PRC, Tajikistan, Turkmenistan, Uzbekistan, and Vietnam.

²⁰ See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Final Results of the 1998–1999 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part*, 66 FR 1953 (January 10, 2001), and accompanying Issues and Decision Memorandum at Comment 1; *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Final Results of 1999–2000 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part*, 66 FR 57420 (November 15, 2001), and accompanying Issues and Decision Memorandum at Comment 1; and *China National Machinery Imp. & Exp. Corp. v. United States*, 293 F. Supp. 2d 1334, 1339 (CIT 2003), as affirmed by the Federal Circuit, 104 Fed. Appx. 183 (Fed. Cir. 2004).

Finally, we excluded imports that were labeled as originating from an “unspecified” country from the average Indian import values, because we could not be certain that they were not from either an NME or a country with general export subsidies.

As discussed above, the Department valued surrogate truck freight cost by using a per-unit average rate calculated from August 2008 data on the following Web site: <http://www.infobanc.com/logistics/logtruck.htm>. See *Polyethylene Retail Carrier Bags from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 52282, 52286 (September 9, 2008) (and unchanged in *Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 6857 (February 11, 2009)); and Surrogate Value Memorandum at Attachment 9.

We valued water using data from the Maharashtra Industrial Development Corporation (MIDC) because it includes a wide range of industrial water tariffs. This source provides 378 industrial water rates within the Maharashtra province from June 2009; 189 for the “inside industrial areas” usage category; and 189 for the “outside industrial areas” usage category.²¹ Because these data were not contemporaneous with the POR, we deflated the average value to the POR using the WPI. See Surrogate Value Memorandum at Attachment 6.

The Department calculated a simple average price for domestic coal using data obtained from the Indian Mineral Yearbook and Coal India Limited. Because these data were not contemporaneous with the POR, we adjusted the average value for inflation using WPI. See Surrogate Value Memorandum at Attachment 5.

To value electricity, the Department used March 2008 electricity price rates from *Electricity Tariff & Duty and Average Rates of Electricity Supply in India*, published by the Central Electricity Authority of the Government of India. Because these data were contemporaneous with the POR, we did not adjust the average value. See Surrogate Value Memorandum at Attachment 5.

For direct labor, indirect labor and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rates reflective of the observed relationship between wages and national income in ME countries as reported on Import Administration's Web site. See

²¹ MIDC Web site is available at <http://www.midcindia.org>.

"Expected Wages of Selected NME Countries" (revised December 2009) (available at <http://www.trade.gov/ia/>). For further details on the labor calculation, see Surrogate Value Memorandum at Attachment 8. Because the regression-based wage rates do not separate the labor rates into different skill levels or types of labor, we applied the same wage rate to all skill levels and types of labor reported by SPA.

For factory overhead, selling, general, and administrative expenses (SG&A), and profit values, consistent with 19 CFR 351.408(c)(4), we used the public information from the 2008–2009 annual report of Pudumjee Pulp & Paper Mills Ltd. (Pudumjee).²² From this information, we were able to determine factory overhead as a percentage of the total raw materials, labor, and energy (ML&E) costs; SG&A as a percentage of ML&E plus overhead (*i.e.*, COM); and the profit rate as a percentage of the COM plus SG&A. Where appropriate, we did not include in the surrogate overhead and SG&A calculations the excise duty amount listed in the financial report. For a full discussion of the calculation of these ratios, see Surrogate Value Memorandum and its accompanying calculation worksheets at Attachment 7.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by SPA for use in our preliminary results. We used standard verification procedures including an examination of relevant accounting and production records, and original source documents provided by SPA. See SPA Verification Report.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rate in effect on the date of the U.S. sale, as certified by the Federal Reserve Bank. See <http://www.ia.ita.doc.gov/exchange/index.html>.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margins exist for the period

March 1, 2008, through February 28, 2009:

CERTAIN TISSUE PAPER PRODUCTS FROM THE PRC

Individually reviewed exporter 2007–2008 administrative review	Margin (percent)
Seaman Paper Asia Company Ltd.	0.00
Max Fortune Industrial Ltd.	112.64

Disclosure

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the date of publication of this notice. See 19 CFR 351.224(b).

Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments within 30 days of the date of publication of this notice. See 19 CFR 351.309(c)(ii). Rebuttal briefs, limited to issues raised in the case briefs, will be due five days later, pursuant to 19 CFR 351.309(d). Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue, and (2) a brief summary of the argument. Parties are requested to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Additionally, parties are requested to provide their case brief and rebuttal briefs in electronic format (*e.g.*, Microsoft Word, pdf, *etc.*). Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. See 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in case and rebuttal briefs. The Department will issue the final results of this review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review.

In accordance with 19 CFR 351.212(b)(1), for SPA, we calculated an importer-specific assessment rate for the merchandise subject to this review because SPA submitted entered value information with its U.S. sales reporting. Where an importer-specific *ad valorem* rate is zero or *de minimis*, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. See 19 CFR 351.106(c)(2).

With respect to Max Fortune, we will instruct CBP to liquidate appropriate entries at the PRC-wide rate of 112.64 percent.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of the administrative review for all shipments of certain tissue paper products from the PRC 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) A cash deposit rate of 0.00 percent will be required for certain tissue paper products from the PRC exported by SPA; (2) a cash deposit rate of 112.64 percent will be required for certain tissue paper products from the PRC exported by Max Fortune; (3) for previously reviewed or investigated companies not listed above that have separate rates, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (4) for all other PRC exporters of subject merchandise, which have not been found to be entitled to a separate rate, the cash deposit rate will be PRC-wide rate of 112.64 percent; and (5) for all non-PRC exporters of subject merchandise, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) 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 double antidumping duties.

This administrative review and notice are in accordance with sections

²² See *Certain Tissue Paper Products from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 18497, 18502 (April 4, 2008) (unchanged in *Certain Tissue Paper Products from the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review*, 73 FR 58113 (October 6, 2008) (*Tissue Paper (AR2)*). See also *PRC Tissue Paper—3rd AR*, and accompanying Issues and Decision Memorandum at Comment 5.

751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Dated: April 7, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010-8424 Filed 4-12-10; 8:45 am]

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DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number: 100202060-0143-01]

Second DRAFT NIST Interagency Report (NISTIR) 7628, Smart Grid Cyber Security Strategy and Requirements; Request for Comments

AGENCY: National Institute of Standards and Technology (NIST), Department of Commerce.

ACTION: Notice; request for comments.

SUMMARY: The National Institute of Standards and Technology (NIST) seeks comments on the second draft of NISTIR 7628, *Smart Grid Cyber Security Strategy and Requirements*. This second draft has been updated to address the comments submitted. In addition, the privacy, vulnerability categories, bottom-up analysis, individual logical interface diagrams, and the cyber security strategy sections have all been updated and expanded and the requirements section has been revised to include requirements for the entire Smart Grid. Finally, there are new sections on research and development, standards assessment, and an overall logical functional architecture. This is the second draft of NISTIR 7628; the final version is scheduled to be posted in the spring of 2010.

DATES: Comments must be received on or before June 2, 2010.

ADDRESSES: Written comments may be sent to: Annabelle Lee, National Institute of Standards and Technology, 100 Bureau Dr., Stop 8930, Gaithersburg, MD 20899-8930. Electronic comments may be sent to: cswgdraft2comments@nist.gov.

The report is available at: <http://csrc.nist.gov/publications/PubsDrafts.html#NIST-IR-7628>.

FOR FURTHER INFORMATION CONTACT: Annabelle Lee, National Institute of Standards and Technology, 100 Bureau Dr., Stop 8930, Gaithersburg, MD 20899-8930, telephone (301) 975-8897.

SUPPLEMENTARY INFORMATION: Section 1305 of the Energy Independence and Security Act (EISA) of 2007 (Pub. L. 110-140) requires the Director of the

National Institute of Standards and Technology (NIST) "to coordinate the development of a framework that includes protocols and model standards for information management to achieve interoperability of smart grid devices and systems." EISA also specifies that, "It is the policy of the United States to support the modernization of the Nation's electricity transmission and distribution system to maintain a reliable and secure electricity infrastructure that can meet future demand growth and to achieve each of the following, which together characterize a Smart Grid: * * *

(1) Increased use of digital information and controls technology to improve reliability, security, and efficiency of the electric grid.

(2) Dynamic optimization of grid operations and resources, with full cyber-security * * *

With the Smart Grid's transformation of the electric system to a two-way flow of electricity and information, the information technology (IT) and telecommunications infrastructures have become critical to the energy sector infrastructure.

NIST has established a Smart Grid Interoperability Panel. The Panel's Cyber Security Working Group (SGIP-CSWG) now has more than 375 volunteer members from the public and private sectors, academia, regulatory organizations, and Federal agencies. Cyber security is being addressed in a process that will result in a comprehensive set of cyber security requirements. These requirements are being developed using a high-level risk assessment process that is defined in the cyber security strategy for the Smart Grid.

NIST published a request for public comments in the **Federal Register** on October 9, 2009 (74 FR 152183) to seek public comment on the first draft of NIST Interagency Report (NISTIR) 7628, *Smart Grid Cyber Security Strategy and Requirements*.

The comment period closed on December 1, 2009. The second draft of NISTIR 7628 incorporates changes based on the comments received, which are summarized below. The complete set of comments and NIST's analysis are posted at: <http://csrc.nist.gov/publications/PubsDrafts.html#NIST-IR-7628>.

Summary of Public Comments Received by NIST in Response to the Draft NISTIR 7628, Cyber Security Strategy and Requirements, and NIST's Response to Those Comments

NIST received comments from sixty-three (63) organizations and individuals.

The commenters consisted of twenty-three (23) private companies, five (5) Federal agencies, nine (9) individuals, twelve (12) non-profit organizations, twelve (12) industry associations and two (2) universities. A detailed analysis of the comments follows.

General Comments

Comment: Fifteen (15) commenters identified inconsistencies between the text and logical interface diagrams and suggested additions or deletions to the logical interface diagrams and associated text.

Response: In the second draft of NISTIR 7628, the logical interface diagrams and text have been updated and an overall functional logical architecture has been added.

Comment: Fifty-one (51) commenters suggested grammatical, editorial, and language changes and correcting cited information and sources.

Response: The relevant sections were updated to reflect suggested changes. Some suggested changes were not accepted because they are not consistent with Government Printing Office (GPO) style.

Comment: One (1) commenter suggested integration of cryptographically strong identity management mechanisms.

Response: Strong authentication is an important aspect of the Smart Grid. This will be addressed in the next version of the NISTIR. There were several topics that were not addressed in the second draft of the NISTIR. The schedule for completing the second draft was extremely tight. Therefore, we will address this comment in the June draft, which is the next version.

Comment: One (1) commenter suggested that security requirements be amended to address potential insider threats.

Response: The security requirements are intended to address threats from insiders and external entities. For the next version of the NISTIR, additional analysis will be completed to ensure that the insider threat is addressed. There were several topics that were not addressed in the second draft of the NISTIR. The schedule for completing the second draft was extremely tight. Therefore, we will address this comment in the June draft, which is the next version.

Comment: Seven (7) commenters suggested amendments to the definition of the term "cyber security" to be more inclusive of the electric sector.

Response: The definition of "cyber security" was modified to focus on the electric sector.

Comment: Four (4) commenters suggested including definitions of frequently used terms and acronyms to ensure clear and consistent meanings throughout the document.

Response: A glossary has been included in the second draft of the NISTIR.

Comment: Seven (7) commenters recommended establishing regulations and policies addressing various facets of Smart Grid, including naming an enforcement authority, privacy training and awareness, management and user accountability, use and retention of user data, and law enforcement access to Smart Grid data.

Response: These comments are outside the scope of the NISTIR and the Smart Grid Interoperability Panel (SGIP) Cyber Security Working Group (CSWG) because they focus on regulations and policies.

Comment: Eighteen (18) commenters suggested that the NISTIR should be clarified with respect to purpose and intent of the document. It does not create Smart Grid Cyber Security “requirements,” rather acts as a strategy document intended to facilitate the development of such requirements.

Response: The NISTIR was revised to clarify that the document is a guidance document and that the content is not mandatory. In addition, text was added to clarify how the NISTIR may be used by organizations as they develop a cyber security strategy and specify security requirements for the Smart Grid.

Comment: Three (3) commenters suggested adding the following sections to the NISTIR:

- Multi-Tier Control System Criticality Model.
- Control System Trust Model.
- Threat-based Requirements.

Response: These comments are being reviewed for possible inclusion in the next version of the NISTIR. There were several topics that were not addressed in the second draft of the NISTIR. The schedule for completing the second draft was extremely tight. Therefore, we will address this comment in the June draft, which is the next version.

Comment: One (1) commenter proposed use of risk-based performance standards rather than security-specific requirements.

Response: The comment will be considered during the development of the next version of the NISTIR. There were several topics that were not addressed in the second draft of the NISTIR. The schedule for completing the second draft was extremely tight. Therefore, we will address this comment in the June draft, which is the next version.

Comment: One (1) commenter encouraged NIST to collaborate closely with the electric utility industry to develop options for integrating legacy equipment into a smarter grid.

Response: The NISTIR has been revised to clarify that the content is at a high level and each organization will need to address security based on their specific requirements. The intent of the NISTIR is to identify security requirements for the end-to-end grid, including the integration of legacy equipment.

Comment: One (1) commenter advised NIST to implement role-based access control to Smart Grid data.

Response: The NISTIR has been revised to include role-based access control because NIST agrees that role-based access control is good practice.

Comment: Four (4) commenters suggested that the NISTIR should focus on the specificity of standards pertaining to cyber security rather than data privacy.

Response: Both reliability and privacy are being addressed by the NISTIR as both are critical to the effective operation of the Smart Grid.

Comment: One (1) commenter recommended creating a risk management framework focused on protecting the functions of the electric power system rather than the individual assets.

Response: The risk assessment process included in the NISTIR addresses the functions of and information in the electric grid, not individual assets.

Comment: One (1) commenter suggested that interoperability and system security standards be developed that apply directly to the interfaces and the equipment being integrated.

Response: This design consideration will be reviewed in depth for the next draft of the NISTIR. There were several topics that were not addressed in the second draft of the NISTIR. The schedule for completing the second draft was extremely tight. Therefore, we will address this comment in the June draft, which is the next version. The NISTIR is intended to assist all stakeholders of the Smart Grid as they develop requirements and integration strategies.

Comment: One (1) commenter recommended assessing any potential cyber security impacts on the Smart Grid beyond the scope of IT and telecommunications; new vulnerabilities applicable to the Smart Grid could be introduced regularly.

Response: The second draft of the NISTIR provides additional information on impacts that affect the reliability of

the Smart Grid. The second draft of the NISTIR clarifies that a risk assessment needs to be performed at regular intervals to address new threats and vulnerabilities. This discussion will be further expanded on the next version of the NISTIR.

Comment: Five (5) commenters suggested including a high-level “summary” or user guide of the document in order to help readability.

Response: The final version of the NISTIR will include design considerations and/or a user guide to assist people in the use of the document.

Comment: One (1) commenter inquired about how NIST would evolve the document to address emerging threats, Smart Grid paradigms and other changing elements of security.

Response: The second draft of the NISTIR clarifies that the risk assessment needs to be performed at regular intervals to address emerging threats, new vulnerabilities, and changes in technology. This discussion will be further expanded on the next version of the NISTIR.

Comment: One (1) commenter inquired about Smart Grid Security Certification and NIST’s role in determining the relevancy of such certification.

Response: The Smart Grid Interoperability Panel (SGIP) Testing and Certification Committee has been established to focus on this issue. The SGIP–Cyber Security Working Group (SGIP–CSWG) will be coordinating with this new committee.

Comments and Responses Regarding Chapter One, Cyber Security Risk Management Framework and Strategy

Comment: One (1) commenter suggested that the NISTIR document be revised to be consistent with the “NIST Framework and Roadmap for Smart Grid Interoperability Standards.” Also, the document should clearly articulate a strategy for Smart Grid Cyber Security.

Response: The cyber security strategy in the NIST Framework and the NISTIR are the same. Also, additional information was included in the NIST Framework document and in the NISTIR to clarify how the two documents should be used.

Comment: One (1) commenter requested a more detailed definition of how the North American Electric Reliability Corporation (NERC) Critical Infrastructure Protection (CIP) standards 002–CIP 009 will apply to the Smart Grid. These standards currently apply to the bulk power system and it would be costly to apply them to all of the

Advanced Metering Infrastructure (AMI) and Distribution systems.

Response: The NERC CIPs are mandatory for the bulk power system. The NISTIR includes security requirements for the entire Smart Grid, and the NERC CIPs are some of the standards used as source documents for the security requirements.

Comment: Two (2) commenters commented about the aggressive timeline for developing security requirements and the potential for inferior standards, requirements, and/or strategies because of the limited timeline.

Response: Because of the short time schedule, tasks are being done in parallel. The SGIP-CSWG recognizes the impact this may have and is working hard to ensure the quality is at a high level.

Comment: One (1) commenter noted the impact of new logical interface categories, security considerations, and appropriate controls on the current NISTIR. The overview should mention that the document is not exhaustive and excludes certain topics.

Response: The second draft of the NISTIR clarifies that the document is neither finalized nor comprehensive on all topics.

Comment: One (1) commenter proposed two specific strategies for developing a cyber security framework for the Smart Grid:

1. NIST and the industry should develop a focus on response and recovery. Although the primary goal of a cyber security strategy should be prevention, a response and recovery plan needs to be developed in the event of a cyber attack.

2. It is essential that those parts or equipment of the Smart Grid that optimize the system are separate from the core components of the Smart Grid. In the event of a cyber security incident on the grid, the core components can be recovered with minimal technology in a quick and efficient manner, thereby assuring bulk power system reliability. This will also help identify where response plan decisions and actions can be carried out to protect core functionality and/or quickly restore it.

Response: The cyber security strategy included in the NISTIR addresses prevention, response, and recovery for events that affect the Smart Grid. The cyber security strategy and the security requirements included in the NISTIR are at a high level and do not focus on specific parts and equipment. It is the responsibility of each organization to provide more granular security requirements. Also, the NISTIR

addresses the entire Smart Grid, not just the bulk power system.

Comment: One (1) commenter suggested the expansion of the risk assessment to address distribution, transmission, and generation, in addition to AMI.

Response: The second draft of the NISTIR clarifies that the risk assessment should address the entire Smart Grid, not just AMI.

Comment: One (1) commenter inquired about the Smart Grid distribution system in relation to the jurisdiction of NERC.

Response: The NISTIR addresses the entire Smart Grid. Any questions related to the jurisdiction of NERC should be forwarded to that organization.

Comment: One (1) commenter recommended a continual assessment of cyber security risks to the Smart Grid be performed. This way, a common lexicon or language to capture system vulnerabilities that require continual monitoring can be determined.

Response: This recommendation will be considered for the final version of the NISTIR.

Comment: One (1) commenter suggested that NIST should integrate adequate cyber security protection at all levels (device, application, network and system) in the development of a cyber security strategy. This level of cyber security protection should go beyond the requirements of NERC CIP Reliability Standards.

Response: The NISTIR has been modified to clarify that the security requirements are applicable to the entire Smart Grid. The NERC CIPs were considered in the development of the security requirements.

Comments and Responses Regarding Chapter Two, Privacy and the Smart Grid

Comment: One (1) commenter suggested that NIST's approach to Smart Grid privacy is insufficient.

Response: The privacy chapter has been significantly revised and includes more comprehensive privacy principles.

Comment: One (1) commenter recommended that fair information practices be adopted.

Response: The second draft of the NISTIR has a rewritten privacy chapter that includes privacy principles that addresses this concern.

Comment: One (1) commenter suggested that a rulemaking be developed so that service providers establish a concrete set of approved purposes for which PII activity is permitted. That list of approved purposes should be very limited and PII activity only be permitted for purposes

essential to the functioning of the Smart Grid. Also, restrictions on the use and retention of data should be mandatory, not merely best practices.

Response: The scope of the NISTIR is to provide recommendations.

Implementation of regulations and mandatory practices are outside the scope of the NISTIR and the CSWG.

Comment: One (1) commenter stated the importance of having clear, strong language spelling out specific privacy protection.

Response: The privacy chapter of the second draft of the NISTIR has been revised and now includes revised privacy principles relevant to the Smart Grid.

Comment: One (1) commenter suggested that the privacy chapter should relate how the findings in the "high-level privacy impact assessment (PIA) of the consumer-to-utility metering data sharing portion of the Smart Grid" can be applied to the whole of the Smart Grid. Otherwise, this whole chapter belongs as an appendix as a summary of those findings.

Response: The privacy chapter in the second draft of the NISTIR clarifies that the privacy impact assessment was performed for the entire Smart Grid.

Comment: Two (2) commenters recommended removing the privacy chapter from the NISTIR and creating a stand-alone document about Smart Grid Privacy.

Response: Privacy is an important topic and is addressed alongside cyber security in the NISTIR. Although privacy and security are not the same, many of the security requirements that address privacy also address confidentiality which is a security objective. Because the two are closely related, they are both included in the NISTIR.

Comment: One (1) commenter proposed adopting a "privacy by design" approach. By building standards that reflect privacy interests, rather than attempting to tack on privacy at a later point, this is the most effective means of protecting consumer privacy and security. Ensuring privacy is addressed at an early stage will also be less expensive than attempting to address these issues in the future and will make the grid more adaptable to changing threats to privacy and security as use increases.

Response: Organizations utilizing the Smart Grid should take a holistic view toward privacy, building in privacy from project initiation whenever possible, rather than as an add-on at a later date. This will be further expanded in the next draft of the NISTIR. The Privacy sub-group plans to develop

relevant use cases with the intent of including them in the final version of the NISTIR. The second draft of the NISTIR includes suggested privacy principles that are applicable to the Smart Grid that may be useful to many organizations.

Comment: Eight (8) commenters encouraged including privacy principles to cover all Smart Grid entities and practices and develop use cases that reflect a comprehensive model of data flow detailing necessary consumer privacy protections.

Response: The second draft of the NISTIR includes privacy principles applicable to the entire Smart Grid. The next draft of the NISTIR will include privacy use cases.

Comment: Two (2) comments suggested updating the NISTIR to address privacy policies, standards, and supporting procedures on information collection and uses.

Response: The privacy section has been revised to include privacy principles that address these concerns.

Comment: Three (3) commenters suggested that any attempt to define Personally Identifiable Information (PII) must account for rules and definitions of PII in other jurisdictions. There is also a difference between data privacy and data security. NIST should focus on data security issues and especially upon data security that effectively frustrates security breaches that result in identity theft.

Response: In the second draft of the NISTIR the content of the privacy chapter has been revised and the term PII is not included. PII is defined very specifically and does not include concepts that are used in Smart Grid. Both data privacy and data security are important to the Smart Grid and are included in the NISTIR.

Comment: One (1) commenter suggested that it will be necessary to address the privacy of customer information generated by Smart Grid installations.

Response: The privacy chapter has been revised and includes privacy principles.

Comments and Responses Regarding Chapter Three, Logical Interface Analysis

Comment: Twenty-seven (27) commenters recommended changing the impact levels of various logical interface categories.

Response: The impact levels for the logical interface categories have been revised. They will continue to be reviewed and revised for the final version of the NISTIR.

Comment: One (1) commenter proposed two additional constraints to Category 11—

1. System scale and diversity prohibits a unified solution to security management.

2. Ubiquitous networking of devices combined with remote control capabilities can enable coordinated manipulation of load on a large scale.

Also, an additional impact to Category 11 was proposed—

1. Possible large-scale load manipulation through distributed control of unsecured or compromised devices.

Response: The Logical Interface Category Definitions section has been rewritten in the second draft of the NISTIR. Rather than constraints, Table 3.1 provides the analysis matrix of the security-related logical interface categories against the attributes that reflect the interface categories.

Comment: One (1) commenter suggested that the logical interface diagrams be moved and re-titled “Proposed Logical Interfaces.”

Response: The second draft of the NISTIR has been revised to clarify that these are logical interface diagrams, are not solutions, and do not imply any architectural implementations.

Comment: One (1) commenter identified a high-risk, low-tech attack that did not apply to the Confidentiality, Integrity, or Availability (CIA) of Smart Grid data.

Response: Both the Vulnerability and Bottom-up sub-groups within the SCIP-CSWG will review this attack to include in Appendix C or Appendix D of the final version of the NISTIR.

Comment: Twenty (20) commenters suggested changes to examples within the logical interface categories.

Response: Examples for the logical interface categories were changed accordingly.

Comments and Responses Regarding Chapter Four, Advanced Metering Infrastructure (AMI) Security Requirements

Comment: Twenty-five (25) commenters suggested that requirements be clear, non-prescriptive, cost effective and scalable based on the criticality of the device or system. Certain requirements also require further clarification and detail.

Response: The second draft of the NISTIR includes requirements for the entire Smart Grid. The security requirements in the second draft of the NISTIR are at a high level and do not specify specific solutions or controls. The AMI requirements included in the first draft of the NISTIR were developed

by the Advanced Security Acceleration Project for the Smart Grid (ASAP-SG) project as part of the AMI Security Profile document which is now being maintained by the UCA International Users Group (UCAIug) Smart Grid (SG) Security working group.

Comment: One (1) commenter suggested removing “AMI” from the section title and adding a section on “Smart Grid Control Systems Security Requirements” to this section.

Response: The chapter was revised to address security requirements for the entire Smart Grid and the title of the chapter was changed to “High-Level Security Requirements.”

Comment: One (1) commenter recommended that the requirements be refined to remove statements requiring “all components” to include security features. Many security requirements can effectively be handled in a central “system” method.

Response: The second draft of the NISTIR includes security requirements for the entire Smart Grid. The security requirements in the second draft of the NISTIR are at a high level and do not specify specific solutions or controls.

Comment: One (1) commenter proposed that the requirements should be more flexible to allow alternatives that meet the security requirement for efficiency and effectiveness.

Response: The second draft of the NISTIR includes requirements for the entire Smart Grid. The security requirements in the second draft of the NISTIR are at a high level and do not specify specific solutions or controls.

Comment: One (1) commenter suggested that the AMI-Security Task Force (SEC) requirements should be included in an informative annex and not in the main body of the document.

Response: The second draft of the NISTIR includes requirements for the entire Smart Grid, not just on AMI. The AMI requirements will be included in a reference list that will be added to the final version of the NISTIR.

Comment: One (1) commenter proposed that the focus should be on how to secure the transported information through the Internet rather than discourage its use.

Response: The second draft of the NISTIR includes requirements for the entire Smart Grid. The security requirements in the second draft of the NISTIR are at a high level and do not specify specific solutions or controls. Use of the Internet is a specific solution.

Comment: Thirteen (13) commenters provided comments about specific AMI controls. Suggestions included:

- Text revisions for technical content.

- Inquiries regarding clarification or further detail.
- Deletion of text.
- Accidental omissions.
- Concerns regarding specific use cases.

- Inconsistency in terminology.
- Inclusion of additional relevant controls.

Response: The second draft of the NISTIR includes requirements for the entire Smart Grid. The AMI requirements included in the first draft of the NISTIR were developed by the ASAP-SG project as part of the AMI Security Profile document which is now being maintained by the UCAIug SG Security working group. The eighty-six (86) comments were forwarded to the ASAP-SG team.

Comment: One (1) commenter recommended that there are two further pieces of work that will be vital to the success of this project, and in which the security research community could be engaged, as they are of technical interest as well as being important.

1. Security policy for the core of the network.
2. Information flow policies at the periphery (between the meter, home and network).

Response: An R&D sub-group was established under the SGIP CSWG and a chapter in the second draft of the NISTIR includes R&D themes. This comment has been forwarded to that group for evaluation and potential inclusion in the final version of the NISTIR.

Comments and Responses Regarding Appendices

Comment: Five (5) commenters suggested additional use cases to include in the document or edits to existing use cases.

- Additions to Retail Power Electricity Market Use Case.
- Considerations for variation in:
 - Real Time Pricing (RTP) for Customer Load and Distributed Energy Resources (DER)/Plug-in Electric Vehicles (PEV).
 - Time of Use (TOU) Pricing.
 - Power Bulk Electricity Market. Regional Transmission Operators (RTO).
 - Independent System Operators (ISO).

Response: The security-relevant content of these use cases will be considered for the final version of the NISTIR.

Comment: One (1) commenter urged NIST to follow a two-track approach in order to address any confidentiality issues: (1) Ensuring that its cyber security standards incorporate into

Smart Grid architecture all reasonable and cost-effective safeguards to protect the privacy of customer information, while also (2) educating State and Federal policy makers as to the potential costs and benefits of including the highest level of cyber security safeguards into Smart Grid installations.

Response: A strong focus has been placed on reliability, since it is a first priority to the power grid. However, confidentiality is also very critical and the SGIP-CSWG will coordinate with State and Federal policy makers when developing future versions of the NISTIR. The NISTIR focuses on high level security requirements and not specific controls that are implementation specific. Outreach to Federal and State representatives and private sector organizations are an important task and will be considered for the future.

Comment: Thirteen (13) commenters recommended changes and updates to use cases presented in Appendix A. Examples of such recommendations include:

- Revisions to the retail power electricity market scenario.
- Revisions to reflect continuing regional diversity in wholesale power markets.
- Refine statements regarding power system operations to demonstrate some portions of a power system can cease operations without an objectionable impact on the overall power system.
- Clarification that the Use Cases are not mandatory.
- Design considerations to assist people with the use/application of the document.
- Concerns regarding impact (financially to the Utility and to customer trust) of incorrect data.

Response: The Use Cases presented in Appendix A are neither exhaustive nor complete. New Use Cases may be added as they evolve in future versions of this document. The Use Cases were derived “as-is” from their sources and put into a common format for evaluating Smart Grid characteristics and associated cyber security objectives, requirements and stakeholder concerns. The section introduction has been modified to reflect this more clearly.

Comment: One (1) commenter suggested it would be helpful to have a tool to help resolve conflicts between relevant standards. It is not clear which document should be followed for each security requirement in the Draft NISTIR.

Response: Appendix B has been revised to only list the source documents and not standards, that were used in developing the security

requirements in the NISTIR. The final version of the NISTIR will list the specific requirements; therefore, individuals will not need to refer to the source documents.

Comment: One (1) commenter was concerned that statements in Appendix D.4, *Openness and Accessibility of Smart Grid Standards*, could be misconstrued to imply that simply because there is a charge for a standard that the standard is not “accessible.” Neither openness nor accessibility demands that documents be made available without charge.

Response: The language was changed to avoid possible confusion in associating these standards with closed, secretly developed algorithms.

Comment: Ten (10) commenters provided additional references for inclusion in the NISTIR or changes to existing references.

Response: These references will be considered in developing the final version of the NISTIR.

Comment: One (1) commenter suggested additional information regarding cryptography and key management.

Response: Cryptography and key management are important areas for the Smart Grid. They will be examined more fully in the final version of the NISTIR and a new sub-group has been established to address these topics.

Request for Comments: NIST seeks public comments on the second draft of NISTIR 7628. The report will be revised on the basis of comments received and a final version is scheduled to be posted in late spring of 2010.

The document will contain the final set of security controls and the final security architecture.

Comments on draft NISTIR 7628, *Smart Grid Cyber Security Strategy and Requirements*, may be transmitted electronically to: csctgdraftcomments@nist.gov. They also may be mailed to: Annabelle Lee, National Institute of Standards and Technology, 100 Bureau Dr., Stop 8930, Gaithersburg, MD 20899-8930.

Comments must be received no later than June 2, 2010.

E.O. 12866: This notice has been determined not to be significant for the purposes of E.O. 12866.

Dated: April 7, 2010.

Marc G. Stanley,
Acting Deputy Director, NIST.

[FR Doc. 2010-8415 Filed 4-12-10; 8:45 am]

BILLING CODE 3510-13-P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0019, Stocks of Grain in Licensed Warehouses

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (“the Commission”) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for comment in response to the notice. This notice solicits comments on requirements relating to information collected to assist the Commission in the prevention of market manipulation.

DATES: Comments must be submitted on or before June 14, 2010.

ADDRESSES: Comments may be mailed to Gary J. Martinaitis, Division Economic Analysis, U.S. Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Gary J. Martinaitis, (202) 418–5209; FAX (202) 418–5527; e-mail: gmartinaitis@cftc.gov.

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. “Collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the Commission is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the Commission invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

- The accuracy of the Commission’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Ways to enhance the quality of, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

Stocks of Grain in Licensed Warehouses, OMB Control No. 3038–0019—Extension

Under Commission Rule 1.44, 17 CFR 1.44, contract markets must require operators of warehouses regular for delivery to keep records on stocks of commodities and make reports on call by the Commission. The rule is designed to assist the Commission in prevention of market manipulation and is promulgated pursuant to the Commission’s rulemaking authority contained in section 5a of the Commodity Exchange Act, 7 U.S.C. 7a.

The Commission estimates the burden of the collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

17 CFR section	Annual number of respondents	Frequency of response	Total annual responses	Hours per response	Total hours
17 CFR 1.42 & 1.43	3	Weekly	156	1.0	156

There are no capital costs or operating and maintenance costs associated with this collection.

This estimate is based on the number of exchanges providing such weekly data to the Commission and the number of elevator operators from which the exchanges collect the data.

Dated: April 7, 2010.

David Stawick,

Secretary of the Commission.

[FR Doc. 2010–8421 Filed 4–12–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; Meeting of the Department of Defense Historical Advisory Committee

AGENCY: Department of Defense (DoD).

ACTION: Notice of open meeting.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, this notice announces a meeting of the Department of Defense Historical Advisory Committee. During the meeting the Committee will discuss the report of the Department of the Army Subcommittee. The meeting will be open to the public.

DATES: The meeting will be held on Tuesday, May 18, 2010, at 1 p.m.

ADDRESSES: The meeting will be held at 1777 North Kent Street, 14th Floor,

Conference Room #2, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Ms. Carolyn Thorne at 703–588–7890 for information or upon arrival at the building in order to be admitted.

Dated: April 8, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–8357 Filed 4–12–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; U.S. Strategic Command Strategic Advisory Group; Closed Meeting

AGENCY: Department of Defense (DoD).

ACTION: Notice of advisory committee closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C. App 2, Section 1), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.150, the Department of Defense announces that the U.S. Strategic Command Strategic Advisory Group will meet on May 6 and 7, 2010. The meeting is closed to the public.

DATES: The meeting will be held: May 6, 2010, from 8 a.m. to 5 p.m. May 7, 2010, from 8 a.m. to 11:30 a.m.

ADDRESSES: The meeting will be held at the Dougherty Conference Center, Building 432, 906 SAC Boulevard, Offutt AFB, Nebraska 68113.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Sudduth, Designated Federal Officer, (402) 294–4102, 901 SAC Blvd., Suite 1F7, Offutt AFB, NE 68113–6030.

For supplementary information, contact: Mr. Floyd March, Joint Staff, (703) 697–0610.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting

The purpose of the meeting is to provide advice on scientific, technical, intelligence, and policy-related issues to the Commander, U.S. Strategic Command, during the development of the Nation's strategic war plans.

Agenda

Topics include: Policy Issues, Space Operations, Nuclear Weapons Stockpile Assessment, Weapons of Mass Destruction, Intelligence Operations, Cyber Operations, Global Strike, Command and Control, Science and Technology, Missile Defense.

Meeting Accessibility

Pursuant to 5 U.S.C. 552b, and 41 CFR 102–3.155, the Department of Defense has determined that the meeting shall be closed to the public. Per delegated authority by the Chairman, Joint Chiefs of Staff, General Kevin P. Chilton, Commander, U.S. Strategic Command, in consultation with his legal advisor, has determined in writing that the public interest requires that all sessions of this meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, U.S.C.

Written Statements

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public of interested organizations may submit written statements to the membership of the Strategic Advisory Group at any time or

in response to the stated agenda of a planned meeting. Written statements should be submitted to the Strategic Advisory Group's Designated Federal Officer; the Designated Federal Officer's contact information can be obtained from the GSA's FACA Database—<https://www.fido.gov/facadatabase/public.asp>. Written statements that do not pertain to a scheduled meeting of the Strategic Advisory Group may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all the committee members.

Dated: April 8, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–8433 Filed 4–12–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Advantage Electronic Product Development Incorporated/Utility Crew Safety LLC

AGENCY: Department of Energy.

ACTION: Notice of intent to grant exclusive patent license.

SUMMARY: Notice is hereby given with an intent to grant to: Advantage Electronic Product Development Incorporated/Utility Crew Safety LLC, of Broomfield, Colorado, an exclusive license to practice the inventions described in U.S. Patent Application No. 12/401,033, entitled “Ground Potential Rise Monitor,” and PCT/US10/26189, entitled “Ground Potential Rise Monitor,” in the United States and in foreign countries. The inventions are owned by the United States of America, as represented by the U.S. Department of Energy (DOE).

DATES: Written comments or nonexclusive license applications are to be received at the address listed below no later than April 28, 2010.

ADDRESSES: Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Annette R. Reimers, Office of the Assistant General Counsel for Technology Transfer and Intellectual

Property, U.S. Department of Energy, Forrestal Building, Room 6F–067, 1000 Independence Ave., SW., Washington, DC 20585; Telephone (202) 586–3815.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 209 provides Federal agencies with authority to grant exclusive licenses in Federally-owned inventions, if, among other things, the agency finds that the public will be served by the granting of the license. The statute requires that no exclusive license may be granted unless public notice of the intent to grant the license has been provided, and the agency has considered all comments received in response to that public notice before the end of the comment period. Under 37 CFR 404.7, DOE has considered whether the interests of the Federal Government or the United States industry in foreign commerce will be enhanced.

Advantage Electronic Product Development Incorporated/Utility Crew Safety LLC, of Broomfield, Colorado, has applied for an exclusive license to practice the inventions embodied in U.S. Patent Application No. 12/401,033, entitled “Ground Potential Rise Monitor” and PCT/US10/26189, entitled “Ground Potential Rise Monitor,” and has plans for commercialization of the inventions. The exclusive license will be subject to a license and other rights retained by the U.S. Government and other terms and conditions to be negotiated. DOE intends to negotiate to grant the license, unless, within 15 days of this notice, the Assistant General Counsel for Technology Transfer and Intellectual Property, Department of Energy, Washington, DC 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reason why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention in which applicant states that it already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

The Department will review all timely written responses to this notice and will proceed with negotiating the license if, after consideration of written responses to this notice, a finding is made that the license is in the public interest.

Issued in Washington, DC, on April 07, 2010.

Paul A. Gottlieb,

Assistant General Counsel for Technology Transfer and Intellectual Property.

[FR Doc. 2010–8389 Filed 4–12–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY**Notice of Inventions Available for License**

AGENCY: Department of Energy.

ACTION: Notice of inventions available for license.

SUMMARY: The Department of Energy hereby announces that the following invention is available for license, in accordance with 35 U.S.C. 207–209: PCT/US10/26189, entitled “Ground Potential Rise Monitor.”

FOR FURTHER INFORMATION CONTACT:

Annette R. Reimers, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, Forrestal Building, Room 6F–067, 1000 Independence Ave., SW., Washington, DC 20585; Telephone (202) 586–3815.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 207 authorizes licensing of government owned inventions. Implementing regulations are contained in 37 CFR part 404.

Issued in Washington, DC, on April 7, 2010.

Paul A. Gottlieb,

Assistant General Counsel for Technology, Transfer and Intellectual Property.

[FR Doc. 2010–8388 Filed 4–12–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Project No. 13685–000]

Mr. Howard Rosenfeld; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

April 6, 2010.

On March 22, 2010, Mr. Howard Rosenfeld filed an application, pursuant to section 4(f) of the Federal Power Act, for a preliminary permit to study the feasibility of the Warren Energy Independence Hydroelectric Project (Warren Project), to be located on Sucker Brook (a.k.a. Lake Waramaug Brook) in Litchfield County, Connecticut.

Some of the features of the proposed Warren Project would be new and located on residential property owned by the applicant, and some of the project works would include properties owned by the Town of Warren, Connecticut, such as an existing dam, intake, and water conveyance structures. The proposed project would

consist of: (1) An existing 80-foot-long, 4-foot-wide, and 5-foot-high masonry dam; (2) an existing 48-inch square sluice gate structure feeding into; (3) a new 18-inch-diameter, approximately 535-foot-long penstock leading to; (4) an existing 25-foot-high, 22-foot-square stone-masonry building to house; (5) a new turbine generator unit, with a maximum hydraulic capacity of 5 cubic feet per second (cfs) and total installed generating capacity of 10 kilowatts (kW); (6) a new approximately 400-foot-long, 3.4 kilovolt (kV) transmission line, which would connect with the existing 23 kV distribution line owned by Connecticut Power & Light and adjacent to the applicant's property; and (7) appurtenant facilities. The Warren Project would have an estimated average annual generation of 50,000 kilowatt-hours (kWh), which would be used by the applicant on-site or distributed to the power grid and sold directly to a local utility.

Applicant Contact: Mr. Howard Rosenfeld, 10 Town Hill Road, Warren, Connecticut 06754, (860) 868–8087, xmotifs@gmail.com.

FERC Contact: John Ramer, (202) 502–8969.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the “e-Filing” link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at <http://www.ferc.gov/filing-comments.asp>. More information about this project can be viewed or printed on the “eLibrary” link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P–13685) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,
Secretary.

[FR Doc. 2010–8353 Filed 4–12–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Project No. 2615–037]

FPL Energy Maine Hydro LLC, Madison Paper Industries, and Merimil Limited Partnership; Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

April 6, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2615–037.

c. *Date Filed:* March 31, 2010.

d. *Applicant:* FPL Energy Maine Hydro LLC, Madison Paper Industries, and Merimil Limited Partnership.

e. *Name of Project:* Brassua Hydroelectric Project.

f. *Location:* The existing project is located on the Moose River in Somerset County, Maine. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Frank H. Dunlap, FPL Energy Maine Hydro, LLC, 26 Katherine Drive, Hallowell, Maine 04347; Telephone (207) 629–1817.

i. *FERC Contact:* John Costello, (202) 502–6119 or john.costello@ferc.gov.

j. This application is not ready for environmental analysis at this time.

k. *The Project Description:* The existing Brassua Project includes: (1) A 1,789-foot-long dam consisting of: (a) An earth dike 410 feet long with 100 feet of concrete core wall; (b) a concrete-faced earth dike 342.5 feet long; (c) a concrete Ambursen dam 284 feet long with a height of 52 feet above the stream bed; (d) a 18.5-foot fishway (inactive); and (e) a 734-foot earth dike with a concrete core wall; (2) a 9,700-acre reservoir (known as Brassua Lake) with a normal pool elevation 1,074.0 feet (U.S.G.S. datum) and maximum drawdown of 31 feet, extending 7.75 miles upstream; (3) a reinforced-concrete intake structure; (4) a 110-foot-long, 13-foot square penstock; (5) a 32-foot-high, 32-foot-wide and 60-foot-long powerhouse; (6) a 4.18–MW generating unit; (7) a 40-foot-wide, 15-foot-deep and 60-foot-long tailrace; (8) a substation; (9) a 0.5-mile-long, 34.5-kV (kilovolt) transmission line; and (10) appurtenant facilities. The earth sections of the dam are topped with

33.5-inch-high wave barriers (Jersey barriers).

The Brassua Project is operated as a seasonal storage facility where water releases are determined by downstream demands for hydroelectric generation in the Kennebec River and for flood control. Reservoir fluctuations follow an annual cycle under which reservoir levels are reduced during the fall and winter to provide additional flows downstream as well as to make storage volume available for spring snow melt and runoff. After the spring refill, flow is released for the Brassua reservoir to provide summer minimum instream flows as well as water for industrial and municipal uses. Specific project operation requirements are discussed below.

The current license allows the licensees to operate the Brassua Project in peaking mode from July 1st through August 31st and from November 6th

through the start of spring freshnet (normally mid-May) of each year. The licensees are required to cease peaking operation and resume normal operation in which flows through the project are maintained constant on a daily basis from spring freshet through June 30th and from September 1st through November 5th of each year.

The current license requires the licensees to release the following minimum flows and maintain the following target water levels to protect fish and aquatic habitat and to benefit the reproductive efforts of the landlocked salmon population in the Moose River. All Minimum flow releases are maintained through the turbine or deep gates and discharged in the lower Moose River below the dam.

l. Locations of the Application: A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on

the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at 1-866-208-3676, or for TTY, (202) 502-8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural Schedule:*

The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target Date
Notice of Acceptance/Notice of Ready for Environmental Analysis (when FERC approved studies are complete)	May 30, 2010.
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions	July 29, 2010.
Commission issues EA	January 10, 2011.
Comments on EA	February 9, 2011.
Modified terms and conditions	April 10, 2011.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Kimberly D. Bose,
Secretary.

[FR Doc. 2010-8354 Filed 4-12-10; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

April 6, 2010.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG10-26-000

Applicants: Butler Ridge Wind Energy Center, LLC

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Butler Ridge Wind Energy Center, LLC.

Filed Date: 04/06/2010

Accession Number: 20100406-5127

Comment Date: 5 p.m. Eastern Time on Tuesday, April 27, 2010

Docket Numbers: EG10-27-000

Applicants: High Majestic Wind Energy Center, LLC

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of High Majestic Wind Energy Center, LLC.

Filed Date: 04/06/2010

Accession Number: 20100406-5130

Comment Date: 5 p.m. Eastern Time on Tuesday, April 27, 2010

Docket Numbers: EG10-28-000

Applicants: Wessington Wind Energy Center, LLC

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Wessington Wind Energy Center, LLC.

Filed Date: 04/06/2010

Accession Number: 20100406-5138

Comment Date: 5 p.m. Eastern Time on Tuesday, April 27, 2010

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10-999-000; ER10-998-000; ER10-1000-000; ER10-1001-000

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc requests approval of the issuance of refunds resulting from a correction made to FERC Form 1 to Kansas Electric

Power Cooperative, Inc; filing dated 3/31/2010.

Filed Date: 04/01/2010

Accession Number: 20100401-0271

Comment Date: 5 p.m. Eastern Time on Thursday, April 22, 2010

Docket Numbers: ER10-1014-000

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits Third Revised Sheet 1027 *et al.* to FERC Electric Tariff, Fifth Revised Volume 1 to be effective 6/11/10.

Filed Date: 04/05/2010

Accession Number: 20100405-0224

Comment Date: 5 p.m. Eastern Time on Monday, April 26, 2010

Docket Numbers: ER10-1015-000

Applicants: California Independent System Operator Corporation

Description: The California Independent System Operator Corporation submits a Dynamic Scheduling Host Balancing Authority Operating Agreement with Gila River Power, LP.

Filed Date: 04/05/2010

Accession Number: 20100406-0204

Comment Date: 5 p.m. Eastern Time on Monday, April 26, 2010

Docket Numbers: ER10-1017-000

Applicants: Exelon Energy Company

Description: Exelon Energy Company submits its Baseline tariff filing, to be effective 4/6/2010.

Filed Date: 04/06/2010

Accession Number: 20100406-5071

Comment Date: 5 p.m. Eastern Time on Tuesday, April 27, 2010

Docket Numbers: ER10-1020-000

Applicants: Exelon Framingham, LLC

Description: Exelon Framingham, LLC submits its Baseline tariff filing, to be effective 4/6/2010.

Filed Date: 04/06/2010

Accession Number: 20100406-5097

Comment Date: 5 p.m. Eastern Time on Tuesday, April 27, 2010

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES10-19-002

Applicants: KCP&L Greater Missouri Operations Company

Description: Application to Amend Authorization to Issue Short-Term Debt Under Section 204 of the Federal Power Act and Request for Expedited Decision.

Filed Date: 04/06/2010

Accession Number: 20100406-5072

Comment Date: 5 p.m. Eastern Time on Friday, April 16, 2010

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies

of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010-8348 Filed 4-12-10; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP10-517-000]

Wisconsin Electric Power Company, Wisconsin Gas LLC, Wisconsin Public Service Corporation: Complainants; ANR Pipeline Company: Respondent; Notice of Complaint

April 6, 2010.

Take notice that on March 26, 2010, pursuant to section 5 of the Natural Gas Act, 15 U.S.C. 717d (2006) and Rule 206 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 385.206 (2009), Wisconsin Electric Power Company, Wisconsin Gas LLC, and Wisconsin Public Service Corporation (Complainants) filed a formal complaint against ANR Pipeline Company (Respondent) alleging that Respondent has violated Section 36.2(A) of its tariff relating to obligations at Respondent's Marshfield recipient point.

The Complainant certifies that a copy of the complaint has been served on the contacts for the Respondent.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of

intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on April 15, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010-8351 Filed 4-12-10; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10-58-000]

PSEG Power Connecticut LLC, Complainant v. ISO New England Inc., Respondent; Notice of Complaint

April 6, 2010.

Take notice that on April 2, 2010, pursuant to section 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 (2009) and section 206 of the Federal Power Act, 16 U.S.C. 824(e) (2000), PSEG Power Connecticut LLC (Complainant) filed a formal complaint against ISO New England Inc. (Respondent) challenging the justness and reasonableness of the Respondent's actions to limit the Capacity Network Resource Capability ratings of capacity resources owned by the Complainant.

The Complainant certifies that copies of the complaint were served on the contacts for the Respondent as listed on

the Commission's List of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on April 22, 2010.

Kimberly D. Bose,
Secretary.

[FR Doc. 2010-8352 Filed 4-12-10; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10-34-000]

East Cheyenne Gas Storage, LLC; Notice of Availability of the Environmental Assessment for the Proposed East Cheyenne Gas Storage Project

April 6, 2010.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an

environmental assessment (EA) for the East Cheyenne Gas Storage Project proposed by East Cheyenne Gas Storage, LLC (East Cheyenne) in the above referenced docket. East Cheyenne requests authorization to convert two substantially depleted oil production reservoirs in Logan County, Colorado to natural gas storage. The purpose of the project is to provide natural gas storage capacity to interstate shippers of natural gas.

The EA assesses the potential environmental effects of the construction and operation of the East Cheyenne Gas Storage Project in accordance with the requirements of the National Environmental Policy Act of 1969. The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The proposed Project includes the following facilities:

- Ten gas injection/withdrawal (I/W) wells to be drilled from six new well pads;
- A Process Facility with compression facilities for I/W of natural gas;
- Approximately 66,000 feet of 4- to 24-inch-diameter pipelines connecting the wellheads to the Process Facility area;
- Two header pipelines (16-inch and 24-inch-diameter) to be constructed within a single corridor interconnecting with the Rockies Express Pipeline LLC and Trailblazer Pipeline Company LLC pipeline systems;
- Metering facilities; and
- Temporary compression and ancillary facilities necessary to perform I/W activities.

The EA has been placed in the public files of the FERC and is available for public viewing on the FERC's Web site at <http://www.ferc.gov> using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502-8371.

Copies of the EA have been mailed to federal, state, and local government representatives and agencies; elected officials; Native American tribes; potentially affected landowners and other interested individuals and groups; newspapers and libraries in the project area; and parties to this proceeding.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable

alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are properly recorded and considered prior to a Commission decision on the proposal, it is important that the FERC receives your comments in Washington, DC on or before May 6, 2010.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP10-34-000) with your submission. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at (202) 502-8258 or efiling@ferc.gov.

(1) You may file your comments electronically by using the Quick Comment feature, which is located on the Commission's Web site at <http://www.ferc.gov> under the link to Documents and Filings. A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's Web site at <http://www.ferc.gov> under the link to Documents and Filings. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on "Sign up" or "eRegister." You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Although your comments will be considered by the Commission, simply filing comments will not serve to make the commentator a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).¹ Only intervenors have the right to seek rehearing of the Commission's decision.

¹ Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208-FERC or on the FERC Web site (<http://www.ferc.gov>) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field (i.e., CP10-34). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to <http://www.ferc.gov/esubscribenow.htm>.

Kimberly D. Bose,
Secretary.

[FR Doc. 2010-8355 Filed 4-12-10; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OECA-2009-0525; FRL-9136-8; EPA ICR Number 1056.10; OMB Control Number 2060-0019]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Nitric Acid Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved

collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before May 13, 2010.

ADDRESSES: Submit your comments, referencing docket ID number EPA-HQ-OECA-2009-0525, to (1) EPA online using <http://www.regulations.gov> (our preferred method), or by e-mail to docket.oeca@epa.gov, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Robert C. Marshall, Jr., Office of Compliance, Mail Code: 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564-7021; fax number: (202) 564-0050; e-mail address: marshall.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 July 30, 2009 (74 FR 38004), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA-HQ-OECA-2009-0525, which is available for public viewing online at <http://www.regulations.gov>, in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 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 is (202) 566-1752.

Use EPA's electronic docket and comment system at <http://www.regulations.gov>, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then

key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at <http://www.regulations.gov>, as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to <http://www.regulations.gov>.

Title: NSPS for Nitric Acid Plants (Renewal).

ICR Numbers: EPA ICR Number 1056.10, OMB Control Number 2060-0019.

ICR Status: This ICR is scheduled to expire on May 31, 2010. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: 40 CFR part 60, subpart G, applies to owners and operators of nitric acid plants which commenced construction, modification or reconstruction after August 17, 1971. Owners/operators are required to make the following one-time-only reports; notification of the dates of construction or reconstruction; notification of actual dates of startup, notification of any physical or operational change to an existing facility which may increase the pollutant emission rate; notification of demonstration of the continuous monitoring system (CMS); notification of the date of the initial performance test; and the results of the initial performance test. Semiannual reports are also required. These notifications reports and records are required in general of all sources subject to New Source Performance Standards (NSPS).

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 25 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain,

or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are the owners or operators of nitric acid plants.

Estimated Number of Respondents: 24.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 1,291.

Estimated Total Annual Cost: \$2,549,639, which includes \$81,639 in labor costs, \$68,000 in capital/startup costs, and \$2,400,000 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is no change in the labor cost to the respondents in this ICR compared to the previous ICR. This is due to two considerations. First, the regulations have not changed over the past three years and are not anticipated to change over the next three years. Secondly, the growth rate for the industry is very low, negative or non-existent. Therefore, the cost figures in the previous ICR reflect the current burden to the respondents and are reiterated in this ICR. Note that there is an increase of one hour in the total labor hours to the respondents due to rounding-up.

Dated: April 7, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010-8402 Filed 4-12-10; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9136-1]

National Environmental Justice Advisory Council; Notification of Public Teleconference and Public Comment

AGENCY: Environmental Protection Agency.

ACTION: Notification of Public Teleconference and Public Comment.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92-463, the U.S. Environmental Protection Agency (EPA) hereby provides notice that the National Environmental Justice Advisory Council (NEJAC) will host a public teleconference call on, Wednesday April 28, 2010, starting at 2 p.m. Eastern Time. The primary topics of discussion will be updates on EPA's response to the NEJAC's Goods Movement Report; and reports from the NEJAC liaisons to the Tribal Operations Commission and the Children's Health Protection Advisory Committee School Siting Task Group. This NEJAC National Public Teleconference meeting is open to the public. There will be a public comment period from 3:30 p.m. to 4 p.m. Eastern Time. Members of the public are encouraged to provide comments relevant to the topics of this call.

For additional information about registering to attend the call or to provide public comment during the call, *please see* **SUPPLEMENTARY INFORMATION**. Due to a limited number of telephone lines, attendance will be on a first-come basis. There is no fee to attend, but pre-registration is required.

DATES: The NEJAC teleconference call on April 28 2010, will begin promptly at 2 p.m. Eastern Time.

FOR FURTHER INFORMATION CONTACT: To register online, visit the Web site above. If unable to register online, requests for advance-registration forms should be sent to EPA's support contractor, APEX Direct Inc., by phone or fax at (877) 773-0779, or by e-mail at Meetings@AlwaysPursuingExcellence.com. Please provide your name, organization, and telephone number for follow-up as necessary. Non-English speaking attendees wishing to arrange for a foreign language interpreter also may make appropriate arrangements using these numbers.

Questions or correspondences concerning the teleconference meeting should be directed to Mr. Aaron Bell, U.S. Environmental Protection Agency, at 1200 Pennsylvania Avenue, NW., (MC2201A), Washington, DC 20460; by telephone at (202) 564-1044, via e-mail at Bell.Aaron@epa.gov; or by FAX at (202) 564-1624. Additional information about the meeting is available on the following Web site: <http://www.epa.gov/environmentaljustice/nejac/meetings.html>.

SUPPLEMENTARY INFORMATION: The Charter of the NEJAC states that the advisory committee shall provide

independent advice to the Administrator on areas that may include, among other things, "advice about broad, cross-cutting issues related to environmental justice, including environment-related strategic, scientific, technological, regulatory and economic issues related to environmental justice. The April 28, 2010, teleconference call shall be used to receive comments, discuss and provide recommendations primarily regarding updates on EPA's response to the NEJAC's Goods Movement Report; and reports from the NEJAC liaisons to the Tribal Operations Commission and the Children's Health School Siting Task Force.

A. Public Comment: Members of the public who wish to participate on the call or to provide public comment must pre-register by 11 a.m. Eastern Time Tuesday, April 27, 2010. Individuals or groups making remarks during the public comment period will be limited to a total time of five minutes. Only one representative of a community, organization or group will be allowed to speak. Written comments can also be submitted for the record. The suggested format for individuals providing public comments is as follows: Name of Speaker, Name of Organization/Community, Address/Telephone/E-mail, Description of Concern and its Relationship to a Specific Policy Issue(s), and Recommendations or desired outcome. Written comments received by 5 p.m. Eastern Time Monday, April 26, 2010, will be included in the materials distributed to the members of the NEJAC. Written comments received after that time will be provided to the NEJAC as logistics allow. All written comments should be sent EPA's support contractor, APEX Direct, Inc., listed in the CONTACT section above.

B. Information about Services for Individuals with Disabilities: For information about access or services for individuals with disabilities, please contact EPA's support contractor, APEX Direct, Inc., listed in the CONTACT section above. To request special accommodations for a disability, please contact EPA's support contractor, APEX Direct, Inc., at least 10 days prior to the call, to give EPA sufficient time to process your request. All requests should be sent to the address, e-mail, or fax number listed in the CONTACT section above.

Dated: April 7, 2010.

Victoria Robinson,

Designated Federal Officer, National Environmental Justice Advisory Council.

[FR Doc. 2010-8399 Filed 4-12-10; 8:45 am]

BILLING CODE 6560-50-P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**Agency Information Collection Activities: Existing Collection; Emergency Extension**

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of Information Collection—Emergency Extension Without Change: Employer Information Report (EEO-1).

SUMMARY: In accordance with the Paperwork Reduction Act, the Equal Employment Opportunity Commission (EEOC or Commission) announces that it submitted to the Office of Management and Budget (OMB) a request for a 90-day emergency extension of the Employer Information Report (EEO-1) to be effective after the current April 30, 2010 expiration date.

FOR FURTHER INFORMATION CONTACT: Ronald Edwards, Director, Program Research and Surveys Division, 131 M Street, NE., Room 4SW30F, Washington, DC 20507; (202) 663-4958 (voice) or (202) 663-7063 (TTY).

SUPPLEMENTARY INFORMATION: The EEOC has collected information from certain private employers on the EEO-1 Report form since 1966.

Overview of Information Collection

Collection Title: Employer Information Report (EEO-1).

OMB Number: 3046-0007.

Frequency of Report: Annual.

Type of Respondent: Private employers with 100 or more employees and certain Federal Government contractors and first-tier subcontractors with 50 or more employees.

Description of Affected Public: Private employers with 100 or more employees and certain Federal Government contractors and first-tier subcontractors with 50 or more employees.

Reporting Hours: 599,000.

Respondent Cost: \$11.4 million.

Federal Cost: \$2.1 million.

Number of Forms: 1.

Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-8(c), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed, to preserve such records and to produce reports as the Commission prescribes by regulation or order. Accordingly, the EEOC issued regulations prescribing the EEO-1 reporting requirement. Employers in the private sector with 100 or more employees and some Federal contractors with 50 or more employees

have been required to submit EEO-1 reports annually since 1966. The individual reports are confidential. EEO-1 data is used by EEOC to investigate charges of employment discrimination against employers in private industry and to provide information about the employment status of minorities and women. The data is shared with the Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, and several other Federal agencies. Pursuant to section 709(d) of Title VII of the Civil Rights Act of 1964, as amended, EEO-1 data is also shared with State and local Fair Employment Practices Agencies (FEPAs).

Burden Statement: The estimated number of respondents included in the annual EEO-1 survey is 45,000 private employers. The estimated number of establishment-based responses per reporting company is between three and four EEO-1 reports annually. The annual number of responses is approximately 170,000. The form is estimated to impose 599,000 burden hours annually. In order to help reduce survey burden, respondents are encouraged to report data electronically whenever possible.

Dated: March 19, 2010.

Stuart J. Ishimaru,

Acting Chairman for the Commission.

[FR Doc. 2010-8322 Filed 4-12-10; 8:45 am]

BILLING CODE 6570-01-P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**Agency Information Collection Activities: Existing Collection; Emergency Extension**

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of Information Collection—Emergency Extension Without Change: Elementary-Secondary Staff Information Report (EEO-5).

SUMMARY: In accordance with the Paperwork Reduction Act, the Equal Employment Opportunity Commission (EEOC or Commission) announces that it submitted to the Office of Management and Budget (OMB) a request for a 90-day emergency extension of the Elementary-Secondary Staff Information Report (EEO-5) to be effective after the current April 30, 2010 expiration date.

FOR FURTHER INFORMATION CONTACT: Ronald Edwards, Director, Program Research and Surveys Division, 131 M Street, NE., Room 4SW30F, Washington,

DC 20507; (202) 663-4958 (voice) or (202) 663-7063 (TTY).

SUPPLEMENTARY INFORMATION:

Elementary and secondary public school systems and districts have been required to submit EEO-5 reports to EEOC since 1974 (biennially in even-numbered years since 1982). Since 1996, each public school district or system has submitted all of the district data on a single form, EEOC Form 168A. The individual school form, EEOC Form 168B, was eliminated in 1996, reducing the respondent burden and cost.

Overview of Information Collection

Collection Title: Elementary-Secondary Staff Information Report (EEO-5).

OMB Number: 3046-0003.

Frequency of Report: Biennial.

Type of Respondent: Certain public elementary and secondary school districts.

Description of Affected Public: Certain Public elementary and secondary school districts.

Number of Responses: 7,155.

Reporting Hours: 10,000.

Cost to the Respondents: \$266,000.

Federal Cost: \$160,000.

Number of Forms: 1.

Form Number: EEOC Form 168A.

Abstract: Section 709 (c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-8(c), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed, to preserve such records and to produce reports as the Commission prescribes by regulation or order. Accordingly, the EEOC issued regulations prescribing the reporting requirements for elementary and secondary public school districts. The EEOC uses EEO-5 data to investigate charges of employment discrimination against elementary and secondary public school districts. The data also are used for research. The data are shared with the Department of Education (Office for Civil Rights and the National Center for Education Statistics) and the Department of Justice. Pursuant to Section 709(d) of Title VII of the Civil Rights Act of 1964, as amended, EEO-5 data also are shared with State and Local Fair Employment Practices Agencies (FEPAs).

Burden Statement: The estimated number of respondents included in the biennial EEO-5 survey is 7,155 public elementary and secondary school districts. The form is estimated to impose 10,000 burden hours biennially.

Dated: March 19, 2010.

Stuart J. Ishimaru,

Acting Chairman for the Commission.

[FR Doc. 2010-8325 Filed 4-12-10; 8:45 am]

BILLING CODE 6750-01-P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection

Activities: Existing Collection; Emergency Extension

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of information collection—Emergency extension without change: Local Union Report (EEO-3).

SUMMARY: In accordance with the Paperwork Reduction Act, the Equal Employment Opportunity Commission (EEOC or Commission) announces that it submitted to the Office of Management and Budget (OMB) a request for a 90-day emergency extension of the Local Union Report (EEO-3), to be effective after the current April 30, 2010 expiration date.

FOR FURTHER INFORMATION CONTACT: Ronald Edwards, Director, Program Research and Surveys Division, 131 M Street, NE., Room 4SW30F, Washington, DC 20507; (202) 663-4958 (voice) or (202) 663-7063 (TTY).

SUPPLEMENTARY INFORMATION: The EEOC has collected information from local unions on the EEO-3 form since 1966 (biennially since 1985).

Overview of Information Collection

Collection Title: Local Union Report (EEO-3).

OMB Number: 3046-0006.

Frequency of Report: Biennial.

Type of Respondent: Referral local unions with 100 or more members.

Description of Affected Public: Referral local unions and independent or unaffiliated referral unions and similar labor organizations.

Responses: 1,399.

Reporting Hours: 4,500 (including recordkeeping).

Cost to Respondents: \$85,000.

Federal Cost: \$60,000.

Number of Forms: 1.

Form Number: EEOC Form 274.

Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-8(c), requires labor organizations to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed and to produce reports from the data. The EEOC issued regulations requiring

referral local unions with 100 or more members to submit EEO-3 reports. The individual reports are confidential. The EEOC uses EEO-3 data to investigate charges of discrimination and for research.

Burden Statement: The estimated number of respondents included in the biennial EEO-3 survey is 1,399 referral unions. The form is estimated to impose 4,500 burden hours biennially. In order to help reduce survey burden, respondents are encouraged to report data electronically whenever possible.

Dated: March 19, 2010.

Stuart J. Ishimaru,

Acting Chairman for the Commission.

[FR Doc. 2010-8328 Filed 4-12-10; 8:45 am]

BILLING CODE 6570-01-P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection

Activities: Existing Collection; Emergency Extension

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of information collection—Emergency extension without change: State and Local Government Information Report (EEO-4).

SUMMARY: In accordance with the Paperwork Reduction Act, the Equal Employment Opportunity Commission (EEOC or Commission) announces that it submitted to the Office of Management and Budget (OMB) a request for a 90-day emergency extension of the State and Local Government Information Report (EEO-4), to be effective after the current April 30, 2010 expiration date.

FOR FURTHER INFORMATION CONTACT: Ronald Edwards, Director, Program Research and Surveys Division, 131 M Street, NE., Room 4SW30F, Washington, DC 20507; (202) 663-4958 (voice) or (202) 663-7063 (TTY).

SUPPLEMENTARY INFORMATION: The EEOC has collected information from State and local governments with 100 or more full-time employees since 1974.

Overview of Information Collection

Collection Title: State and Local Government Information Report (EEO-4).

OMB Number: 3046-0008.

Frequency of Report: Biennial.

Type of Respondent: State and local government jurisdictions with 100 or more employees.

Description of Affected Public: State and local governments excluding

elementary and secondary public school districts.

Number of Responses: 13,456.

Reporting Hours: 44,719.

Cost to Respondents: \$1,045,000.

Number of Forms: 1.

Form Number: EEOC Form 164.

Federal Cost: \$187,500.

Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-8(c), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed, to preserve such records and to produce reports as the Commission prescribes by regulation or order. Accordingly, the EEOC issued regulations prescribing the reporting requirements for State and local governments. State and local governments with 100 or more employees have been required to submit EEO-4 reports since 1974 (biennially in odd-numbered years since 1993). The individual reports are confidential.

EEO-4 data are used by the EEOC to investigate charges of discrimination against State and local governments and to provide information on the employment status of minorities and women. The data are shared with several other Federal agencies. Pursuant to section 709(d) of Title VII of the Civil Rights Act of 1964, U.S.C. 2000e-8(d), as amended, EEO-4 data is shared with State and Local Fair Employment Practices Agencies (FEPAs). Aggregated data are also used by researchers and the general public.

Burden Statement: The estimated number of respondents included in the EEO-4 survey is 9,000 State and local governments. These 9,000 jurisdictions file about 13,456 reports due to the requirement for some to file separate reports by function. The form is estimated to impose 44,719 burden hours biennially.

Dated: March 19, 2010.

Stuart J. Ishimaru,

Acting Chairman for the Commission.

[FR Doc. 2010-8327 Filed 4-12-10; 8:45 am]

BILLING CODE 6570-01-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Reviewed by the Federal Communications Commission, Comments Requested

April 6, 2010.

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, as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. 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; (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, and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC 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 currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 14, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via email to Nicholas.A.Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov and Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0937.

Title: Establishment of a Class A Television Service, MM Docket No. 00–10.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Frequency of Response: On occasion and quarterly reporting requirements; Recordkeeping and third party disclosure requirements.

Number of Respondents and Responses: 500 respondents and 12,250 responses.

Estimated time per response: 0.0003 hours—52 hours.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 154(i), 307, 308, 309 and 319 of the Communications Act of 1934, as amended.

Total annual burden: 234,621 hours.

Total annual costs: \$1,995,000.

Privacy Impact Assessment: No impact(s).

Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: On November 29, 1999, the Community Broadcasters Protection Act of 1999 (CBPA), Pub. L. No. 106–113, 113 Stat. Appendix I at pp. 1501A–594–1501A–598 (1999), codified at 47 U.S.C. Section 336(f), was enacted. That legislation provided that a low power television (LPTV) licensee should be permitted to convert the secondary status of its station to the new Class A status, provided it can satisfy certain statutorily-established criteria. The CBPA directs that Class A licensees be subject to the same license terms and renewal standards as full-power television licenses and that Class A licensees be accorded primary status as television broadcasters as long as they continue to meet the requirements set forth in the statute for a qualifying low power station. The CBPA sets out certain certification and application procedures for LPTV licensees seeking Class A designation, prescribes the criteria LPTV licensees must meet to be eligible for Class A licenses, and outlines the interference protection Class A applicants must provide to analog, digital, LPTV and TV translator stations.

The CBPA directs that Class A stations must comply with the operating requirements for full-service television broadcast stations. Therefore, beginning on the date of its application for a Class A license and thereafter, a station must be “in compliance” with the Commission's operating rules for full-service television stations, contained in 47 CFR Part 73.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–8383 Filed 4–12–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act; Notice of a Matter To Be Deferred From the Agenda for Consideration at an Agency Meeting

Pursuant to the provisions of the “Government in the Sunshine Act” (5 U.S.C. 552b), notice is hereby given that the following matter will be deferred from the “Discussion Agenda” at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 10 a.m. on Tuesday, April 13, 2010, in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC:

Memorandum re: Notice of Proposed Rulemaking—Large Insured Depository Institutions Reporting and Planning.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7043.

Dated: April 9, 2010.

Robert E. Feldman,

Executive Secretary, Federal Deposit Insurance Corporation.

[FR Doc. 2010–8486 Filed 4–9–10; 4:15 pm]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the

standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

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 May 8, 2010.

A. Federal Reserve Bank of Atlanta (Clifford Stanford, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. *Validus Holdings, LLP*, Tampa, Florida; to become a bank holding company by acquiring up to 40 percent of the voting shares of GulfShore Bancshares, Inc., and thereby indirectly acquire voting shares of GulfShore Bank, both of Tampa, Florida.

Board of Governors of the Federal Reserve System, April 8, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010-8394 Filed 4-12-10; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 2010-7980) published on page 17917 of the issue for Thursday, April 8, 2010.

Under the Federal Reserve Bank of New York heading, the entry for Morgan Stanley, New York, New York, is revised to read as follows:

A. Federal Reserve Bank of New York (Ivan Hurwitz, Bank Applications Officer) 33 Liberty Street, New York, New York 10045-0001:

1. *Morgan Stanley*, New York, New York; to acquire 100 percent of the voting shares of Morgan Stanley Private Bank, N.A., Jersey City, New Jersey, as a result of converting Morgan Stanley Trust, Jersey City, New Jersey, into a national bank. Morgan Stanley Private Bank, N.A., will assume certain deposit liabilities of Morgan Stanley Bank, N.A., Salt Lake City, Utah, and will be relocated to Purchase, New York.

Comments on this application must be received by April 26, 2010.

Board of Governors of the Federal Reserve System, April 8, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010-8393 Filed 4-12-10 8:45 am]

BILLING CODE 6210-01-S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting Notice

TIME AND DATE: 9 a.m. (Eastern Time), April 19, 2010.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC 20005.

STATUS: Parts will be open to the public and parts closed to the public.

Matters To Be Considered

Parts Open to the Public

1. Approval of the minutes of the March 15, 2010 Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.

a. Monthly Participant Activity Report.

b. Legislative Report.

3. Quarterly Reports.

a. Investment Policy Review.

b. Vendor Financial Review.

4. Financial Audit Report.

Parts Closed to the Public

5. Proprietary Data

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs. (202) 942-1640.

Dated: April 9, 2010.

Thomas K. Emswiler,

Secretary, Federal Retirement Thrift Investment Board.

[FR Doc. 2010-8571 Filed 4-9-10; 4:15 pm]

BILLING CODE 6760-01-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0168; Docket 2010-0083; Sequence 20]

Submission for OMB Review; American Recovery and Reinvestment Act—One-Time Reporting, Compensation Requirements

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000-0168).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation, Regulatory Secretariat, will be submitting to the

Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning the one-time reporting, compensation requirements. A request for public comments was published in the **Federal Register** at 74 FR 14639, on March 31, 2009.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before May 13, 2010.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the Regulatory Secretariat (MVCB), General Services Administration, 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 9000-0168, American Recovery and Reinvestment Act—One-time Reporting, Compensation Requirements, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Woodson, Procurement Analyst, Contract Policy Branch, at telephone (202) 501-3775 or via e-mail to ernest.woodson@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

A one-time reporting elements for prime contractors and first-tier subcontractors to publicly disclose the names and total compensation of each of the contractor's or first-tier subcontractor's five most highly compensated officers, for the calendar year in which the award was made ((i)(2) and (i)(4)(ix)) (see applicability requirements in (i)(2) and (i)(4)(ix)). The parenthetical reference after each reporting element description refers to the FAR clause.

While Section 1512(c)(4) requires reporting on all FFATA data elements, including the compensation information, it limits the prime's

reporting responsibility to first-tier subcontractors that meet the applicability requirements. The FAR clause requires this compensation disclosure for prime contractors as well because to exclude prime contractors while requiring disclosure for first-tier subcontractors would be unsupportable given the transparency goals of both FFATA and the Recovery Act.

There are likely to be some prime contractors that already provide public access to the compensation of senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or section 6104 of the Internal Revenue Code of 1986. For purposes of this analysis, the Government estimates 15% of prime contractors already provide such public access. There are also likely to be some first-tier subcontractors that do not meet either of the revenue thresholds for applicability. For purposes of this analysis, the Government estimates 25 percent of first-tier subcontractors will not have to disclose compensation information because they do not meet the revenue thresholds.

The hours estimated per response include the time for reviewing instructions, searching existing data sources, gathering the data, and completing the collection of information.

B. Annual Reporting Burden

Respondents: 82,198.

Responses per Respondent: 1.25.

Total Annual Responses: 102,747.

Hours per Response: 3.

Total Burden Hours: 308,242.

Obtaining Copies of Proposals:

Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0168, American Recovery and Reinvestment Act—One-time Reporting, Compensation Requirements, in all correspondence.

Dated: April 1, 2010.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 2010-8031 Filed 4-12-10; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

Emily M. Horvath, Indiana University: Based on the Respondent's own admissions in sworn testimony and as set forth below, Indiana University (IU) and the U.S. Public Health Service (PHS) found that Ms. Emily M. Horvath, former graduate student, IU, engaged in research misconduct in research supported by National Center for Complementary and Alternative Medicine (NCCAM), National Institutes of Health (NIH), grant R01 AT001846 and Predoctoral Fellowship Award F31 AT003977-01, and National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), NIH, grant R01 DK082773-01.

Specifically, the Respondent admitted to falsifying the original research data when entering values into computer programs for statistical analysis with the goal of reducing the magnitude of errors within groups, thereby gaining greater statistical power. The Respondent, IU, and ORI agree that the figures identified below in specific grant applications and published papers are false and that these falsifications rise to the level of research misconduct:

- Respondent admitted to falsifying Figures 6B, 18, 22, 23B, and 24 in NCCAM, NIH, grant application R01 AT001846-06, "Chromium Enhanced Insulin & GLUT4 Action via Lipid Rafts," Jeffery S. Elmendorf, P.I. (07/01/04-05/31/20) (application was withdrawn in May 2009).

- Respondent admitted to falsifying Figures 6B, 8, 9D, 16D, and 21 in NIDDK, NIH, grant application R01 DK082773-01, "Mechanisms of Membrane-Based Insulin Resistance & Therapeutic Reversal Strategies," Jeffrey S. Elmendorf, P.I. (3/15/09-01/31/13).

- Respondent admitted to falsifying Figures 2C, 5, 6D, and 11 in the publication: Horvath, E.M., Tacket, L., McCarthy, A.M., Raman, P., Brozinick, J.T., & Elmendorf, J.S. "Antidiabetogenic Effects of Chromium Mitigate Hyperinsulinemia-induced Cellular Insulin Resistance via Correction of Plasma Membrane Cholesterol Imbalance." *Molecular Endocrinology* 22:937-950, 2008.

- Respondent admitted to falsifying Figure 2C in the publication: Bhonagiri, P., Patter, G.R., Horvath, E.M., Habegger, K.M., McCarthy, A.M., Elmendorf, J.S. "Hexosamine biosynthesis pathway flux contributes to insulin resistance via altering membrane PIP₂ and cortical F-actin." *Endocrinology* 150(4):1636-1645, 2009.

Respondent also admitted to falsifying Figures 2C, 5, 6D, 11, 13C, 15A, 16A, 17A, 18, 19C, and 20A, which are included in her thesis, "Cholesterol-dependent mechanism(s) of insulin-sensitizing therapeutics." The Ph.D. was awarded to the Respondent on December 31, 2008. Respondent was supported by a Predoctoral Fellowship Award F31 AT003977 from 09/30/2006 to 09/29/2009.

Ms. Horvath has entered into a Voluntary Settlement Agreement in which she has voluntarily agreed, for a period of three (3) years, beginning on March 22, 2010:

(1) To exclude herself from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant;

(2) That any institution that submits an application for PHS support for a research project on which the Respondent's participation is proposed or that uses her in any capacity on PHS-supported research, or that submits a report of PHS-funded research in which she is involved, must concurrently submit a plan for supervision of her duties to the funding agency for approval; the supervisory plan must be designed to ensure the scientific integrity of her research contribution; respondent agreed that she will not participate in any PHS-supported research until such a supervisory plan is submitted to ORI;

(3) That any institution employing her submits, in conjunction with each application for PHS funds or report, manuscript, or abstract of PHS-funded research in which the Respondent is involved, a certification that the data provided by the Respondent are based on actual experiments or are otherwise legitimately derived and that the data, procedures, analyses, and methodology are accurately reported in the application, report, manuscript, or abstract; the Respondent must ensure that the institution sends a copy of the certification to ORI; and

(4) That she will write letters, approved by ORI, to relevant journal editors of the published papers cited above to state what she falsified/fabricated and to provide corrections if she has not already done so. These letters should state that her

falsifications/fabrications were the underlying reason for the retraction/corrections.

FOR FURTHER INFORMATION CONTACT:

Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453-8800.

John Dahlberg,

Director, Division of Investigative Oversight, Office of Research Integrity.

[FR Doc. 2010-8386 Filed 4-12-10; 8:45 am]

BILLING CODE 4150-31-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

Boris Cheskis, Ph.D., Wyeth Pharmaceuticals: Based on the report of an investigation conducted by Wyeth Pharmaceuticals and additional analysis conducted by ORI in its oversight review, ORI found that Boris Cheskis, Ph.D., former senior scientist, Discovery Research, Women's Health, Wyeth Pharmaceuticals, engaged in research misconduct in grant applications 1 R01 DK072026-01 and 1 R01 DK072026-01A2 submitted to the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), NIH.

Specifically, ORI found that:

- The Respondent engaged in misconduct in science, 42 CFR 50.102, in NIDDK, NIH, grant application 1 R01 DK072026-01, "MNAR Crosstalk with Steroid Receptors," submitted to NIH on September 28, 2004, by intentionally falsifying Figures 5 and 6.

- The Respondent engaged in research misconduct, 42 CFR 93.103, in NIDDK, NIH, grant application 1 R01 DK072026-01A2, "MNAR Crosstalk with Steroid Receptors," submitted to NIH on November 9, 2005, by intentionally falsifying Figures 6 and 9.

Dr. Cheskis' research was in an area of research (estrogen receptors and modulation of nongenomic phosphorylation cascades) that is of importance to women's health. Dr. Cheskis' team identified an adapter protein, MNAR, that coordinates interactions between certain nuclear receptors, Src and PI3K and may play

important roles in regulation of cell proliferation and survival.

Both Dr. Cheskis and the U.S. Public Health Service (PHS) were desirous of concluding this matter without further expense of time and other resources. Dr. Cheskis neither admits nor denies that ORI's findings represent findings of research misconduct. The settlement is not an admission of liability on the part of the Respondent.

Dr. Cheskis has entered into a Voluntary Settlement Agreement. Dr. Cheskis has voluntarily agreed, for a period of two (2) years, beginning on March 22, 2010:

(1) To exclude himself from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant;

(2) That any institution that submits an application for PHS support for a research project on which the Respondent's participation is proposed or that uses him in any capacity on PHS-supported research, or that submits a report of PHS-funded research in which he is involved, must concurrently submit a plan for supervision of his duties to the funding agency for approval; the supervisory plan must be designed to ensure the scientific integrity of his research contribution; respondent agreed that he will not participate in any PHS-supported research until such a supervisory plan is submitted to ORI.

FOR FURTHER INFORMATION CONTACT:

Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453-8800.

John Dahlberg,

Director, Division of Investigative Oversight, Office of Research Integrity.

[FR Doc. 2010-8387 Filed 4-12-10; 8:45 am]

BILLING CODE 4150-31-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Public Health and Science, Office of Minority Health; Privacy Act of 1974; Report of a New System of Records

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of Minority Health.

ACTION: Notice of a new Privacy Act System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act, OMH

proposes to establish a new system of records entitled, "Minority Health Information Service." Under provisions of 42 U.S.C. sec. 300u-6, the Office of Minority Health (OMH) is charged with maintaining a national minority health resource center to (1) Facilitate exchange of and access to information related to health information, promotion, services and education; (2) assist in analysis of issues and problems with regard to such matters; and (3) provide technical assistance with regard to the exchange of such information. The primary purpose of this system is to collect and facilitate distribution of minority health information to public and professional audiences. In support of this purpose, this system maintains individually identifiable information concerning individuals voluntarily participating in OMH health campaigns and technical assistance programs, and concerning information requested by individually identifiable customers that is maintained to facilitate order tracking and customer service.

DATES: Effective Dates: This notice will become effective 30 days from the date of publication of the notice unless modified by a subsequent notice making changes in response to public comments. Although the Privacy Act requires only that OMH provide an opportunity for interested persons to comment on the proposed routine uses, OMH invites comments on all portions of this notice.

FOR FURTHER INFORMATION CONTACT:

Blake Crawford, Director, Division of Information and Education, Office of Minority Health, 1101 Wootton Parkway, Suite 600, Rockville, MD 20852. He can be reached by telephone at 240-453-6905 or via e-mail at blake.crawford@hhs.gov.

SUPPLEMENTARY INFORMATION: Generally, OMH distributes a variety of information via e-mail newsletter, maintains a Resource Persons Network of public and private health experts, plans and implements health campaigns and leads national initiatives with federal and nonfederal partners, conducts leadership development programs, provides capacity development and technical assistance services to community organizations and government agencies and provides information, literature and statistical data in response to public inquiries. The Minority Health Information Service supports the mission of the OMH Resource Center (OMHRC) to function as a help desk and technical assistance service for the public and an organization that assists OMH in implementing national initiatives and

campaigns. The Minority Health Information Service stores data on individuals who ask, via telephone, mail, e-mail, Web form, face to face encounter or other means, to participate in or be regularly informed of these OMH activities. The resource center is managed under contract to OMH, and its offices are located on the same floor of the same building as OMH.

I. Description of the Proposed System of Records

A. Statutory Basis: The statutory basis for the maintenance of this system is 42 U.S.C. 300u-6.

B. Security Classification: None.

C. System Location: The system is located at OMHRC, 1101 Wootton Parkway, Suite 650, Rockville, MD 20852 and OMH, 1101 Wootton Parkway, Suite 600, Rockville, MD 20852.

D. Purpose: The purpose of the system is to (1) Identify individuals who have volunteered to provide pro bono technical assistance to community organizations or government agencies on aspects of minority health; (2) identify key officials at national, state, regional and local organizations who serve as public points of contact for that organization or work specifically on minority health issues; and (3) allow the OMH Resource Center contractor to operate, maintain and safeguard the data system.

E. Categories of Individuals Covered by the System:

Information is collected on members of the general public, health professionals, faculty of academic institutions, students, representatives of government agencies, community organizations and private businesses who seek health information from OMH or its Resource Center, and those who ask to or agree to participate in OMH-sponsored health programs.

The system of records includes the following subsystems:

1. *Mailing List:* Individuals who have asked to receive OMH's electronic newsletter and intermittent e-mail updates.

2. *Resource Persons Network:* Individuals with health expertise who have volunteered to provide some pro bono technical assistance to community organizations of government agencies working on aspects of minority health.

3. *Training Institute File:* Individuals who have applied to and are participating in a leadership development course for emerging and future leaders of community organizations.

4. *Campaign File:* Individuals who have volunteered to participate in an

OMH campaign, currently comprising individuals who have volunteered to train peers on healthy living and pre-conception care.

5. *Organizational Databases:* Business contact information for official representatives of organizations working on minority health or participating in OMH initiatives, along with organizational descriptions.

6. *Inquiry Tracking System:* Details, by customer name, of information requests directed to OMH Resource Center and data on fulfillment of these requests.

F. Information Collected:

The following information is collected.

1. *Mailing List:* Name, business address, organizational affiliation, telephone, and e-mail.

2. *Resource Persons Network, Training Institute File, Campaign File:* Name, business address, organizational affiliation, title, telephone, e-mail, fax, resume, race/ethnicity, areas in which individual offers expertise, health topics or populations with which the individual wishes to work.

3. *Organizational Databases:* Name of organization and key contact person, business address, telephone, e-mail, Web site URL, description of organization.

4. *Inquiry Tracking System:* Name of requestor, organizational affiliation, business address, telephone, e-mail, fax, occupational category (health professional, academic, etc.), source of referral, information requested, fulfillment details (date shipped, etc.).

G. Sources of Information:

Information is collected via mail, e-mail, Web form, telephone or in person at conferences and meetings from individuals who receive some type of communication from OMH. Listings in the organizational database are generally drawn from publicly available documents such as directories, newsletters, and organizational Web sites and are confirmed through direct contact with the organization. Names of contact individuals at organizations partnering with OMH on an initiative, project or campaign are provided by the organization.

H. Storage and Retrievability:

Records are stored in file folders, electronic media and other types of data storage devices.

Data are retrievable by name, business address, telephone, e-mail, organizational affiliation, and type of technical assistance provided (for the Resource Persons Network).

I. System Manager and Address:

Director, Division of Information and Education, Office of Minority Health,

1101 Wootton Parkway, Suite 600, Rockville, MD 20852.

J. Notification Procedure: To determine whether the system contains a record on you, please write to the system manager at the address above, providing name, address, e-mail, telephone and organizational affiliation.

K. Contesting Records: Mailing list members may unsubscribe from the mailing list or correct their entry by clicking on a link in an e-mail received from the system. Unsubscribing will remove subscriber information from the system. For all other deletions and corrections, please write, call, e-mail or fax Office of Minority Health Resource Center, 1101 Wootton Parkway, Suite 650, Rockville, MD 20852, telephone 800-444-6472, e-mail info@omhrc.gov, fax 240-453-2883. The identity of the requestor will be verified by comparison with information contained in the existing record. An individual may request accounting of disclosures outside the department. The right to contest records is limited to information that is incomplete, irrelevant, incorrect, or untimely.

II. Agency Policies, Procedures, and Restrictions on Routine Uses

The Privacy Act permits the disclosure of information without an individual's consent if the information is used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as "routine use." OMH maintains the following procedures for the maintenance of personally identifiable information:

A. We will only release information from this system as provided for under "Section III. Routine Uses of Records."

B. We will only collect the minimum data necessary to achieve the purpose of the Minority Health Information Service.

C. We will collect and disclose only data that OMH has determined to be accurate.

D. We will validate information in the system annually, and as corrections are received from the public.

E. We will provide opportunities and methods for individual correction of data in the system consistent with requirements of the Privacy Act.

F. We will publish on the OMH Web site our Privacy Policy for information collected via this Web site.

III. Routine Uses of Records

1. To identify one or more individuals who have volunteered to provide pro bono technical assistance to a community organization or government agency on aspects of minority health in

response to a specific request for assistance. OMHRC staff provide one or more names and associated contact information to requesting organizations when OMHRC staff finds a match between an assistance request and a Resource Persons Network member with relevant expertise, experience and background, and when the request matches the activities, health topics, or populations for which the network member has specified that he or she is available to assist.

2. To identify key officials at national, state, regional and local organizations who serve as public points of contact for that organization or its work specifically on minority health. Information searches are provided on request. Contact information for OMH campaign and initiative partners may be posted on the OMH Web site.

3. To allow the OMH Resource Center contractor to operate this data system. OMH uses a contractor to operate the OMH Resource Center, which maintains the Minority Health Information Service. This contractor collects the information, maintains the data system and safeguards the data under the provisions outlined in this notice and applicable law and regulation. The contractor is prohibited from using these data for any purpose other than described in the contract and is required to return all data to the government or deliver it securely to a government-designated successor contractor, at the completion of the contract.

4. To appropriate Department contractors to enable conduct of evaluation studies or administration of OMB-approved customer satisfaction surveys.

5. To appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in the system of records, and the information disclosed is relevant and necessary for the assistance.

6. To the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the Agency is authorized to appear, when:

- a. The Agency, or any component thereof; or
- b. Any employee of the Agency in his or her official capacity; or
- c. Any employee of the Agency in his or her individual capacity where the Department of Justice or the Agency has agreed to represent the employee; or
- d. The United States, if the Agency determines that litigation is likely to

affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Agency is deemed by the Agency to be relevant and necessary to the litigation; provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

IV. Protections and Safeguards

The system conforms to all applicable Federal laws and regulations and Federal and HHS policies and standards for information security and data privacy. The OMH system manager, OMHRC senior leadership and OMHRC technology manager confer to review and ensure compliance with provisions of this notice and any changes in security requirements.

A. Authorized Users

Records are available to the system manager and OMH staff when they have a need for the records in the performance of their duties. Records are also available to OMHRC technology staff, OMHRC director and deputy director, OMHRC communications staff, OMHRC information specialists (mailing list, organizational databases, inquiry tracking system), OMHRC knowledge center/library staff (organizational data bases and resource persons network), OMHRC data entry staff, who need access in order to perform their duties.

B. Safeguards

Data systems are in a secured office space with a carded entrance. Servers are located in a locked rack. Data are backed up nightly with a one-month daily snapshot available at any time and monthly snapshots for a year. Annual training is required and conducted for authorized users regarding proper handling and safeguarding of personally identifiable information. OMH and OMHRC staff are trained on HHS policies regarding personal use of health information technology.

V. Effects on Individual Rights

OMH proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to authorized releases in accordance with the routine uses identified in this system of records.

OMH will take precautionary measures to minimize the risks of unauthorized access to the records and

the potential harm to individual privacy or other personal property rights of individuals whose data are maintained in the system. OMH will collect only that information necessary to perform the system's functions. In addition, OMH will make disclosure from the system only with the consent of the subject individual, his or her legal representative, or in accordance with an applicable exception provision of the Privacy Act. OMH therefore does not anticipate an unfavorable effect on individual privacy as a result of information relating to individuals.

Date: March 22, 2010.

Garth N. Graham,

Deputy Assistant Secretary for Minority Health.

SYSTEM NO.:

09-90-0161

SYSTEM NAME:

"Minority Health Information Service," HHS/OS/OPHS/OMH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The system is located at OMHRC, 1101 Wootton Parkway, Suite 650, Rockville, MD 20852 and OMH, 1101 Wootton Parkway, Suite 600, Rockville, MD 20852.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Information is collected on members of the general public, health professionals, faculty of academic institutions, students, representatives of government agencies, community organizations and private businesses who seek health information from OMH or its Resource Center, and those who ask to or agree to participate in OMH-sponsored health programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system of records includes the following subsystems:

7. *Mailing List:* Individuals who have asked to receive OMH's electronic newsletter and intermittent e-mail updates. Information collected: Name, business address, organizational affiliation, telephone, and e-mail.

8. *Resource Persons Network:* Individuals with health expertise who have volunteered to provide some pro bono technical assistance to community organizations of government agencies working on aspects of minority health. Information collected: Name, business address, organizational affiliation, title, telephone, e-mail, fax, resume, race/ethnicity, areas in which individual

offers expertise, health topics or populations with which the individual wishes to work.

9. *Training Institute File:* Individuals who have applied to and are participating in a leadership development course for emerging and future leaders of community organizations. Information collected: Name, business address, organizational affiliation, title, telephone, e-mail, fax, resume, race/ethnicity, areas in which individual offers expertise, health topics or populations with which the individual wishes to work.

10. *Campaign File:* Individuals who have volunteered to participate in an OMH campaign, currently comprising individuals who have volunteered to train peers on healthy living and pre-conception care. Information collected: Name, business address, organizational affiliation, title, telephone, e-mail, fax, resume, race/ethnicity, areas in which individual offers expertise, health topics or populations with which the individual wishes to work.

11. *Organizational Databases:* Business contact information for official representatives of organizations working on minority health or participating in OMH initiatives, along with organizational descriptions. Information collected: Name of organization and key contact person, business address, telephone, e-mail, Web site URL, description of organization.

12. *Inquiry Tracking System:* Details, by customer name, of information requests directed to OMH Resource Center and data on fulfillment of these requests. Information collected: Name of requestor, organizational affiliation, business address, telephone, e-mail, fax, occupational category (health professional, academic, etc.), source of referral, information requested, fulfillment details (date shipped etc.).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The statutory basis for the maintenance of this system is 42 U.S.C. 300u-6.

PURPOSES OF THE SYSTEM:

The purpose of the system is to (1) Identify individuals who have volunteered to provide pro bono technical assistance to community organizations or government agencies on aspects of minority health; (2) identify key officials at national, state, regional and local organizations who serve as public points of contact for that organization or work specifically on minority health issues; and (3) allow the OMH Resource Center contractor to operate, maintain and safeguard the data system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

7. To identify one or more individuals who have volunteered to provide pro bono technical assistance to a community organization or government agency on aspects of minority health in response to a specific request for assistance. OMHRC staff provide one or more names and associated contact information to requesting organizations when OMHRC staff finds a match between an assistance request and a Resource Persons Network member with relevant expertise, experience and background, and when the request matches the activities, health topics, or populations for which the network member has specified that he or she is available to assist.

8. To identify key officials at national, state, regional and local organizations who serve as public points of contact for that organization or its work specifically on minority health. Information searches are provided on request. Contact information for OMH campaign and initiative partners may be posted on the OMH Web site.

9. To allow the OMH Resource Center contractor to operate this data system. OMH uses a contractor to operate the OMH Resource Center, which maintains the Minority Health Information Service. This contractor collects the information, maintains the data system and safeguards the data under the provisions outlined in this notice and applicable law and regulation. The contractor is prohibited from using these data for any purpose other than described in the contract and is required to return all data to the government or deliver it securely to a government-designated successor contractor, at the completion of the contract.

10. To appropriate Department contractors to enable conduct of evaluation studies or administration of OMB-approved customer satisfaction surveys.

11. To appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in the system of records, and the information disclosed is relevant and necessary for the assistance.

12. To the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the Agency is authorized to appear, when:

- i. The Agency, or any component thereof; or
- ii. Any employee of the Agency in his or her official capacity; or
- iii. Any employee of the Agency in his or her individual capacity where the Department of Justice or the Agency has agreed to represent the employee; or
- iv. The United States, if the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Agency is deemed by the Agency to be relevant and necessary to the litigation; provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES ON STORING, ACCESSING, RETRIEVING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, electronic media and other types of data storage devices.

RETRIEVABILITY:

Data are retrievable by name, business address, telephone, e-mail, organizational affiliation, and type of technical assistance provided (for the Resource Persons Network)

PROTECTIONS:

The system conforms to all applicable Federal laws and regulations and Federal and HHS policies and standards for information security and data privacy. The OMH system manager, OMHRC senior leadership and OMHRC technology manager confer to review and ensure compliance with provisions of this notice and any changes in security requirements.

Records are available to the system manager and OMH staff when they have a need for the records in the performance of their duties. Records are also available to OMHRC technology staff, OMHRC director and deputy director, OMHRC communications staff, OMHRC information specialists (mailing list, organizational databases, inquiry tracking system), OMHRC knowledge center/library staff (organizational data bases and resource persons network), OMHRC data entry staff, who need access in order to perform their duties.

Data systems are in a secured office space with a carded entrance. Servers are located in a locked rack. Data are backed up nightly with a one-month daily snapshot available at any time and monthly snapshots for a year. Annual

training is required and conducted for authorized users regarding proper handling and safeguarding of personally identifiable information. OMH and OMHRC staff are trained on HHS policies regarding personal use of health information technology.

RETENTION AND DISPOSAL:

1. *Mailing List*: Records are maintained until removed by the individual on whom information is maintained or until the individual requests removal.

2. *Resource Persons Network*: Records are maintained for as long as the individual indicates a willingness to serve as a Resource Person by responding affirmatively to update requests.

3. *Training Institute File*: Records are maintained for three years following the end of the specific training course.

4. *Campaign File*: Contact information on individuals is maintained for the duration of the campaign. Resumes are retained for one year.

5. *Organizational Databases*: Records are maintained until the organization about which information is maintained no longer works in minority health, or until the contact person for the organization changes.

6. *Inquiry Tracking System*: Records are maintained for three years following order fulfillment.

Records no longer maintained are disposed of by deletion from electronic media and shredding of hard copy records. Electronic records deleted from active files are maintained in system back-up files on tape media for one year.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Information and Education, Office of Minority Health, 1101 Wootton Parkway, Suite 600, Rockville, MD 20852.

NOTIFICATION PROCEDURE:

To determine whether the system contains a record on you, please write to the system manager at the address above, providing name, address, e-mail, telephone and organizational affiliation.

RECORD ACCESS PROCEDURE:

To determine whether the system contains a record on you, please write to the system manager at the address above, providing name, address, e-mail, telephone and organizational affiliation.

CONTESTING RECORD PROCEDURES:

Contesting Records: Mailing list members may unsubscribe from the mailing list or correct their entry by clicking on a link in an e-mail received from the system. Unsubscribing will remove subscriber information from the

system. For all other deletions and corrections, please write, call, e-mail or fax Office of Minority Health Resource Center, 1101 Wootton Parkway, Suite 650, Rockville, MD 20852, telephone 800-444-6472, e-mail info@omhrc.gov, fax 240-453-2883. The identity of the requestor will be verified by comparison with information contained in the existing record. An individual may request accounting of disclosures outside the department. The right to contest records is limited to information that is incomplete, irrelevant, incorrect, or untimely.

RECORDS SOURCE CATEGORIES:

Information is collected via mail, e-mail, Web form, telephone or in person at conferences and meetings from individuals who receive some type of communication from OMH. Listings in the organizational database are generally drawn from publicly available documents such as directories, newsletters, and organizational Web sites and are confirmed through direct contact with the organization. Names of contact individuals at organizations partnering with OMH on an initiative, project or campaign are provided by the organization.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 2010-8413 Filed 4-12-10; 8:45 am]

BILLING CODE 4150-29-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office for Civil Rights; Privacy Act of 1974, Amended System of Records

AGENCY: Office for Civil Rights (OCR), Department of Health and Human Services (HHS or the Department).

ACTION: Notice of modified or altered System of Records (SOR).

SUMMARY: In accordance with the Privacy Act, we are proposing to modify or alter an existing SOR, "Program Information Management System (PIMS)," System No. 09-90-0052, published at 67 FR 57011, September 6, 2002. First, we propose to add a new authority, the Health Information Technology for Economic and Clinical Health (HITECH) Act, part of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), to those under which OCR collects information. Second, we propose to add three new purposes of the PIMS system. Third, we propose to add six new routine uses to the PIMS system. Fourth, we propose to expand the categories of information

stored in the PIMS system to include information that covered entities under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and their business associates report to the Secretary with respect to a breach of protected health information. See Effective Dates section for comment period.

DATES: *Effective Dates:* OCR filed a system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Homeland Security and Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on March 30, 2010. Comments on this SOR may be submitted within 40 days from the publication of the notice, or from the date it was submitted to OMB and the Congress, whichever is later. The SOR, including routine uses, will become effective at the end of the 40-day period, unless OCR receives comments that require alterations to this notice.

ADDRESSES: You may submit comments by any of the following methods (please do not submit duplicate comments):

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.

- *Regular, Express, or Overnight Mail:* U.S. Department of Health and Human Services, Office for Civil Rights, Attention: PIMS System of Records, Hubert H. Humphrey Building, Room 509F, 200 Independence Avenue, SW., Washington, DC 20201. Please submit one original and two copies.

- *Hand Delivery or Courier:* Office for Civil Rights, Attention: PIMS System of Records, Hubert H. Humphrey Building, Room 509F, 200 Independence Avenue, SW., Washington, DC 20201. Please submit one original and two copies. (Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the mail drop slots located in the main lobby of the building.)

Inspection of Public Comments: All comments received before the close of the comment period will be available for public inspection, including any personally identifiable or confidential business information that is included in a comment. We will post all comments received before the close of the comment period at <http://www.regulations.gov>. Because

comments will be made public, they should not include any sensitive personal information, such as a person's social security number; date of birth; driver's license number, state identification number or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information.

FOR FURTHER INFORMATION CONTACT: For further information contact: PIMS Project Manager, Management Operations Division, Office for Civil Rights, 200 Independence Ave., SW., Room 509F, Washington, DC 20201. Telephone number: (202) 619-2888.

SUPPLEMENTARY INFORMATION: The system of records (*i.e.*, PIMS) described in the OCR's Privacy Act notice, 67 FR 57011 (Sept. 6, 2002), is used by OCR staff and consists of an electronic repository of information and documents, and supplementary paper document files. PIMS effectively combined and replaced OCR's two previous systems of records, (CIMS and the Complaint File and Log), into a single, integrated system with enhanced electronic storage, retrieval, and tracking capacities that allows OCR to manage more effectively the information that it collects. PIMS was modified to add a new authority, the Patient Safety and Quality Improvement Act of 2005, and altered to add two new routine uses in OCR's Privacy Act notice at 72 FR 8734 (Feb. 27, 2007).

The Privacy Act permits OCR to disclose information or records pertaining to an individual without that individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected, 5 U.S.C. 552a(b)(3). Any such disclosure is known as a "routine use." The PIMS system conforms to applicable law and policy governing the privacy and security of Federal automated information systems. These include but are not limited to: The Privacy Act of 1974, Federal Information Security Management Act of 2002, Computer Security Act of 1987, the Paperwork Reduction Act of 1995, the Clinger-Cohen Act of 1996, and OMB Circular A-130, Appendix, III, "Security of Federal Automated Information Resources."

OCR has prepared a system security plan as required by OMB Circular A-130, Appendix III. This plan conforms fully to guidance issued by the National Institute for Standards and Technology

(NIST) in NIST Special Publication 800-18, "Guide for Developing Security Plans for Information Technology Systems." The plan includes performance of a risk assessment that addresses the confidentiality and integrity of the data. Only authorized users have access to the information in the system.

Specific access is structured around need and is determined by the person's role in the organization. Access is managed through the use of electronic access control lists, which regulate the ability to read, change, and delete information in the system. Each OCR user has read access to designated information in the system, with the ability to modify only their own submissions or those of others within their region or group. Data identified as confidential is so designated and only specified individuals are granted access. The system maintains an audit trail of all actions against the data base. All electronic data is stored on servers maintained in locked facilities with computerized access control allowing access to only those support personnel with a demonstrated need for access. A database is kept of all individuals granted security card access to the room, and all visitors are escorted while in the room. The server facility has appropriate environmental security controls, including measures to mitigate damage to automated information system resources caused by fire, electricity, water, and inadequate climate controls. Access control to servers, individual computers and databases includes a required user log-on with a password, inactivity lockout to systems based on a specified period of time, legal notices and security warnings at log-on, and remote access security that allows user access for remote users (*e.g.*, while on government travel) under the same terms and conditions as for users within the office. System administrators have appropriate security clearance. Printed materials are filed in secure cabinets in secure Federal buildings with access based on need as described above for the automated component of the PIMS system.

Section 13402(e)(3) of the HITECH Act requires HIPAA covered entities to provide notice to the Secretary of the Department of Health and Human Services (HHS or the Department) of a breach of unsecured protected health information. Notice to the Secretary is required immediately if a breach affects 500 or more individuals and annually for breaches affecting fewer than 500 individuals. Section 13402(e)(4) of the HITECH Act requires the Secretary to

make available to the public on the HHS Web site a list that identifies each covered entity involved in a breach affecting more than 500 individuals. To implement these HITECH provisions, HHS published an interim final rule on August 24, 2009 (74 FR 42740). Section 164.408(a) of the regulations published in the interim final rule requires covered entities to notify the Secretary of breaches of unsecured protected health information. Section 164.408(b) requires breaches that affect 500 or more individuals to be reported to the Secretary contemporaneously with notice to the individual—that is, without unreasonable delay and in no case later than 60 calendar days after a covered entity discovers a breach (subject to a law enforcement delay as provided in section 164.412). Section 164.408(c) sets out the annual reporting for breaches affecting fewer than 500 individuals. Covered entities are required to report these breaches in the manner specified on the HHS Web site. A breach report form that has been approved by OMB for collection of this information can be found at <http://transparency.cit.nih.gov/breach/index.cfm>. A breach report must be filed through this Web site.

Accordingly, this notice modifies PIMS by adding a new authority for maintenance of the system, identifies three new purposes of the PIMS system, adds new routine uses of the PIMS system, and expands the categories of information stored in the PIMS system. In addition to the new routine uses proposed because of breach notification requirements under the HITECH Act, one proposed new routine use regards responding to breaches of personally identifiable information within the Department, consistent with Office of Management and Budget (OMB) Memorandum 07-16, *Safeguarding Against and Responding to the Breach of Personally Identifiable Information*, dated May 22, 2007. Another proposed new routine use regards disclosing relevant personally identifiable information including the identity of covered entities and business associates to obtain information relevant and necessary to investigate violations and potential violations, as well as to conduct compliance reviews, of the Federal laws and regulations OCR has legal authority to enforce. The last new proposed routine use regards allowing OCR to disclose relevant information to the public to inform the public of the results of investigations and compliance reviews of the Federal laws and regulations that OCR has legal authority to enforce, after OCR determines that

the disclosure would not constitute an unwarranted invasion of personal privacy. OCR expects these modifications will not result in any unwarranted invasion of personal privacy.

OCR proposes to add the following authority for maintenance of the PIMS system: section 13402 of the HITECH Act, part of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5).

OCR proposes to add the following three new purposes of the PIMS system: (1) To collect, maintain, and post on the HHS Web site a list of covered entities that experience breaches of unsecured protected health information affecting more than 500 individuals using information reported to the Secretary by covered entities (or a business associate on behalf of a covered entity) as required by section 13402(e) of the HITECH Act; (2) to develop an annual report to Congress, as required by section 13402(i) of the HITECH Act, regarding breach notification using information reported to the Secretary by covered entities (or a business associate on behalf of a covered entity) under section 13402(e) of the HITECH Act; and (3) to provide technical assistance, training, and guidance materials regarding breaches of protected health information.

OCR proposes to establish the following six new routine use disclosures of information for PIMS. Each routine use is compatible with a stated purpose of the system.

I. The first new routine use allows OCR to post on its Web site, as required by section 13402(e)(4) of the HITECH Act, information reported by a covered entity (or a business associate on behalf of a covered entity) to the Secretary pursuant to section 13402(e)(3) of the HITECH Act that identifies covered entities that experience breaches of unsecured protected health information affecting more than 500 individuals.

II. The second new routine use allows OCR to disclose information regarding breaches of unsecured protected health information in an annual report to Congress, as required by section 13402(i) of the HITECH Act, regarding the number and nature of the breaches reported to the Secretary and actions taken in response to such breaches.

III. The third new routine use allows OCR to disclose information regarding breaches of unsecured protected health information to the public and to appropriate Federal agencies and Department contractors to provide technical assistance, training, and guidance materials, after OCR determines that the disclosure would

not constitute an unwarranted invasion of personal privacy.

IV. The fourth new routine use allows OCR to disclose information to appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of security or confidentiality of information maintained in this system of records, and the information disclosed is relevant and necessary for that assistance.

V. The fifth new routine use allows OCR to disclose information to third party contacts, including public and private organizations, to investigate violations and potential violations, as well as to conduct compliance reviews, of the Federal laws and regulations that OCR has legal authority to enforce.

VI. The sixth new routine use allows OCR to disclose relevant information to the public to inform the public of the results of investigations and compliance reviews of the Federal laws and regulations that OCR has legal authority to enforce, after OCR determines that the disclosure would not constitute an unwarranted invasion of personal privacy.

OCR proposes to add the following category of information included in the PIMS system: Information that HIPAA covered entities (or a business associate on behalf of a covered entity) (defined in 45 CFR 160.103) are required to provide to HHS to fulfill their breach notification requirements to the Secretary pursuant to section 13402(e) of the HITECH Act. This information includes the name, address, and contact information of the covered entity or business associate, as well as the contact name of the individual at the covered entity or business associate that reported the breach of protected health information.

OCR will continue to collect only information that is necessary to perform the PIMS functions. We only disclose the minimum personal data necessary to achieve the purpose of PIMS. Disclosure of information from the system will be approved only to the extent necessary to accomplish the purpose of the disclosure. Further, OCR continues to take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other individual rights. In addition, OCR makes disclosures from the PIMS system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act. OCR, therefore, believes

that no unfavorable effect on individual privacy will result from the modifications and alterations to PIMS proposed herein.

The following notice is written in the present, rather than the future tense, to avoid the unnecessary expenditure of public funds to republish the notice after the system has become effective.

Dated: March 30, 2010.

Georgina C. Verdugo,
Director, Office for Civil Rights.

09–90–0052

SYSTEM NAME:

“Program Information Management System” (PIMS) (09–90–0052) HHS/OS/OCR.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The automated portion of the system is maintained at OCR Headquarters. Paper files are maintained in headquarters and regional offices as noted in Appendix I.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Covered individuals include persons who file complaints alleging discrimination or violation of their rights or other violations under the statutes identified below (Authority for Maintenance) and covered entities (*e.g.*, health care providers) that are individuals and not organizations or institutions, investigated by OCR as a result of complaints filed or through reviews conducted by OCR. Covered individuals also include persons who submit correspondence to OCR related to other compliance activities (*e.g.*, outreach and public education), and other correspondence unrelated to a complaint or review and requiring responses by OCR. Covered individuals also include covered entities and business associates (that are individuals and not organizations or institutions), as defined in 45 CFR 160.103, who report breaches of protected health information by submitting a breach report through the HHS Web site. In addition, OCR employees that use the system to record the status of their work are covered by the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system encompasses a variety of records having to do with complaints, reviews, correspondence, and reports of breaches of protected health information. For example, the system includes records containing individual names, Social Security numbers (SSN), tax identification numbers (TIN),

addresses, dates of birth, provider names and addresses, physicians' names, prescriber identification numbers, assigned provider numbers (facility, referring/servicing physician), and/or other identification numbers of HIPAA covered entities.

The complaint files and log include complaint allegations, information gathered during the complaint investigation, findings and results of the investigation, and correspondence relating to the investigation, as well as status information for all complaints. This component of PIMS is exempt from the notification, access, correction and amendment provisions of the Privacy Act (*see below: Systems Exempted From Certain Provisions of the Act*). Equivalent types of information are maintained for reviews and correspondence activities—namely, information gathered, findings, results, correspondence and status.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for the collection, maintenance, and disclosures from this system is given under Title VI of the 1964 Civil Rights Act; Sections 533, 542, 794, 855, 1947 and 1908 of the Public Health Service Act; Sections 504 and 508 of the Rehabilitation Act of 1973; Title II of the Americans with Disabilities Act of 1990; the Age Discrimination Act of 1975; the Equal Employment Opportunity Provisions of the Public Telecommunications Financing Act of 1978; Title VI and Title XVI of the Public Health Service Act (the “community services obligation” of facilities funded under the Act); Title IX of the 1972 Education Amendments; Section 407 of the Drug Abuse Office and Treatment Act; Section 321 of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970; Section 508 of the Social Security Act; the Family Violence Prevention and Services Act; Low-Income Home Energy Assistance Act of 1981; Section 1808 of the Small Business Job Protection Act of 1996; the Health Insurance Portability and Accountability Act of 1996; the Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act); and section 13402 of the Health Information Technology for Economic and Clinical Health (HITECH) Act.

PURPOSE(S) OF THE SYSTEM:

PIMS is used by OCR staff and consists of an electronic repository of information and documents, and supplementary paper document files. PIMS effectively combines and replaces OCR's two previous systems of records, the “Case Information Management

System (CIMS), HHS/OS/OCR, 09–90–0050,” and the “Complaint File and Log, HHS/OS/OCR 09–00–0051,” into a single, integrated system with enhanced electronic storage, retrieval and tracking capacities that allows OCR to manage more effectively the information it collects.

The system is designed to allow OCR to integrate all of OCR's various business processes, including all its compliance activities, to allow for real time access and results reporting and other varied information management needs. PIMS provides: (1) A single, central, electronic repository of all significant OCR documents and information, including investigative files, correspondence, administrative records, policy and procedure manuals and other documents and information developed or maintained by OCR; (2) easy, robust capability to search all the information in OCR's repository; (3) better quality control at the front end with simplified data entry and stronger data validation; (4) tools to help staff work on and manage their casework, and (5) supplementary paper document files. The system has the capacity to generate reports concerning the status of all current and closed complaints, reviews, and correspondence; track outreach, training, and other activities; and to locate and retrieve information, and report results, in order to manage more efficiently OCR's work. In addition, PIMS allows for the tracking of work assignments to employees to facilitate workload balancing, timely response to complaints and completion of reviews, and outreach and public education initiatives focused on organizations and individuals.

PIMS also is used by OCR: (1) To collect, maintain, and post on the HHS Web site a list of covered entities that experience breaches of unsecured protected health information affecting more than 500 individuals using information reported to the Secretary by covered entities (or a business associate on behalf of a covered entity) as required by section 13402(e) of the HITECH Act; (2) to develop an annual report to Congress, as required by section 13402(i) of the HITECH Act, regarding breach notification using information reported to the Secretary by covered entities (or a business associate on behalf of a covered entity) pursuant to section 13402(e) of the HITECH Act; and (3) to provide technical assistance, training, and guidance regarding breaches of protected health information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a “routine use.” The routine uses in this system meet the compatibility requirement of the Privacy Act. The following are the routine use disclosures of information maintained in the PIMS system:

I. The first routine use for this system, permitting disclosure to a congressional office, allows subject individuals to obtain assistance from their representatives in Congress, should they so desire. Such disclosure would be made only pursuant to the request of the individual.

II. The second routine use allows disclosure to the Department of Justice or a court in the event of litigation.

III. The third routine use allows referral to the appropriate agency, in the event that a System of Records maintained by this agency to carry out its functions indicates a violation or potential violation of law.

IV. The fourth routine use allows disclosure of records to contractors for the purpose of processing or refining records in the system.

V. The fifth routine use allows records to be disclosed to student volunteers, individuals working under a personal services contract, and other individuals performing functions for the Department but technically not having the status of agency employees, if they need access to the records in order to perform their assigned agency functions.

VI. The sixth routine use allows referrals of Age Discrimination Act complaints to the Federal Mediation and Conciliation Service (FMCS) for purposes of mediation.

VII. The seventh routine use allows OCR to post on its Web site, as required by section 13402(e)(4) of the HITECH Act, information reported by a covered entity (or a business associate on behalf of a covered entity) to the Secretary pursuant to section 13402(e)(3) of the HITECH Act that identifies covered entities that experience breaches of unsecured protected health information affecting more than 500 individuals.

VIII. The eighth routine use allows OCR to disclose information regarding breaches of unsecured protected health information in an annual report to Congress, as required by section 13402(i) of the HITECH Act, regarding the number and nature of the breaches

reported to the Secretary and actions taken in response to such breaches.

IX. The ninth routine use allows OCR to disclose information regarding breaches of unsecured protected health information to the public and to appropriate Federal agencies and Department contractors to provide technical assistance, training, and guidance materials, after OCR determines that the disclosure would not constitute an unwarranted invasion of personal privacy.

X. The tenth routine use allows OCR to disclose information to appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of security or confidentiality of information maintained in this system of records, and the information disclosed is relevant and necessary for that assistance.

XI. The eleventh routine use allows OCR to disclose information to third party contacts, including public and private organizations, to investigate violations and potential violations, as well as to conduct compliance reviews, of the Federal laws and regulations that OCR has legal authority to enforce.

XII. The twelfth routine use allows OCR to disclose relevant information to the public to inform the public of the results of investigations and compliance reviews of the Federal laws and regulations that OCR has legal authority to enforce, after OCR determines that the disclosure would not constitute an unwarranted invasion of personal privacy.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are maintained on magnetic disc and tape back-up. Paper records are kept in file folders.

RETRIEVABILITY:

Records are indexed by transaction number, but may be retrieved by name, street address, and other complainant, covered entity, or business associate characteristic (such as type of entity, city, state, and type of service provided).

SAFEGUARDS:

The PIMS system conforms to applicable law and policy governing the privacy and security of Federal automated information systems. These include but are not limited to: the Privacy Act of 1974, Federal Information Security Management Act of 2002, Computer Security Act of 1987,

the Paperwork Reduction Act of 1995, the Clinger-Cohen Act of 1996, and OMB Circular A-130, Appendix III, "Security of Federal Automated Information Resources." OCR has prepared a system security plan as required by OMB Circular A-130, Appendix III. This plan conforms fully to guidance issued by the National Institute for Standards and Technology (NIST) in NIST Special Publication 800-18, "Guide for Developing Security Plans for Information Technology Systems." The plan includes conduct of a risk assessment that addresses the confidentiality and integrity of the data. Only authorized users have access to the information in the system. Categories of users include: OCR investigators, regional and headquarters managers, team leaders, OCR budget and Government Performance and Results Act planning staff, program and policy staff, and data analysts. Specific access is structured around need and is determined by the person's role in the organization. Access is managed through the use of electronic access control lists, which regulate the ability to read, change, and delete information in the system. Each OCR user has read access to designated information in the system, with the ability to modify only their own submissions or those of others within their region or group. Data identified as confidential is so designated and only specified individuals are granted access. The system maintains an audit trail of all actions against the data base.

All electronic data is stored on servers maintained in locked facilities with computerized access control allowing access to only those support personnel with a demonstrated need for access. A database is kept of all individuals granted security card access to the room, and all visitors are escorted while in the room. The server facility has appropriate environmental security controls, including measures to mitigate damage to automated information system resources caused by fire, electricity, water, and inadequate climate controls.

Access control to servers, individual computers, and databases includes a required user log-on with a password, inactivity lockout to systems based on a specified period of time, legal notices and security warnings at log-on, and remote access security that allows user access for remote users (e.g., while on government travel) under the same terms and conditions as for users within the office. System administrators have appropriate security clearance. Printed materials are filed in secure cabinets in secure Federal buildings with access

based on need as described above for the automated component of the PIMS system.

RETENTION AND DISPOSAL:

Documents related to breaches are retained at OCR for two years from the date the breach is reported and then are archived at the National Archives and Records Administration for 15 years. Correspondence is retained for one year following the end of the fiscal year in which processed.

SYSTEM MANAGER AND ADDRESS:

PIMS Project Manager, Management Operations Division, Office for Civil Rights, 200 Independence Ave., SW., Room 509F, Washington, DC 20201.

NOTIFICATION PROCEDURE:

Contact System Manager (above). Include name and address of complainant, and name of the recipient against which the allegation was filed. The Department is exempting all investigative records from this provision (see below: Records Exempted).

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters also should reasonably specify the record contents being sought. Requests should be made to the system manager (above). The Department is exempting all investigative records from this provision. (See below: Records Exempted).

CONTESTING RECORD PROCEDURE:

Contact the official(s) at the address specified under System Manager, and reasonably identify the record and specify the information to be contested and corrective action sought with supporting justification. (These procedures are in accordance with Department Regulations (45 CFR 5b.7) The Department is exempting all investigative records from this provision (see below: Records Exempted).

RECORD SOURCE CATEGORIES:

Information is provided by complainants, covered entities, and business associates.

SYSTEM RECORDS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

OCR investigative records maintained in PIMS, either as paper records or electronic documents, are records compiled for law enforcement purposes and are exempt under subsection (k)(2) from the notification, access, correction, and amendment provisions of the Privacy Act.

APPENDIX NUMBER 1—SYSTEM LOCATIONS:

This system is located at HHS offices in the following cities:

Headquarters, PIMS Project Manager, Management Operations Division, Office for Civil Rights, 200 Independence Ave., SW., Room 509F, Washington, DC 20201.

Region I, Regional Manager, OCR/HHS, J.F. Kennedy Federal Building—Room 1875 Boston, MA 02203.

Region II, Regional Manager, OCR/HHS, 26 Federal Plaza—Suite 3312, New York, NY 10278.

Region III, Regional Manager, OCR/HHS, 150 S. Independence Mall West, Suite 372, Public Ledger Building, Philadelphia, PA 19106–9111.

Region IV, Regional Manager, OCR/HHS, Atlanta Federal Center, Suite 3B70, 61 Forsyth Street, SW., Atlanta, GA 30303–8909.

Region V, Regional Manager, OCR/HHS, 233 N. Michigan Ave, Suite 240, Chicago, IL 60601.

Region VI, Regional Manager, OCR/HHS, 1301 Young Street, Suite 1169, Dallas, TX 75202.

Region VII, Regional Manager, OCR/HHS, 601 E. 12th Street—Room 248, Kansas City, MO 64106.

Region VIII, Regional Manager, OCR/HHS, Federal Office Building, 1961 Stout Street—Room 1426 FOB, Denver, CO 80294–3538.

Region IX, Regional Manager, OCR/HHS, 90 7th Street, Suite 4–100, San Francisco, CA 94103.

Region X, Regional Manager, OCR/HHS, 2201 Sixth Avenue— M/S: RX–11, Seattle, WA 98121–2290.

[FR Doc. 2010–8412 Filed 4–12–10; 8:45 am]

BILLING CODE 4153–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Disease Control and Prevention**

[30Day–10–0739]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to omb@cdc.gov. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

CDC Oral Health Management Information System (OMB no. 0920–0739, exp. 6/30/2010)—Revision—Division of Oral Health, National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The CDC seeks to improve the oral health of the nation by targeting efforts to improve the infrastructure of state and territorial oral health departments, developing effective programs to improve the oral health of children and adults, and reducing health disparities among high-risk groups. Through a

cooperative agreement program, CDC provides funding to oral health programs in states and territories.

The CDC collects information from awardees to support oral health program management, consulting and evaluation. The information collection is supported by an electronic management information system (MIS) known as the Management Overview for Logistics, Analysis, and Reporting (MOLAR) system. The MIS provides a centralized, standardized and searchable repository of information about each awardee's objectives, programmatic activities, performance indicators, and financial status.

CDC requests OMB approval to continue the electronic collection of information for three years. The information collected will continue to facilitate CDC's ability to monitor, evaluate, and compare individual programs; provide technical assistance to states and territories; share and disseminate lessons learned; assess and report aggregate information regarding the overall effectiveness of oral health infrastructure and capacity at the state and territorial level; and monitor national progress toward meeting *Healthy People* goals.

Information will be collected electronically twice per year. No changes to the MIS or the estimated burden per response are proposed. There is an increase in the total estimated annualized burden due to an increase in the number of CDC-funded oral health programs. There are no costs to respondents other than their time. The total estimated annualized burden hours are 462.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
State Oral Health Programs	21	2	11

Dated: April 6, 2010.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–8441 Filed 4–12–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Administration for Children and Families****Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)**

Title: Strengthening Communities Fund Program Evaluation.

OMB No.: New Collection.

Description: This proposed information collection activity is to obtain evaluation information from Strengthening Communities Fund (SCF) grantees. Grantees include participants in two SCF grant programs contributing to the economic recovery as authorized in the American Recovery and Reinvestment Act of 2009 (ARRA). The SCF evaluation is an important opportunity to examine the outcomes achieved by the Strengthening Communities Fund in meeting its

objective of improving the capacity of grantees that include Nonprofit organizations and State, Local and Tribal Governments. The evaluation for each program will be designed to assess progress and measure increased

organizational capacity of grantees in each of the two SCF programs. The purpose of this request will be to establish the approved baseline instruments for follow-up data collection.

Respondents: SCF Grantees (both the Nonprofit Capacity Building Program and the Government Capacity Building Program) made up of State, local, and Tribal governments, as well as nonprofit organizations.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Nonprofit Capacity Building Program Performance Progress Report (PPR) ..	35	4	1	140
Government Capacity Building PPR	49	4	1	196

Estimated Total Annual Burden Hours: 336.

Additional Information

ACF is requesting that OMB grant a 180 day approval for this information collection under procedures for emergency processing by April 15, 2010. A copy of this information collection, with applicable supporting documentation, may be obtained by calling the Administration for Children and Families, Reports Clearance Officer, Robert Sargis at (202) 690-7275.

Comments and questions about the information collection described above should be directed to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ACF, Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW.,

Washington, DC 20503, FAX (202) 395-6974.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010-8251 Filed 4-12-10; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: ADP & Services Conditions for FFP for ACF.

OMB No.: 0992-0005.

Description: The Advance Planning Document (APD) process, established in the rules at 45 CFR part 95, subpart F,

is the procedure by which States request and obtain approval for Federal financial participation in their cost of acquiring Automatic Data Processing (ADP) equipment and services. State agencies that submit APD requests provide the Department of Health and Human Services (HHS) with the following information necessary to determine the States' needs to acquire the requested ADP equipment and/or services:

- (1) A statement of need;
- (2) A requirements analysis and feasibility study;
- (3) A cost benefit analysis;
- (4) A proposed activity schedule; and,
- (5) A proposed budget.

HHS' determination of a State Agency's need to acquire requested ADP equipment or services is authorized at sections 402(a)(5), 452(a)(1), 1902(a)(4), and 1102 of the Social Security Act.

Respondents: States.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Advance Planning Document	50	1.84	60	5,520
RFP and Contract	50	1.54	1.50	115.50
Emergency Funding Request	27	1	1	27
Service Agreements	14	1	1	14
Biennial Reports	50	1	1.50	75

Estimated Total Annual Burden Hours: 5,751.50

In compliance with the requirements of section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370

L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address:

infocollection@acf.hhs.gov. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c)

the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: April 8, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010-8426 Filed 4-12-10; 8:45 am]

BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2010-N-0001]

Preparation for International Conference on Harmonisation Steering Committee and Expert Working Group Meetings in Tallinn, Estonia; Regional Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting entitled "Preparation for ICH Steering Committee and Expert Working Group Meetings in Tallinn, Estonia" to provide information and receive comments on the International Conference on Harmonisation (ICH) as well as the upcoming meetings in Tallinn, Estonia. The topics to be discussed are the topics for discussion at the forthcoming ICH Steering Committee Meeting. The purpose of the meeting is to solicit public input prior to the next Steering Committee and Expert Working Group meetings in Tallinn, Estonia, June 5 through 10, 2010, at which discussion of the topics underway and the future of ICH will continue.

Date and Time: The meeting will be held on Wednesday, May 5, 2010, from 2:30 p.m. to 4:30 p.m.

Location: The meeting will be held at the Washington Theater at the Hilton Washington DC/Rockville Hotel & Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: All participants must register with Jennifer Haggerty, Office of the Commissioner, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, by e-mail: jennifer.haggerty@fda.hhs.gov or FAX: 301-827-0003.

Registration and Requests for Oral Presentations: Send registration information (including name, title, firm name, address, telephone, and fax number), written material and requests to make oral presentations, to the contact person by April 30, 2010.

Interested persons may present data, information, or views orally or in writing, on issues pending at the public meeting. Public oral presentations will

be scheduled between approximately 4 p.m. and 4:30 p.m. Time allotted for oral presentations may be limited to 10 minutes. Those desiring to make oral presentations should notify the contact person by April 30, 2010, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses, phone number, fax, and e-mail of proposed participants, and an indication of the approximate time requested to make their presentation.

The agenda for the public meeting will be made available via the Internet at: <http://www.fda.gov/Drugs/NewsEvents/ucm204924.htm>.

If you need special accommodations due to a disability, please contact Jennifer Haggerty at least 7 days in advance.

Transcripts: Please be advised that as soon as a transcript is available, it can be obtained in either hardcopy or on CD-ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (HFI-35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6-30, Rockville, MD 20857.

SUPPLEMENTARY INFORMATION: The ICH was established in 1990 as a joint regulatory/industry project to improve, through harmonization, the efficiency of the process for developing and registering new medicinal products in Europe, Japan, and the United States without compromising the regulatory obligations of safety and effectiveness.

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for medical product development among regulatory agencies. ICH was organized to provide an opportunity for harmonization initiatives to be developed with input from both regulatory and industry representatives. ICH is concerned with harmonization among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labor and Welfare; the Japanese Pharmaceutical Manufactures

Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA). The ICH Steering Committee includes representatives from each of the ICH sponsors and Health Canada, the European Free Trade Area, and the World Health Organization. The ICH process has achieved significant harmonization of the technical requirements for the approval of pharmaceuticals for human use in the three ICH regions.

The current ICH process and structure can be found at the following Web site: <http://www.ich.org>.

Dated: April 5, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010-8379 Filed 4-12-10; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Prevention Research Centers Comparative Effectiveness Research Program, DP 10-003, Initial Review

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 aforementioned meeting:

Times and Dates: 8:30 a.m.-6 p.m., May 4, 2010 (Closed); 8:30 a.m.-5 p.m., May 5, 2010 (Closed).

Place: W Hotel, 1111 Perimeter Center W., Atlanta, GA 30346.

Telephone: (770) 396-6800.

Status: 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 initial review, discussion, and evaluation of applications received in response to "Prevention Research Centers Comparative Effectiveness Research Program, DP 10-003."

Contact Person for More Information: Donald Blackman, PhD, Scientific Review Officer, National Center for Chronic Disease Prevention and Health Promotion, Office of the Director, Extramural Research Program

Office, 4770 Buford Highway, NE., Mailstop K-92, Atlanta, GA 30341, Telephone: (770) 488-3023, E-mail: DYB7@cdc.gov.

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: April 5, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010-8442 Filed 4-12-10; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2010-N-0001]

Food and Drug Administration/National Heart Lung and Blood Institute/National Science Foundation Workshop on Computer Methods for Cardiovascular Devices: The Integration of Nonclinical and Clinical Models; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop entitled "FDA/NHLBI/NSF Workshop on Computer Methods for Cardiovascular Devices: The Integration of Nonclinical and Clinical Models." The workshop will include a smaller, optional session entitled "Microstructure Modeling Session." FDA is cosponsoring the workshop with the National Heart Lung and Blood Institute of the National Institutes of Health and the National Science Foundation. The purpose of the workshop is to facilitate discussion between FDA and other interested parties on the use of computational modeling in the design, development, and evaluation of cardiovascular medical devices.

Dates and Times: The optional session will be held on June 9, 2010, from 1 p.m. to 5:30 p.m. and the public workshop will be held on June 10 and 11, 2010, from 8 a.m. to 5 p.m.

Location: The public workshop and optional session will be held at the Hilton Washington DC/Rockville Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Donna R. Lochner, Center for Devices and Radiological Health, Food and Drug Administration,

10903 New Hampshire Ave., Bldg. 66, rm. 1110, Silver Spring, MD 20993, 301-796-6309, donna.lochner@fda.hhs.gov.

Registration: To register for the public workshop and optional session, please visit the following Web site: <http://scpd.stanford.edu/publicViewHome.do?method=load>.

There is a registration fee to attend the public workshop to cover the expenses and attendees must register in advance. The fee for the meeting is \$350. Students will be offered a discounted fee of \$175. The exhibitors' fee is \$600 and includes registration of one person. Fees will be waived for invited speakers and the organizing committee. The registration process will be handled by the Stanford Center for Professional Development. Although the facility is spacious, registration will be on a first-come, first-served basis.

If you need special accommodations because of a disability, please contact Donna R. Lochner at least 7 days before the public workshop.

SUPPLEMENTARY INFORMATION:

I. Why Are We Holding This Public Workshop?

The purpose of the public workshop is to facilitate discussion between FDA and other interested parties on the use of computational modeling in cardiovascular device design, development, and evaluation.

II. What Are the Topics We Intend to Address at the Public Workshop?

We hope to discuss a large number of issues at the public workshop, with our overall theme being the integration of computer and nonclinical models. Topics include, but are not limited to the following:

- Multiscale, multiphysics, and multiphase modeling;
- Modeling of cardiovascular diseases and therapies;
- Patient-specific modeling, including virtual surgical planning and predictive biomedicine;
- Open source projects, including public policy initiatives, database development and data presentation, and standards and protocols; and
- Regulatory issues with implementation of computer modeling.

III. Where Can I Find Out More About This Public Workshop?

Background information on the public workshop, registration information, the agenda, information about lodging, and other relevant information will be posted, as it becomes available, on the Internet at <http://www.fda.gov/>

MedicalDevices/NewsEvents/WorkshopsConferences/default.htm

Dated: April 7, 2010.

Jeffrey Shuren,

Director, Center for Devices and Radiological Health.

[FR Doc. 2010-8311 Filed 4-12-10; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2010-D-0183]

Small Entity Compliance Guide: Prevention of Salmonella Enteritidis in Shell Eggs During Production, Storage, and Transportation; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled "Prevention of *Salmonella* Enteritidis in Shell Eggs During Production, Storage, and Transportation—Small Entity Compliance Guide." The small entity compliance guide (SECG) is being issued for a final rule published in the **Federal Register** of July 9, 2009, and is intended to set forth in plain language the requirements of the regulation and to help small businesses understand the regulation. Elsewhere in this issue of the **Federal Register**, FDA is amending its July 9, 2009, regulation to correct the date by which producers must register their farm with FDA, reflect a change in the address and telephone number for requesting copies of Form No. 3733, and reflect a change in the address to which producers must send their CD-ROM.

DATES: Submit electronic or written comments on the SECG at any time.

ADDRESSES: Submit electronic comments on the SECG to <http://www.regulations.gov>. Submit written comments on the SECG to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written requests for single copies of the SECG to the Division of Plant and Dairy Food Safety/Office of Food Safety, Center for Food Safety and Applied Nutrition (HFS-315), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, or fax your request to 301-436-1070. Send two self-addressed adhesive labels to assist that office in processing your request. See the

SUPPLEMENTARY INFORMATION section for electronic access to the SECG.

FOR FURTHER INFORMATION CONTACT:

Nancy S. Bufano, Center for Food Safety and Applied Nutrition (HFS-315), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301-436-1493.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of July 9, 2009 (74 FR 33030), FDA issued a final rule requiring shell egg producers to implement measures to prevent *Salmonella* Enteritidis (SE) from contaminating eggs on the farm and from further growth during storage and transportation, and requiring these producers to maintain records concerning their compliance with the rule and to register with FDA. The final rule became effective September 8, 2009.

FDA examined the economic implications of the final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601-612) and determined that the final rule will have a significant economic impact on a substantial number of small entities. In compliance with section 212 of the Small Business Regulatory Enforcement Fairness Act (Public Law 104-121), FDA is making available this SECG stating in plain language the requirements of the regulation.

FDA is issuing this SECG as level 2 guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115(c)(2)). The SECG represents FDA's current thinking on the prevention of SE in shell eggs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This SECG refers to collections of information described in FDA's final rule that published in the **Federal Register** of July 9, 2009 (74 FR 33030 at 33089), and that became effective on September 8, 2009. As stated in the final rule, these collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501-3520). In compliance with the PRA (44 U.S.C. 3507(d)), the agency has submitted the information collection provisions of the final rule to OMB for review. FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve,

modify, or disapprove the information collection provisions in this final rule. 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.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments regarding this SECG. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The SECG and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at <http://www.fda.gov/FoodGuidances> or <http://www.regulations.gov>.

Dated: April 7, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010-8359 Filed 4-12-10; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS-2009-0026]

National Protection and Programs Directorate; Chemical Facility Anti-Terrorism Standards Personnel Surety Program

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 30-day notice and request for comments: New information collection request 1670-NEW.

SUMMARY: The Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), Office of Infrastructure Protection (IP), Infrastructure Security Compliance Division (ISCD) will be submitting the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is a new information collection. A 60-day public notice for comments was previously published in the **Federal Register** on June 10, 2009, at 74 FR 27555. Comments were received and responses

are in this notice. The purpose of this notice is to solicit additional comments during a 30-day public comment period prior to the submission of this collection to OMB. The submission describes the nature of the information collection, the categories of respondents, the estimated burden, and cost.

DATES: Comments are encouraged and will be accepted until May 13, 2010. This process is conducted in accordance with 5 CFR 1320.8.

ADDRESSES: Interested persons are invited to submit comments on the proposed information collection through the Federal Rulemaking Portal at <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments must be identified by docket number DHS-2009-0026.

Comments that include trade secrets, confidential commercial or financial information, Chemical-terrorism Vulnerability Information (CVI), Sensitive Security Information (SSI), or Protected Critical Infrastructure Information (PCII) should not be submitted to the public regulatory docket. Please submit such comments separately from other comments in response to this notice. Comments containing trade secrets, confidential commercial or financial information, CVI, SSI, or PCII should be appropriately marked and submitted by mail to the DHS/NPPD/IP/ISCD CFATS Program Manager at the Department of Homeland Security, 245 Murray Lane, SW., Mail Stop 0610, Arlington, VA 20528-0610. Comments must be identified by docket number DHS-2009-0026.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained through the Federal Rulemaking Portal at <http://www.regulations.gov>.

SUPPLEMENTARY INFORMATION:

Program Description

The Chemical Facility Anti-Terrorism Standards (CFATS), 6 CFR part 27, require high-risk chemical facilities to submit information about facility personnel and, as appropriate, unescorted visitors with access to restricted areas or critical assets at those facilities. This information will be vetted by the Federal Government against the Terrorist Screening Database (TSDB), the consolidated and integrated terrorist watchlist maintained by the Federal Government, to identify known or suspected terrorists (i.e., individuals with terrorist ties).

High-risk chemical facilities must also perform other relevant background checks in compliance with CFATS Personnel Surety Risk-Based Performance Standard 12 (RBPS-12). See 6 CFR 27.230(a)(12)(i-iii): High-risk chemical facilities must “perform appropriate background checks * * * including (i) Measures designed to verify and validate identity; (ii) Measures designed to check criminal history; [and] (iii) Measures designed to verify and validate legal authorization to work.” The CFATS Personnel Surety Program is not intended to halt, hinder, or replace high-risk chemical facilities’ performance of background checks which are currently required for employment or access to secure areas of those facilities.

Background

On October 4, 2006, the President signed the Department of Homeland Security Appropriations Act of 2007 (the Act), Public Law 109-295. Section 550 of the Act provides DHS with the authority to regulate the security of high-risk chemical facilities.

Section 550 requires that DHS regulations establish CFATS RBPS. RBPS-12 (6 CFR 27.230(a)(12)(iv)) requires that regulated chemical facilities implement “measures designed to identify people with terrorist ties.” The ability to identify individuals with terrorist ties requires the use of information held in Government-maintained databases, which are unavailable to high-risk chemical facilities. Therefore, DHS is implementing the CFATS Personnel Surety Program, which will allow chemical facilities to comply with RBPS-12 by implementing “measures designed to identify people with terrorist ties.”

Overview of CFATS Personnel Surety Process

The CFATS Personnel Surety Program will work with the DHS Transportation Security Administration (TSA) to identify individuals who have terrorist ties by comparing information submitted by each high-risk chemical facility to the information of known or suspected terrorists who are listed in the TSDB.

Information will be submitted to DHS through the Chemical Security Assessment Tool (CSAT), the online data collection portal for CFATS. The representative(s) of each high-risk chemical facility will submit the information of affected individuals to DHS through CSAT. The representative(s) of each high-risk chemical facility will also certify that

the information is (1) true, correct, and complete, and (2) collected and submitted in compliance with the facility’s Site Security Plan (SSP). The representative(s) of each high-risk chemical facility will also affirm that notice required by the Privacy Act of 1974, 5 U.S.C. 552a, has been given to affected individuals before their information is submitted to DHS.

DHS will send a verification of submission to the representative(s) of each high-risk chemical facility when a high-risk chemical facility (1) Submits information about an affected individual for the first time, (2) submits updated or corrected information about an affected individual, and/or (3) notifies DHS that an affected individual no longer has access to that facility’s restricted areas or critical assets.

Upon receipt of each affected individual’s information in CSAT, DHS will send a copy of the information to TSA. Within TSA, the Office of Transportation Threat Assessment and Credentialing (TTAC) conducts screening and vetting of information against the TSDB for many DHS programs. On behalf of DHS, TTAC will compare the information of affected individuals collected by DHS to the information of known or suspected terrorists on the TSDB. TTAC will forward the results from potential matches to the Federal Bureau of Investigation’s Terrorist Screening Center (TSC), which will make a final determination of whether an individual is a match to a known or suspected terrorist listed in the TSDB.

In the event that there is a positive match to an identity in the TSDB, the TSC will notify the appropriate Federal law enforcement agency for coordination, investigative action, and/or response, as appropriate. DHS will neither routinely provide vetting results to high-risk chemical facilities, nor will it provide results to an affected individual whose information was submitted by a high-risk chemical facility. As warranted, high-risk chemical facilities may be contacted by the Department or Federal law enforcement as a part of appropriate law enforcement investigation activity. (See the amendment to the FBI’s Terrorist Screening Records System, published in the **Federal Register** on August 22, 2007, at 72 FR 47073.)

Information Collected

DHS may collect the following information from individuals:

- Full name
- Date of birth
- Place of birth
- Gender

- Citizenship
- Passport information
- Visa information
- Alien registration number
- DHS Redress Number (if available)
- Work phone number(s)
- Work e-mail address(es)

DHS will collect information that identifies the high-risk chemical facility or facilities, to which the affected individual has access to restricted areas or critical assets. As applicable, DHS will also collect information to verify that an affected individual is currently enrolled in a DHS program which relies on DHS-performed TSDB checks, in addition to other program-specific requirements.

DHS may request additional information on an affected individual to confirm that the individual is or is not a match to a known or suspected terrorist in the TSDB. DHS may randomly select a small percentage of affected individuals for further verification as part of data accuracy review and auditing processes. In order to assist with this confirmation and verification, DHS may request additional information on affected individuals from the high-risk chemical facilities which have submitted their information to the Department. DHS may also collect information about points of contact at each high-risk chemical facility, and which points of contact the Department or Federal law enforcement personnel may contact with follow-up questions. However, a request for additional information from DHS does not imply, and should not be construed to indicate, that an individual is known or suspected to be associated with terrorism.

DHS may collect information on affected individuals as necessary to enable it to provide redress for individuals who believe that they have been improperly impacted by the Personnel Surety Program. The information collected may include information necessary to conduct adjudications under subpart C of CFATS, 6 CFR 27.300–27.345.

DHS will also collect administrative or programmatic information (e.g., affirmations or certifications of compliance, extension requests, brief surveys for process improvement, etc.) necessary to manage the CFATS Personnel Surety Program.

Affected Population

6 CFR 27.230(a)(12) requires facility personnel and, as appropriate, unescorted visitors who have access to restricted areas or critical assets to undergo background checks. This affected population will include (1)

facility personnel (e.g., employees and contractors) who have access, either unescorted or otherwise, to restricted areas or critical assets, and (2) unescorted visitors who have access to restricted areas or critical assets.

These background checks do not affect facility personnel who do not have access to facilities' restricted areas or critical assets, nor do they affect escorted visitors.

Linking Affected Individuals to Specific CFATS Covered Facilities

To comply with CFATS, high-risk chemical facilities are required to identify who is an affected individual, and at which high-risk chemical facility or facilities each affected individual has access to restricted areas or critical assets. DHS intends to collect this information through CSAT.

Personnel Surety Submission Schedule To Check for Terrorist Ties

DHS will establish a CFATS Personnel Surety Submission schedule for high-risk chemical facilities when submitting information to DHS to check for terrorist ties under 6 CFR 27.230(a)(12)(iv). The schedule will be published in the **Federal Register**. The schedule, when published, will require: (1) An initial submission of information either within a certain number of days after DHS issues a letter of authorization or within certain number of days after publication of the schedule, whichever is later; (2) additional submissions for individuals that become newly affected (e.g., new hires or other individuals given access to a restricted area or critical asset); (3) updates or corrections to information for affected individuals whose information has previously been submitted; and (4) notification when an affected individual no longer has access to a restricted area or critical asset. The schedule will likely vary by final tier. A proposed schedule is provided in subpart (B) of the "Response To Comments Received During The 60-Day Comment Period" section of this 30-Day notice. High-risk chemical facilities may request extensions or variances from this schedule based on unique or unusual circumstances.

Request for Exception to the Requirement Under 5 CFR 1320.8(b)(3)

DHS is requesting from OMB an exception for the CFATS Personnel Surety Program to the Paperwork Reduction Act (PRA) requirement, as contained in 5 CFR 1320.8(b)(3), which requires Federal agencies to confirm that their information collections provide certain reasonable notices, under the Paperwork Reduction Act, to

affected individuals. If this exception is granted, DHS will be relieved of the potential obligation to require high-risk chemical facilities to collect signatures or other positive affirmations of these notices from affected individuals. Whether or not this exception is granted, DHS will still require high-risk facilities to affirm that required Privacy Act notice has been provided to affected individuals before personal information is collected. See 5 U.S.C. 552a(e)(3).

DHS's request for an exception to the requirement under 5 CFR 1320.8(b)(3) would not exempt high-risk chemical facilities from having to adhere to applicable Federal, State, local, or tribal laws, or to regulations or policies pertaining to the privacy of facility personnel and the privacy of unescorted visitors.

Responses to Comments Received During the 60-Day Comment Period

DHS received 17 comments in response to the 60-day notice for comment. Comments were received from three private citizens, four private sector companies, seven associations, one training council, and one professional society. One additional comment was a jointly submitted comment. Many of the comments were in response to the questions posed by DHS in the 60-day notice for comments. In this section of this notice, DHS first addresses specific questions that the Department solicited, then other comments related to the Personnel Surety Program, and finally unsolicited comments received in response to the 60-day notice.

(A) On behalf of OMB, DHS solicited comments that evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

Comment: Commenters challenged the practical utility of requiring high-risk chemical facilities to update previously submitted information.

Response: The information collected by DHS is generally static. However, DHS will require each high-risk chemical facility to update and correct information previously submitted about affected individuals. Updates and corrections do not necessarily need to be made immediately when submitted information changes; rather, DHS will require high-risk facilities to make updates and corrections in accordance with a DHS-approved schedule.

For example, when a high-risk chemical facility becomes aware that an affected individual's information has changed (e.g., when a high-risk

chemical facility becomes aware that an affected individual has changed his/her name), the high-risk chemical facility must update the submitted information. DHS will also require a high-risk chemical facility to correct previously submitted information when the high-risk chemical facility becomes aware that an affected individual's information is incorrect (e.g., an affected individual's place or date of birth). Requiring high-risk chemical facilities to update and correct information about affected individuals will increase the accuracy of the data collected, and decrease the probability of incorrect matches to the information of known or suspected terrorists listed on the TSDB.

One piece of information that may change is the list of high-risk chemical facilities within one company or organization to which an affected individual has access. When such a change occurs, updates are not required immediately but rather in accordance with a schedule to be published by DHS.

Comment: Commenters challenged the practical utility of requiring high-risk chemical facilities to notify the Department when an affected individual no longer has access to a high-risk chemical facility's restricted area(s) or critical asset(s). Commenters suggested that this notification by a high-risk chemical facility to DHS would provide no value in the context of terrorism screening.

Response: DHS will not rely on a single, one-time check to determine that an affected individual has ties to terrorism. Instead, DHS will continue to vet an affected individual's information against new and/or updated TSDB records as they become available, for as long as the affected individual has access to a high-risk chemical facility's restricted area(s) or critical asset(s). This process is referred to as "recurrent vetting" and is a standard DHS vetting practice. DHS will require high-risk chemical facilities to notify the Department when an affected individual no longer has access to a high-risk chemical facility's restricted areas or critical assets so that the Department can cease recurrent vetting of the affected individual.

Comment: Many commenters suggested that the proposed collection of information is needless and duplicative. Specifically, commenters suggested that the proposed information collection will place an undue burden on industry—in regard to time, money and other resources—by creating a program which duplicates an existing DHS screening or vetting program, such as the Transportation Worker

Identification Credential (TWIC) program.

Response: TWIC's authorizing statute, the Maritime Transportation Security Act of 2002 (MTSA), as amended, 46 U.S.C. 70101 *et seq.*, explicitly applies "transportation security card" requirements only to: "individual[s] allowed unescorted access to secure area[s] designated in * * * [maritime] vessel or [maritime] facility security plan[s]" (§ 70105(b)(2)(A)); certain MTSA license and permit holders (§ 70105(b)(2)(B)); maritime vessel pilots (§ 70105(b)(2)(C)); maritime towing vessel personnel (§ 70105(b)(2)(D)); individuals with access to certain protected maritime security information (§ 70105(b)(2)(E)); and "other individuals engaged in port security activities" (§ 70105(b)(2)(F)).

Furthermore, individuals are only eligible to receive TWICs if they have not committed certain "disqualifying criminal offense[s]," or if they do not meet certain "immigration status requirements" 49 CFR 1572.5(a)(1)–(2). However, the CFATS authorizing statute applies to "chemical facilities that * * * present high levels of security risk" Department of Homeland Security Appropriations Act of 2007, Public Law 109–295, section 550 (Oct. 4, 2006), as amended. CFATS Personnel Surety Program requirements apply only to high-risk chemical facilities' "personnel,

and as appropriate * * * unescorted visitors with access to restricted areas or critical assets" 6 CFR 27.230(a)(12). Moreover, facilities regulated under MTSA are exempt from CFATS. Accordingly, the CFATS Personnel Surety Program is not duplicative of the TWIC program.

DHS recognizes that some affected individuals under CFATS possess TWICs or other credentials that rely on DHS-conducted TSDB vetting (e.g., an individual vetted under the TWIC program). DHS intends to reduce the burden of this collection by recognizing previous TSDB vetting results conducted by DHS. Therefore, an affected individual who possesses a current and valid TWIC will likely require less information to be submitted than an affected individual who does not have a TWIC. Some additional personal information will be required in order to verify that the affected individual has a previous TSDB vetting result upon which the TWIC was issued.

Comment: One comment suggested that the vetting of affected individuals against the TSDB has little practical utility in identifying terrorists due to the large number of individuals whose names appear on the TSDB, even though they are not actually threats to national security.

Response: As indicated in the CFATS interim final rule, the Department has

determined that a TSDB check is necessary for the purpose of protecting restricted areas and critical assets of high-risk chemical facilities from persons who may have ties to terrorism. See 72 FR 17708. The TSDB is the Federal Government's integrated and consolidated terrorist watchlist and is the appropriate database to identify individuals with terrorist ties.

(B) On behalf of OMB, DHS solicited comments which evaluate the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

Comment: Commenters suggested that DHS did not provide sufficient detail about the proposed information collection to adequately evaluate the estimated burden.

Response: In order to provide the public with more information to evaluate the estimated burden, the Department has established the information submission schedule outlined below. The Department will review comments received in response to this 30-day notice when finalizing the DHS schedule for submitting information. High-risk chemical facilities will be notified of the final DHS schedule prior to its implementation. The final DHS schedule will also be published in the **Federal Register**.

	Final tier 1	Final tier 2	Final tier 3	Final tier 4
Initial Submission of Affected Individual's Information.	60 days after DHS issues a letter of authorization.	60 days after DHS issues a letter of authorization.	90 days after DHS issues a letter of authorization.	90 days after DHS issues a letter of authorization.
Submission of a New Affected Individual's Information.	Within 30 days of being granted access.	Within 30 days of being granted access.	Within 60 days of being granted access.	Within 60 days of being granted access.
Submission of Updates and Corrections to an Affected Individual's Information.	Within 90 days of becoming aware of the need for an update or correction.	Within 90 days of becoming aware of the need for an update or correction.	Within 90 days of becoming aware of the need for an update or correction.	Within 90 days of becoming aware of the need for an update or correction.
Submission of notification that an affected individual no longer has access.	Within 90 days of access being removed.	Within 90 days of access being removed.	Within 90 days of access being removed.	Within 90 days of access being removed.

Comment: Commenters generally believed the mechanics of the information submission and update process could place a heavy burden on high-risk facilities. One commenter indicated that DHS could expect submissions to be in the tens of thousands per month. Commenters suggested that the proposed 35-minute burden for the information collection was based on an incomplete estimate, and did not account for the duplicative submission of affected individuals' information by multiple high-risk

chemical facilities in the cases of individuals who have access to restricted areas or critical assets at multiple facilities.

Response: The estimated burden relied on the regulatory evaluation published for CFATS on April 1, 2007. In the regulatory evaluation, the Department estimated that 1,063,200 affected individuals would be vetted against the TSDB (i.e., 29,533 per month) over a three-year period. This estimate allows for the possibility that a specific individual could have access at

multiple high-risk chemical facilities. The Department's population estimate also aligns with the commenters' expectations that DHS should expect tens of thousands of submissions during each month.

The estimated time for a responsible entity to submit the information of each affected individual through the CSAT portal is 0.59 hours per individual. This estimate is based upon the CFATS regulatory evaluation. The estimated time per affected individual was derived by assuming that (1) 30 minutes is

required to type in the required information for every affected individual once; (2) 5 percent of affected individuals will have some element of their information change annually, requiring 10 additional minutes of effort; and (3) 20 percent of affected individuals will lose access to restricted areas or critical assets annually, which will require 10 additional minutes of effort to remove each affected individual's information from CSAT.

DHS believes that the information contained in this notice, in the Personnel Surety Program's 60-day PRA notice preceding this notice (74 FR 27555 (June 10, 2009)), and in the CFATS regulatory evaluation provides sufficient detail about the proposed Personnel Surety Program's information collection process.

Comment: One commenter suggested that the Department's estimate of the burden may not have accounted for the burden an affected individual incurs from investigations and adverse employment decisions that may result from the individual's possibly unjustified presence on the TSDB.

Response: The burden outlined in this 30-day notice is limited in scope to those activities listed in 5 CFR 1320.3(b)(1). Specifically, 5 CFR 1320.3(b)(1) requires the Department to estimate 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.

The Department is also seeking to collect five core data elements about each individual to be vetted under the Personnel Surety Program: Full name, date of birth, place of birth, gender, and citizenship. When taken together, these identifiers will minimize false positive matches to the TSDB. Furthermore, each potential match will be manually reviewed by Department adjudicators who have expertise in evaluating matches prior to confirmation that an individual's information matches the information of a known or suspected terrorist.

(C) On behalf of OMB, DHS solicited comments to enhance the quality, utility, and clarity of the information to be collected.

Comment: Most of the commenters requested additional clarity about what information DHS will routinely collect and update. Several commenters suggested that the information collected should be limited to information which is necessary to conduct an inquiry against the TSDB. One commenter also suggested that the information should be limited to personal information that is unlikely to change.

Response: As outlined earlier in this 30-day notice, DHS will routinely collect an affected individual's full name, date of birth, place of birth, gender, and citizenship. DHS will also collect information that identifies the high-risk chemical facility or facilities to which the affected individual has access. DHS has limited the information routinely collected to include only that which is (1) Necessary to conduct a TSDB check and adjudicate potential matches, (2) unlikely to change, and (3) is essential for quickly understanding the risk a known or suspected terrorist poses to high-risk chemical facilities.

DHS will not require immediate reporting of updates to previously submitted information. As previously discussed in this notice, DHS will permit high-risk chemical facilities to update information on a periodic basis in compliance with a DHS-approved schedule.

Comment: Most commenters commended DHS for intending to recognize the previous TSDB vetting results completed by other DHS programs, such as the TWIC program. Several commenters, however, suggested that DHS should not collect information from high-risk chemical facilities for the purpose of verifying the validity of credentials issued as part of other DHS programs (which conduct TSDB vetting) because the burden of data collection necessary to verify such credentials could be burdensome.

Response: In lieu of conducting new TSDB vetting on all affected individuals, DHS intends to recognize the results of previous TSDB vetting conducted on individuals enrolled in certain other DHS programs. Specifically, DHS is considering recognizing the previous TSDB vetting results completed by other DHS programs, such as TWIC, and the Trusted Traveler Programs (Secure Electronic Network for Travelers Rapid Inspection (SENTRI), Free and Secure Trade (FAST), and NEXUS). Further, DHS is also considering recognizing the results of TSDB vetting (conducted by DHS) upon which each State relies when issuing a Commercial Driver's License with a Hazardous Materials Endorsement (HME).

This will likely require fewer pieces of information than are required to vet an individual who is not enrolled in another vetting program. DHS believes the burden of collecting those fewer pieces of information is accounted for in the estimated burden.

This approach will also limit the number of instances in which different DHS programs may vet the same affected individual against the TSDB. If

other programs' vetting results cannot be verified without substantial effort, DHS may initiate new vetting of an affected individual's information against the TSDB.

Comment: Several commenters recommended that the Department recognize and offer reciprocity to the background checks, which include vetting against the TSDB, as conducted by the Department of Justice Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). Commenters suggested that without this accommodation, the regulatory overlap between the two agencies will impose unreasonable burdens.

Response: ATF does not conduct recurrent vetting against the TSDB, and thus is not appropriate as a reciprocal program to meet the requirements of CFATS.

(D) On behalf of OMB, DHS solicited comments regarding the minimization of the burden of information collection on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

Comment: Commenters encouraged DHS to consider the procedural and logistical challenges of large-scale data collection and transmission when developing the Personnel Surety portal component of CSAT. Specifically, commenters suggested that DHS permit each high-risk chemical facility to transmit data collectively (e.g., via a spreadsheet or other readily available electronic means). In other words, a high-risk chemical facility would collect the required information in a single file (or series of files) and upload it to DHS. Anything to the contrary—such as manual entry of discrete information into data fields—would result in an undue burden to the regulated community, increase human error, and raise information security concerns.

Response: DHS will enable high-risk chemical facilities to upload information electronically about multiple affected individuals collectively. DHS would welcome suggestions about what technical standards, formats, or export/import capabilities are in use by high-risk chemical facilities to facilitate such data submission.

Comment: Many commenters suggested that third parties be authorized to support data submission to the Department. Specifically, many commenters suggested that DHS should permit third party vendors to enter information into CSAT on a facility's

behalf. One commenter suggested that (1) Background check providers understand the information security and privacy protections that apply to information; (2) a web of Federal, State, and local laws protect information (many corporations outsource personnel surety needs for this reason); and (3) experienced background check providers will help high-risk chemical facilities ensure that compliance with CFATS does not cause noncompliance with other laws which govern the collection, use, storage, or destruction of information.

Response: To support the submission of information by high-risk chemical facilities, DHS has historically allowed—and will continue to allow—authorized third-party access to CSAT as a Preparer. Information about the CSAT Preparer user role can be found at <http://www.dhs.gov/chemicalsecurity>.

Comment: A few commenters suggested that high-risk chemical facilities receive an electronic acknowledgement that the submitted information has been received. Such an acknowledgement would aid in demonstrating a high-risk chemical facility's compliance with 6 CFR 27.230(a)(12)(iv).

Response: DHS will send an electronic verification of submission to high-risk chemical facilities when a high-risk chemical facility (1) Submits information about an affected individual for the first time, (2) submits updated or corrected information about an affected individual, and/or (3) notifies DHS that an affected individual no longer has access to restricted areas or critical assets.

(E) DHS solicited comments that respond to the Department's interpretation of the population affected by RBPS-12's background check requirement.

Comment: Many commenters provided extensive responses to the Department's interpretation of the population which is affected by RBPS-12. The comments suggested that the Department's interpretation expanded the definition beyond the scope of CFATS. The comments referenced the preamble to the CFATS Interim Final Rule, in which DHS stated that each facility "shall identify critical assets and restricted areas and establish which employees and contractors may need unescorted access to those areas or assets, and thus must undergo a background check" 72 FR 17708 (Apr. 7, 2007). Commenters also suggested that vetting escorted facility personnel is inconsistent with other regulatory schemes (e.g., TWIC).

Response: The regulatory text makes no distinction between facility personnel who are escorted and facility personnel who are unescorted. The actual text of CFATS, at 6 CFR 27.230(a)(12), uses the term "unescorted" to modify only the noun "visitors." As such, if facility personnel have access, either unescorted or otherwise (e.g., escorted), to restricted areas or critical assets, then they are affected individuals who must be screened for the purposes of the Personnel Surety Program.

However, the preamble to the CFATS Interim Final Rule could be read to imply that a different population would undergo vetting rather than the population suggested in the regulatory text of CFATS. To the extent that there is a potential conflict, the regulatory text of CFATS takes precedence. As such, the populations of individuals who must be vetted under 6 CFR 27.230(a)(12) are the same as those described in the 60-day notice preceding this 30-day notice: (1) Facility personnel (e.g., employees and contractors) with access (unescorted or otherwise) to restricted areas or critical assets, and (2) unescorted visitors with access to restricted areas or critical assets.

DHS would like to underscore that a high-risk chemical facility has wide latitude in its unique and tailored SSP regarding the terms under which facility personnel will be granted access, either unescorted or otherwise, to restricted areas and critical assets. Each high-risk chemical facility will need to consider its unique security concerns when determining which individuals will be afforded access to restricted areas or critical assets.

Additionally, DHS will expect that each facility be able to explain why an individual is an affected individual. Specifically, an affected individual must meet one and only one of the following three criteria: (1) The individual is facility personnel with unescorted access to restricted areas or critical assets; (2) the individual is facility personnel with access, but not unescorted access, to restricted areas or critical assets; or (3) the individual is an unescorted visitor with access to restricted areas or critical assets.

(F) DHS solicited comments which respond to the statement that a Federal law enforcement agency may, if appropriate, contact the high-risk chemical facility as a part of a law enforcement investigation into terrorist ties of facility personnel.

Comment: One commenter expressed concern that contact from a Federal law enforcement agency about an individual

who is properly on the watchlist but is innocent nevertheless may result in adverse employment decisions.

Response: Contact by a Federal law enforcement organization does not necessarily indicate that any affected person is a known or suspected terrorist. Further, employment decisions made by a high-risk chemical facility in response to contact by a Federal law enforcement agency are not regulated by CFATS. A corporation or facility should ensure that it is complying with all applicable laws, including applicable state regulations, when considering employment decisions.

It should also be noted that DHS will randomly audit its vetting processes in an effort to maximize vetting accuracy and Personnel Surety Program efficiency. As part of this auditing, DHS may request information on a small percentage of affected individuals after those individuals have been initially vetted against the TSDB. A request for additional information does not imply, and should not be construed to indicate, that an individual is known or suspected to be associated with terrorism.

(G) DHS solicited comments which respond to the Department's intention to seek an exception to the notice requirement under 5 CFR 1320.8(b)(3).

Comment: DHS received several comments in response to the Department's intention to seek an exception to the PRA's notice requirement. Every comment expressed concern about the impact to an affected individual's right to be granted notice under the Privacy Act. See 5 U.S.C. 552a(e)(3).

Response: The request for an exception to 5 CFR 1320.8(b)(3) is related to the PRA and unrelated to the Privacy Act; 5 CFR 1320.8(b)(3) requires that each collection of information shall inform and provide reasonable notice to the potential persons to whom the collection of information is addressed. The request by DHS for an exception to 5 CFR 1320.8(b)(3) from OMB will ensure that DHS will be relieved of the potential obligation to require high-risk chemical facilities to collect signatures or other positive affirmations of these notices from affected individuals (although high-risk chemical facilities would not be precluded from collecting signatures or other positive affirmations of notice if this exception is granted). This exception will then afford high-risk chemical facilities wide latitude in choosing how to collect, recollect, or leverage already collected data based upon their unique business operations and processes.

Because the information being collected under this information collection request is information that will be used to identify individuals with known or suspected terrorist ties, the Department believes that it is important for affected individuals to be informed of the Government's intended use of their information. However, under CFATS the Department regulates high-risk chemical facilities and not affected individuals. Although the affected individual is ultimately the source of the collected information, the burden of submitting the collected data to DHS lies on the high-risk chemical facility. (For example, high-risk chemical facilities may collect affected individuals' information by having affected individuals fill out forms, or high-risk chemical facilities may submit batch files extracted from databases which contain the necessary information previously collected from affected individuals.) An exception to 5 CFR 1320.8(b)(3) will ensure that the Department does not need to inspect, audit, or receive confirmation (*e.g.*, signatures of acknowledgement from affected individuals) from high-risk chemical facilities where every affected individual has received notice under the PRA of this information collection.

The Department's request for an exception to 5 CFR 1320.8(b)(3) of the PRA is not a request for an exception to provide notice to affected individuals under the Privacy Act. If this exception is granted, high-risk chemical facilities will be relieved of the potential obligation to collect signatures or other positive affirmations from affected individuals, but will still be obligated to affirm that required privacy notice has been provided to affected individuals before personal information is collected.

Comment: Several commenters suggested that affected individuals should be notified in writing that they must undergo background checks consistent with the requirements of 6 CFR 27.230 as a condition of employment at any high-risk chemical facility. Commenters also suggested that affected individuals should be advised of their rights to contest the findings of background checks, and of how to contest those findings.

Response: No affirmative written statements of this sort are required by CFATS. However, DHS has discussed Personnel Surety Program background check requirements in CFATS in the Advanced Notice of Rulemaking preceding CFATS (71 FR 78276 (Dec. 28, 2006)), the CFATS Risk-Based Performance Standards Guidance Document (May 2009), and the

Personnel Surety Program's 60-day PRA notice (74 FR 27555 (June 10, 2009)).

(H) DHS also received unsolicited comments in response to the 60-day notice related to the CFATS Personnel Surety Program.

Comment: One commenter expressed disappointment in the proposed information collection, because the commenter believed that the collection approach did not guarantee the availability of all due process protections under notice and comment rulemaking pursuant to the Administrative Procedure Act (APA).

Response: Through this notice and through DHS's June 10, 2009, 60-day PRA notice, 74 FR 27555 (June 10, 2009), DHS is fulfilling its obligations to solicit and respond to public comment under the PRA. DHS's PRA publications detail (1) which data points the Department will collect in order to conduct vetting against the TSDB; (2) how the Department will collect those data points; and (3) how the Department will perform vetting against the TSDB. This type of program description is the type of detail which is appropriate in a PRA notice, because it allows DHS to solicit comments on how to improve the proposed information collection and to consider ways to reduce the burden the CFATS Personnel Surety Program will place on affected individuals and high-risk chemical facilities.

Comment: Many commenters expressed concern that DHS would not notify high-risk chemical facilities when affected individuals are determined to be known or suspected terrorists. Commenters stated that as a result of such lack of notification, high-risk chemical facilities may unknowingly grant access to individuals who are known or suspected to have terrorist ties, thereby subjecting facility personnel and surrounding communities to unnecessary risk. Some of the commenters acknowledged that there may be circumstances when it is either appropriate or inappropriate to contact a facility in the context of a law enforcement investigation, but stated that DHS should not withhold TSDB vetting results as a general matter. Other commenters suggested that DHS should always notify facilities about known or suspected terrorists to enable appropriate facility action, such as potentially limiting or denying known or suspected terrorists' access to restricted areas or critical assets.

Response: DHS will not routinely notify high-risk chemical facilities of Personnel Surety Program vetting results. DHS will coordinate with Federal law enforcement entities to monitor and/or prevent situations in

which known or suspected terrorists have access to high-risk chemical facilities. The precise manner in which DHS or Federal law enforcement entities could contact high-risk chemical facilities following vetting are beyond the scope of this PRA notice.

Comment: Commenters also suggested that failure to notify an individual that he/she is a known or suspected terrorist would abrogate that individual's right to request an administrative adjudication of a finding under RBPS-12 that he/she is a potential security threat.

Response: Administrative adjudications which contest findings that affected individuals are potential security threats are provided by 6 CFR 27.310(a)(1). The Department does not intend to limit affected individuals' abilities to request administrative adjudications merely because it will not routinely notify them of TSDB vetting results. Individuals who believe they have been adversely affected by vetting may file Notices of Application for Review with the Department.

Comment: One commenter recommended that DHS should not collect an acknowledgement of State and local privacy law compliance from high-risk chemical facilities. The commenter suggested that requiring a compliance certification would add unnecessary procedural burden to the Personnel Surety Program because DHS is not responsible for State or local privacy law compliance.

Response: DHS agrees with the commenter and will not collect this acknowledgement as part of Personnel Surety Program information submissions.

Solicitation of Comments

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology

(e.g., permitting electronic submissions of responses).

The Department is particularly interested in comments which:

1. Respond to the Department's interpretation of the population affected by RBPS-12 background checks, as outlined in 6 CFR 27.230(a)(12);
2. Respond to fact that the Department or a Federal law enforcement agency may, if appropriate, contact the high-risk chemical facility as a part of a law enforcement investigation into terrorist ties of facility personnel;
3. Respond to the Department's intention to collect information that identifies the high-risk chemical facilities, restricted areas and critical assets to which each affected individual has access; and
4. Respond to the Department on its intention to seek an exception to the notice requirement under 5 CFR 1320.8(b)(3).

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate, Office of Infrastructure Protection, Infrastructure Security Compliance Division.

Title: CFATS Personnel Surety Program.

Form: Not Applicable.

OMB Number: 1670-NEW.

Frequency: As required by the DHS-approved schedule.

Affected Public: High-risk chemical facilities as defined in 6 CFR part 27, high-risk chemical facility personnel, and as appropriate, unescorted visitors with access to restricted areas or critical assets.

Number of Respondents: 354,400 individuals.

Estimated Time per Respondent: 0.59 hours (35.4 minutes).

Total Burden Hours: 210,351.7 annual burden hours.

Total Burden Cost (capital/startup): \$0.00.

Total Burden Cost (operating/maintaining): \$17,669,543.

Dated: March 6, 2010.

Thomas Chase Garwood, III,

Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2010-8312 Filed 4-12-10; 8:45 am]

BILLING CODE 9110-9P-P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS-2009-0146]

Privacy Act of 1974; Department of Homeland Security Citizenship and Immigration Services Ombudsman-001 Virtual Ombudsman System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security is giving notice that it proposes to establish a new Department of Homeland Security system of records notice titled, "Department of Homeland Security Citizenship and Immigration Services Ombudsman-001 Virtual Ombudsman System of Records." This system of records will ensure the efficient and secure processing of information to aid the Citizenship and Immigration Services Ombudsman in providing assistance to individuals, employers, and their representatives in resolving problems with U.S. Citizenship and Immigration Services; identify areas in which individuals, employers, and their representatives have problems working with U.S. Citizenship and Immigration Services; and to the extent possible, propose changes to mitigate problems pursuant to 6 U.S.C. 272. This newly established system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before May 13, 2010. This new system will be effective May 13, 2010.

ADDRESSES: You may submit comments, identified by docket number DHS-2009-0146 by one of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 703-483-2999.

- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

- *Docket:* For access to the docket to read background documents or comments received go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Raymond Mills (202-357-8100), Privacy Point of Contact, Office of the Citizenship and Immigration Services Ombudsman, Department of Homeland Security, Washington, DC 20528. For privacy issues please contact: Mary Ellen Callahan (703-235-0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to the Privacy Act of 1974, (5 U.S.C. 552a), the Department of Homeland Security (DHS) Citizenship and Immigration Services Ombudsman (CISOMB) is giving notice that it proposes to establish a new DHS system of records notice titled, "DHS/CISOMB-001 Virtual Ombudsman System of Records." This system of records will ensure the efficient and secure processing of information to aid the CISOMB in providing assistance to individuals, employers, and their representatives in resolving problems with U.S. Citizenship and Immigration Services (USCIS); identify areas in which individuals, employers, and their representatives have problems working with USCIS; and to the extent possible, propose changes to mitigate problems pursuant 6 U.S.C. 272.

CISOMB has developed the DHS/CISOMB-001 Virtual Ombudsman System of Records to ensure the efficient and secure processing of information and to aid the Ombudsman in assisting individuals and employers in making systemic recommendations to USCIS. The core of the DHS/CISOMB-001 Virtual Ombudsman System of Records is CISOMB's Web form 7001 which is a user interface Web-based form which will automatically convert information submitted by an individual or employer into a case within CISOMB's account within Internet Quorum/Enterprise Correspondence Tracking (IQ/ECT) system. IQ/ECT is the Department's enterprise-wide correspondence and case management tracking system. This system allows the Department's headquarters and components to manage cases and resolve issues in a coordinated and timely manner. For more information on IQ/ECT, please view the Enterprise Correspondence Tracking System PIA at <http://www.dhs.gov/privacy>. The system also enables CISOMB to segregate data into several categories to generate internal reports, provide customized feedback to individuals and employers, and supply real-time aggregated

statistical information for the CISOMB to assist individuals and employers with their problems with USCIS.

The purpose of this system is to provide efficient and secure case management and processing of information related to individuals and employers problems allowing the Ombudsman to make systemic recommendations to USCIS. The Department's authority for this collection is primarily Section 452 of the Homeland Security Act of 2002. This system will collect individuals' personal information to support the Ombudsman's efforts to make recommendations to USCIS pursuant to 6 U.S.C. 272. Efforts have been made to safeguard records in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions. The routine uses posted cover sharing with the Department of Justice for legal representation; to Congress at the request of a constituent; to the National Archives and Records Administration for records retention and disposal; to agencies, organizations, and individuals for purposes of audit as well as for security breaches; to contractors of the Department in performance of their contractual duties; to appropriate agencies and entities for investigations and prosecutions; and to an attorney or representative who is acting on behalf of an individual. This system collects information under the Paperwork Reduction Act using the following form: DHS Form 7001, Case Problem Submission Worksheet and Supporting Statement Case Problem Submission, OMB Control Number 1601-0004, Expiration Date 01/01/2013.

This newly established system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency for which information is retrieved by

the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses to their records are put, and to assist individuals to more easily find such files within the agency. Below is the description of the DHS/CISOMB-001 Virtual Ombudsman System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

System of Records:

DHS/CISOMB-001

SYSTEM NAME:

Citizenship and Immigration Services Ombudsman—001 Virtual Ombudsman System of Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at Citizenship and Immigration Services Ombudsman Headquarters in Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include: any member of the general public, including individuals, employers, and their representatives seeking assistance from the Citizenship and Immigration Services Ombudsman in resolving general matters, issues, or problems with USCIS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include:

- Individual's full legal name including any aliases;

- Individual's date and country of birth;
- Individual's legal citizenship;
- Individual's alien ("A") number;
- Full legal name of person preparing form if other than the individual named in the case;
- Applications and petitions filed;
- Receipt number located on the top left hand corner of Notice of Action (Form I-797) received from USCIS in response to the application/petition filed;
- Immigration status or interim benefit applied or petitioned for;
- Type of case problem;
- Source of case problem;
- Description of case problem;
- Prior actions taken to remedy the problem;
- Designated attorney/representative;
- Consent of the petitioner for USCIS to disclose information in the file to the designated representative;
- Verification statement signed and dated by the individual of the inquiry or the authorized representative; and
- Declaration by the individual or the attorney or representative submitting the case problem.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 452 of the Homeland Security Act of 2002.

PURPOSE(S):

The purpose of this system is to provide efficient and secure case management and processing of information related to individuals and employers problems with USCIS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3), and in accordance with 6 U.S.C. 272, as follows:

A. To the Department of Justice (including United States Attorney Offices) or other federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;
2. any employee of DHS in his/her official capacity;
3. any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or

4. the United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish a CISOMB function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate Federal, State, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face

or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To an attorney or representative who is acting on behalf of an individual covered by this system of records to obtain the individual's information submitted to the Virtual Ombudsman System.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD-ROM.

RETRIEVABILITY:

Records may be retrieved by CISOMB Case Number, Alien Registration Number, or by the individuals' name.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

In accordance with National Archives and Records Administration approved retention and disposal policy N1-563-08, processed case files are cut off at the final disposition of the case and are deleted or destroyed ten years after cutoff. Uncompleted case files are the record copy of cases where additional information is requested, but not received. Cases are closed 30 days after the request for additional information. These records are cut off 30 days from date of request if no response, and are deleted or destroyed 5 years after cutoff.

SYSTEM MANAGER AND ADDRESS:

CISOMB VOS Project Manager (202-357-8100), Office of the Citizenship and Immigration Services Ombudsman,

Department of Homeland Security, Washington, DC 20528.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the CISOMB's FOIA Officer, whose contact information can be found at <http://www.dhs.gov/foia> under "contacts." When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief FOIA Officer at <http://www.dhs.gov> or 1-866-431-0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created;
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records; and
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Information originates from stakeholders and customers who contact the CISOMB.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: March 19, 2010.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2010-8313 Filed 4-12-10; 8:45 am]

BILLING CODE 9110-9B-P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS-2010-0017]

Privacy Act of 1974, Department of Homeland Security Transportation Security Administration—013 Federal Flight Deck Officer Record System

AGENCY: Privacy Office, DHS.

ACTION: Notice to alter an existing Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974 the Department of Homeland Security proposes to update and reissue an existing Department of Homeland Security system of records notice titled, Transportation Security Administration—013 Federal Flight Deck Officer Record System, previously published on August 18, 2003. The Federal Flight Deck Officer Record System contains records necessary for assessment, acceptance, training, participation, and recertification of deputized pilots of commercial air carriers who participate in the Flight Deck Officer Program designed to defend aircraft flight decks against acts of criminal violence or air piracy.

As a result of the biennial review of this system, modifications are being made to the system of records' routine uses, record sources, retention and disposal, notification procedures, and system manager and address.

Portions of this system are exempt under 5 U.S.C. 552a(k)(1), (k)(2) and (k)(6) as reflected in the final rule published in the **Federal Register** on June 25, 2004.

This updated system will continue to be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before May 13, 2010. The system will be effective May 13, 2010.

ADDRESSES: You may submit comments, identified by docket number DHS-2010-0017 by one of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 703-483-2999.

- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Peter Pietra, Privacy Officer, Transportation Security Administration, TSA-36, 601 South 12th Street, Arlington, VA 20598-6036 or TSAPrivacy@dhs.gov. For privacy issues please contact: Mary Ellen Callahan (703-235-0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) Transportation Security Administration (TSA) proposes to update and reissue a DHS/TSA system of records notice titled, DHS/TSA-013 Federal Flight Deck Officer Record System (FDORS), previously published on August 18, 2003 (68 FR 49496).

TSA's mission is to protect the nation's transportation systems to ensure freedom of movement for people and commerce. To achieve this mission, TSA is required to develop and adapt its security programs to respond to evolving threats to transportation security. In accordance with the biennial review of this system, the following modifications are being made:

- DHS/TSA is updating the system of records to incorporate five Department of Homeland Security (DHS) standard routines uses. One routine use will allow the release of information to appropriate agencies, entities, and persons when DHS/TSA suspects or has confirmed that the security or confidentiality of an information system of records has been compromised. Another routine use permits the release of information to the media when there exists a legitimate public interest in disclosing information. Release under this routine use will require the approval of the DHS Chief Privacy officer in consultation with counsel. The third routine use allows the release of information to a court, magistrate,

administrative tribunal or opposing counsel or parties where a federal agency is a party or has an interest in the litigation or administrative proceeding. The fourth routine use allows DHS/TSA to release information to a former employee when it is necessary to consult with the former employee regarding a matter that is within that person's former area of responsibility. The fifth routine use allows DHS/TSA to release information to appropriate entities where it would assist in the enforcement of civil or criminal laws.

- DHS/TSA is revising a routine use currently in by adding indirect air carriers and other facility operators as potential recipients of information from these systems when appropriate to address a threat or potential threat to transportation security or national security, or when required for administrative purposes related to the effective and efficient administration of transportation security laws.

- DHS/TSA is also revising a current routine use by adding indirect air carriers and other facility operators as potential recipients of information about individuals who are their employees, job applicants, or contractors, or persons to whom they issue identification credentials or grant clearances to secured areas in transportation facilities when relevant to such employment, application, contract, training or the issuance of such credentials or clearances.

- Finally, DHS/TSA has removed as a routine use the sharing of information with the Attorney General of the United States concerning violations of the Brady Handgun Violence Prevention Act as it is duplicative.

- The record source categories are being updated to reflect the use of commercial and public record databases and Web sites to obtain information regarding the identity of individuals who attempt to gain access to the sterile areas of the airport and for whom identity needs to be verified or individuals who are being vetted to qualify as federal flight deck officers.

- The retention and disposal section is updated to reflect the records retention schedules approved by the National Archives and Records Administration (NARA).

- The notification section was changed to reflect that inquiries regarding whether the applicable system contains records about an individual should be directed to TSA's Freedom of Information Act (FOIA) Office.

- The system manager and address were revised to reflect the current system manager.

FFDORS contains records necessary for assessment, acceptance, training, participation, and recertification of deputized pilots of commercial air carriers who participate in the Flight Deck Officer Program designed to defend aircraft flight decks against acts of criminal violence or air piracy.

As a result of the biennial review of this system, modifications are being made to the system of records' routine uses, record sources, retention and disposal, notification procedures, and system manager and address.

Portions of this system are exempt under 5 U.S.C. 552a(k)(1), (k)(2) and (k)(6) as reflected in the final rule published on June 25, 2004, 69 FR 35536.

Consistent with the Privacy Act, information shared in the Federal Flight Deck Officer Records System may be shared with other DHS components, as well as appropriate federal, state, local, tribal, foreign, or international government agencies. This sharing will only take place after DHS determines that the receiving component or agency has a need-to-know the information to carry out national security, law enforcement, immigration, intelligence, or other functions consistent with the routine uses set forth in this system of records notice.

II. Privacy

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States government collects, maintains, uses, and disseminates individual's records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that

the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses to which their records are put, and to assist individuals to more easily find such files within the agency. Below is the description of the Transportation Security Administration 013 Federal Flight Deck Officer Record System system of records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

System of Records:

DHS/TSA 013

SYSTEM NAME:

Transportation Security Administration 013 Federal Flight Deck Officer Record System (FFDORS).

SECURITY CLASSIFICATION:

Classified, sensitive.

SYSTEM LOCATION:

Federal Flight Deck Officer (FFDO) Program Records are maintained at the offices of the Transportation Security Administration (TSA) Headquarters in Reston, Virginia.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include:

1. All individuals who volunteer to participate in the FFDO program,
2. FFDO program participants, *i.e.*, those volunteers who are accepted into the FFDO training program and deputized as FFDOs, and
3. former FFDO program participants.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system includes all records required in connection with an individual's voluntary participation in the program, including records associated with FFDO application, selection, training, participation, retention and requalification. FFDORS includes records about individuals who applied but were not accepted into the program. Such records may include, but are not limited to the following:

- (a) Volunteer forms prepared by applicants for program participation containing such information as work history, education, military service, certificates of specialized training, awards and honors;
- (b) Copies of correspondence between the applicant and TSA, and between TSA and other agencies, applicant places of employment, and educational

institutions, for the purposes of verifying information provided to TSA by the applicant;

(c) The FD-258 Fingerprint card, investigative summaries, and compilations of criminal history record checks, to include administrative records and correspondence incidental to the background investigation process, obtained from various law enforcement authorities;

(d) Results of written cognitive and noncognitive assessments and information regarding how the volunteer form was rated, prepared by TSA employees or contract psychologists;

(e) Records regarding the TSA's final decision to accept or reject volunteers for the FFDO program for suitability or medical reasons, including records prepared by TSA employees, and responses to and results of approved psychological assessments or similar tests administered by TSA;

(f) Results of telephonic or in-person interviews with program volunteers, including summary recommendations regarding the individual's participation in the program, prepared by TSA employees;

(g) Records prepared by TSA employees related to the selection or rejection of volunteer applicants (to include records generated as a result of any administrative appeal of TSA's determination to reject an applicant), and records related to recertification and decertification;

(h) Records prepared by TSA employees related to training, including academic and firearms performance; and

(i) Records prepared by TSA employees related to requalification and deputation renewal.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 114, 44921.

PURPOSE(S):

The purpose of this system is to maintain records necessary for the assessment and acceptance of volunteers, and the training, participation and recertification of deputized volunteer pilots of air carriers providing commercial air transportation as federal law enforcement to defend the flight decks of aircraft of such air carriers against acts of criminal violence or air piracy.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. To the Department of Justice (DOJ) (including United States Attorney Offices) or other federal agency in

anticipation of, or conducting litigation, or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;
2. Any current or former employee of DHS in his/her official capacity;
3. Any current or former employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee, or
4. The United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant cooperative agreement or other assignment for DHS, when necessary to accomplish an

agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate federal, state, tribal, local, international, or foreign agency, including law enforcement, or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To the United States Department of Transportation, its operating administrations, or the appropriate state or local agency when relevant or necessary to:

1. Ensure safety and security in any mode of transportation;
2. Enforce safety- and security-related regulations and requirements;
3. Assess and distribute intelligence or law enforcement information related to transportation security;
4. Assess and respond to threats to transportation;
5. Oversee the implementation and ensure the adequacy of security measures at airports and other transportation facilities;
6. Plan and coordinate any actions or activities that may affect transportation safety and security or the operations of transportation operators; or
7. The issuance, maintenance, or renewal of a license, certificate, contract, grant, or other benefit.

I. To a Federal, State, local, tribal, territorial, foreign, or international agency, in response to queries regarding persons who may pose a risk to transportation or national security; a risk of air piracy or terrorism or a threat to airline or passenger safety; or a threat to aviation safety, civil aviation, or national security.

J. To the appropriate Federal, State, local, tribal, territorial, foreign, or international agency regarding individuals who pose or are suspected of posing a risk to transportation or national security.

K. To a Federal, State, local, tribal, territorial, foreign, or international agency, where such agency has requested information relevant or necessary for the hiring or retention of an individual, or the issuance of a

security clearance, license, contract, grant, or other benefit.

L. To a Federal, State, local, tribal, territorial, foreign, or international agency, if necessary to obtain information relevant to a DHS/TSA decision concerning the hiring or retention of an employee, the issuance of a security clearance, license, contract, grant, or other benefit.

M. To international and foreign governmental authorities in accordance with law and formal or informal international agreement.

N. To third parties to the extent necessary to obtain information pertinent to the individual's fitness and qualifications for the FFDO program.

O. To airport operators, aircraft operators, and maritime and surface transportation operators, indirect air carriers, and other facility operators about individuals who are their employees, job applicants, or contractors, or persons to whom they issue identification credentials or grant clearances to secured areas in transportation facilities when relevant to such employment, application, contract, training or the issuance of such credentials or clearances.

P. To the DOJ in review, settlement, defense, and prosecution of claims, complaints, and lawsuits involving matters over which DHS/TSA exercises jurisdiction.

Q. To a former employee of DHS, in accordance with applicable regulations, for purposes of responding to an official inquiry by a Federal, State, or local government entity or professional licensing authority; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

R. To a court, magistrate, or administrative tribunal where a Federal agency is a party to the litigation or administrative proceeding in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation or settlement negotiations or in connection with criminal law proceedings.

S. To the appropriate Federal, State, local, tribal, territorial, foreign, or international agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, license, or treaty, where DHS/TSA determines that the information would assist in the enforcement of a civil or criminal laws.

T. To the news media and the public, with the approval of the DHS Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy or a risk to transportation or national security.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system may be maintained on paper and in computer-accessible storage media. Records may also be stored on microfiche and roll microfilm. Records that are sensitive or classified are safeguarded in accordance with agency procedures, and applicable Executive Orders and statutes.

RETRIEVABILITY:

Information can be retrieved by name, address, social security, and account number or other assigned tracking identifier of the individual on whom the records are maintained.

SAFEGUARDS:

Information in this system is safeguarded in accordance with applicable laws, rules and policies. All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include restricting access to authorized personnel who have a need-to-know; using locks, alarm devices, and passwords; and encrypting data communications. TSA file areas are locked after normal duty hours and security personnel protect the facilities from the outside.

RETENTION AND DISPOSAL:

Records associated with the assessment of FFDO's will be destroyed one year after TSA is notified that access based on security threat assessment is no longer valid; where an individual was a possible match to a watchlist, records will be destroyed seven years after completion of the security threat assessment or one year after being notified that access based on

the security threat assessment is no longer valid, whichever is longer; and where the individual is an actual match to a watchlist records will be destroyed 99 years after the security threat assessment or seven years after TSA is notified the individual is deceased, whichever is shorter.

SYSTEM MANAGERS AND ADDRESS:

Transportation Security Administration, Office of Law Enforcement/Federal Air Marshal Service, 1900 Oracle Way, Suite 500, Reston, VA 20190.

NOTIFICATION PROCEDURE:

The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act because it is a law enforcement system. However, TSA will consider individual requests to determine whether or not information may be released. Thus, individuals seeking notification and access to any record contained in the system of records, or seeking to contest its content, may submit a request in writing to the Headquarters or component's FOIA Officer, whose contact information can be found at <https://www.dhs.gov/foia> under "contacts." TSA's FOIA Officer is located at: Freedom of Information Act Office, TSA-20, 601 S. 12th Street, 11th Floor, East Tower, Arlington, VA 20598-6020, 1-866-FOIA-TSA or 571-227-2300, Fax: 571-227-1406, E-mail: foia.tsa@dhs.gov. If an individual believes more than one component maintains Privacy Act records concerning him or her the individual may submit the request to the Chief Privacy Officer, Department of Homeland Security, 245 Murray Drive, SW., Building 410, STOP-0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Director, Disclosure and FOIA, <http://www.dhs.gov> or 1-866-431-0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you,
- Identify which component(s) of the Department you believe may have the information about you,
- Specify when you believe the records would have been created,
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records,
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Information maintained in this system is primarily obtained from the FFDO volunteer form or derived from information the applicant supplied, reports from medical personnel on physical and psychological results of examinations, training records, and law enforcement and intelligence agency record systems, commercial and public databases and Web sites and individuals interviewed as part of the background investigation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system are exempt under 5 U.S.C. 552a(k)(1), (k)(2) and (k)(6) as reflected in the final rule published on June 25, 2004.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2010-8317 Filed 4-12-10; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS-2010-0015]

Privacy Act of 1974; Department of Homeland Security Transportation Security Administration—006 Correspondence and Matters Tracking Records

AGENCY: Privacy Office, DHS.

ACTION: Notice to alter an existing Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974 the Department of Homeland Security is updating and reissuing the Department of Homeland Security Transportation Security Administration—006 Correspondence and Matters Tracking Records system of records, last published on August 18, 2003, to reflect necessary programmatic changes. As a result of the biennial review of this system, modifications are being made to the system of records' authorities, routine uses, data retention and disposal, notification procedures, and system location. The Department of Homeland Security Transportation Security Administration Correspondence and Matters Tracking Records system covers records associated with the management, tracking, retrieval, and response to incoming correspondence, all outgoing correspondence, memoranda, documentation, injuries, claims, and complaints associated with all subject matters over which the Transportation Security Administration exercises jurisdiction. For example, records pertaining to individuals who make a complaint to the agency's contact center are covered by this system.

Portions of this system are exempt under 5 U.S.C. 552a(k)(1) and (k)(2) as reflected in the final rule published in the **Federal Register** on June 25, 2004.

This updated system will continue to be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before May 13, 2010. This new system will be effective May 13, 2010.

ADDRESSES: You may submit comments, identified by docket number DHS–2010–0015 by one of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 703–483–2999.

- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

- *Docket:* For access to the docket to read background documents or comments received go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Peter Pietra (TSAPrivacy@dhs.gov), Privacy Officer, Transportation Security Administration, TSA–36, 601 South 12th Street, Arlington, VA, 20598–6036. For privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) Transportation Security Administration (TSA) is updating and reissuing a DHS/TSA system of records notice titled, DHS/TSA–006 Correspondence Matters Tracking System Records (CMTR) (68 FR 49496, August 18, 2003).

TSA's mission is to protect the nation's transportation systems to ensure freedom of movement for people and commerce. To achieve this mission, TSA is required to develop and adapt its security programs to respond to evolving threats to transportation security. In accordance with the biennial review of this system, the following modifications are being made:

- TSA is updating the authorities for maintenance of the system.
- DHS/TSA is updating the system of records to incorporate four DHS standard routines uses. One routine use will allow release of information to appropriate agencies, entities, and persons when DHS/TSA suspects or has confirmed that the security or confidentiality of information in a system of records has been compromised. The second routine use permits the release of information to the media when there exists a legitimate public interest in disclosing information. Release under this routine use will require the approval of the Chief Privacy Officer in consultation with the counsel. The third routine use allows the release of information to a court, magistrate, administrative tribunal or opposing counsel or parties where a federal agency is a party or has an interest in the litigation or administrative proceeding. The fourth routine use allows DHS/TSA to release information to a former employee when it is necessary to consult with the former employee regarding a matter that is within that person's former area of responsibility.

- Additionally, DHS/TSA is revising a routine use that currently allows DHS/TSA to release information only to third parties during the course of an investigation related to transportation

security. The revised routine use will allow disclosure to third parties for the purposes of investigating any matter before DHS/TSA. These changes will allow DHS/TSA to thoroughly and efficiently investigate and adjudicate theft or damage claims before the agency, as well as complaints about employees. DHS/TSA is also revising a current routine use by adding indirect air carriers and other facility operators as potential recipients of information about individuals who are their employees, job applicants, or contractors, or persons to whom they issue identification credentials or grant clearances to secured areas in transportation facilities when relevant to such employment, application, contract, training or the issuance of such credentials or clearances.

DHS/TSA is removing the routine uses involving sharing with the Department of State and other Intelligence Community agencies, information relating to persons who may pose a risk to transportation or national security. Also removed as a routine use is the sharing of information with the Attorney General of the United States concerning violations of the Brady Handgun Violence Prevention Act. Both routine uses are duplicative.

- The retention and disposal section has been updated to reflect the records retention schedule approved by the National Archives and Records Administration (NARA).
- The notification section was changed to reflect that inquiries regarding whether the applicable system contains records about an individual should be directed to TSA's Freedom of Information Act (FOIA) Office.
- DHS/TSA updated the system location to reflect the current location of the system.

The CMTR system covers records associated with the management, tracking, retrieval, and response to incoming correspondence, all outgoing correspondence, memoranda, documentation, injuries, claims, and complaints associated with all subject matters over which DHS/TSA exercises jurisdiction. For example, records pertaining to individuals who make a complaint to the agency's contact center are covered by this system. DHS/TSA is revising its system of records to reflect necessary programmatic changes.

Portions of this system are exempt under 5 U.S.C. 552a(k)(1) and (k)(2) as reflected in the final rule published in the **Federal Register** on June 25, 2004 (69 FR 35536).

Consistent with the Privacy Act, information stored in the CMTR system may be shared with other DHS

components, as well as appropriate federal, state, local, tribal, foreign, or international government agencies. This sharing will only take place after DHS determines that the receiving component or agency has a need to know the information to carry out national security, law enforcement, immigration, intelligence, or other functions consistent with the routine uses set forth in this system of records notice.

II. Privacy

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses to their records are put, and to assist individuals to more easily find such files within the agency. Below is the description of the DHS/TSA-006 CMTR system system of records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM OF RECORDS:

DHS/TSA-006.

SYSTEM NAME:

Transportation Security Administration 006 Correspondence and Matters Tracking Records (CMTR).

SECURITY CLASSIFICATION:

Sensitive, Classified.

SYSTEM LOCATION:

Records are maintained at the TSA Office of the Executive Secretariat, TSA Headquarters in Arlington, Virginia. Records may also be located at the Office of Legislative Affairs, Office of Civil Rights and Liberties, Redress Office, and the Office of the Ombudsman (which includes the Consumer Response Center (CRC)), to the extent those offices maintain matter tracking information. Records may also be maintained in other offices at TSA Headquarters and the various TSA field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

To the extent not covered by any other system, this system covers individuals who submit inquiries, comments, complaints, or claims to TSA in writing, in person, or by telephone, for response and resolution and those with any matter pending before TSA. This includes TSA employees, Members of Congress and their staff, officers and employees of other Executive branch agencies and the White House, tort and property claimants who have filed claims against the Government or TSA, stakeholders, passengers in transportation, and members of the public.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence and information related thereto, including name, address, and telephone number of individuals contacting TSA; records of contacts made by or on behalf of individuals, including inquiries, comments, complaints, resumes and letters of reference; staff reports; TSA's responses to correspondence and calls; and staff recommendations on actions requiring approval or action by a TSA official. The system also includes records, including those prepared by TSA employees, related to matters under consideration by TSA.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 28 U.S.C. 1346(b), 1402(b), 2401(b), 2412(c), 2671-80; 31 U.S.C. 3325, 3332, 3701, 3711, 3721; 49 U.S.C. 114.

PURPOSES:

(a) To facilitate and assist in the management, tracking, retrieval, and response to incoming correspondence,

inquiries, claims, and complaints associated with all subject matters over which TSA exercises jurisdiction.

(b) To monitor assignment, disposition, status, and results of correspondence, inquiries, claims, and complaints sent to TSA and, generally, to review, analyze, investigate, and study trends identified by the concerns expressed.

(c) To facilitate and assist in the management, tracking, and retrieval of information associated with matters and issues under consideration by TSA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. To the Department of Justice (DOJ) (including United States Attorney offices) or other federal agency in anticipation of or conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;
2. Any current or former employee of DHS in his/her official capacity, or
3. Any current or former employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee, or
4. The United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;
2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of

harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS when necessary to perform an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate federal, state, tribal, local, international, or foreign agency, including law enforcement, or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To the United States Department of Transportation and its operating administrations when relevant or necessary to

1. Ensure safety and security in any mode of transportation;
 2. Enforce safety- and security-related regulations and requirements;
 3. Assess and distribute intelligence or law enforcement information related to transportation security;
 4. Assess and respond to threats to transportation;
 5. Oversee the implementation and ensure the adequacy of security measures at airports and other transportation facilities;
 6. Plan and coordinate any actions or activities that may affect transportation safety and security or the operations of transportation operators; or
 7. The issuance, maintenance, or renewal of a license, certificate, contract, grant, or other benefit.
- I. To a federal, state, local, tribal, territorial, foreign, or international

agency, in response to queries regarding persons who may pose a risk to transportation or national security; a risk of air piracy or terrorism or a threat to airline or passenger safety; or a threat to aviation safety, civil aviation, or national security.

J. To a federal, state, local, tribal, territorial, foreign, or international agency, where such agency has requested information relevant or necessary for the hiring or retention of an individual, or the issuance of a security clearance, license, contract, grant, or other benefit.

K. To a federal, state, local, tribal, territorial, foreign, or international agency, if necessary to obtain information relevant to a DHS/TSA decision concerning initial or recurrent security threat assessment, the hiring or retention of an employee; the issuance of a security clearance, license, endorsement, contract, grant, waiver, credential, or other benefit and to facilitate any associated payment and accounting.

L. To international and foreign governmental authorities in accordance with law and formal or informal international agreement.

M. To third parties during the course of an investigation into any matter before DHS/TSA to the extent necessary to obtain information pertinent to the investigation.

N. To airport operators, aircraft operators, and maritime and surface transportation operators, indirect air carriers, and other facility operators about individuals who are their employees, job applicants, or contractors, or persons to whom they issue identification credentials or grant clearances to secured areas in transportation facilities when relevant to such employment, application, contract, or the issuance of such credentials or clearances.

O. To a debt collection agency for the purpose of debt collection.

P. To a former employee of DHS, in accordance with applicable regulations, for purposes of responding to an official inquiry by a federal, state or local government entity or professional licensing authority; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

Q. To a court, magistrate, or administrative tribunal where a federal agency is a party to the litigation or administrative proceeding in the course

of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation or settlement negotiations or in connection with criminal law proceedings.

R. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, where there exists a legitimate public interest in the disclosure of the information except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy or a risk to transportation or national security.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Privacy Act information may be reported to consumer reporting agencies pursuant to 5 U.S.C. 552a(b)(12) for the purpose of collecting a debt on behalf of the United States Government.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be maintained on paper, audio, and video recordings, and in computer accessible storage media. Records may also be stored on microfiche and roll microfilm. Records that are sensitive or classified are safeguarded in accordance with agency procedures and applicable Executive Orders and statutes.

RETRIEVABILITY:

Records are retrieved by name, Social security number or other assigned identifier of an individual covered by this system.

SAFEGUARDS:

Information in this system is safeguarded in accordance with applicable laws, rules and policies. All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include restricting access to authorized personnel who have a need-to-know and password protection identification features. TSA file areas are locked after normal duty hours and the facilities are protected from the outside by security personnel.

RETENTION AND DISPOSAL:

In accordance with NARA approved records schedule, N1-560-03-4, Contact Center and Ombudsman inquiries are destroyed after three years; correspondence files including Congressional correspondence are

retained permanently; redress records are retained for seven years for individuals who were cleared as possible matches, and 99 years for individual who were actual matches.

SYSTEM MANAGER AND ADDRESS:

Director, Office of the Executive Secretariat, TSA Headquarters, 601 S. 12th Street, Arlington, VA 20598.

NOTIFICATION PROCEDURE:

The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act because it is a law enforcement system as reflected in the final rule published on June 25, 2004 (69 FR 35536). However, TSA will consider individual requests to determine whether or not information may be released. This, individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Headquarters or component's FOIA Officer, whose contact information can be found at <http://www.dhs.gov/foia> under "contacts." TSA's FOIA office may be reached by mail at Transportation Security Administration, TSA-20, FOIA Office, 601 S. 12th Street, Arlington, VA 20598. If an individual believes more than one component maintains Privacy Act records concerning him/her the individual may submit the request to the Chief Privacy Officer, Department of Homeland Security, 245 Murray Drive, SW., Building 410, STOP-0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system or records you request must conform with the privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address and data and place of birth. You must sign your request, and your signature must be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Director, Disclosure and FOIA, <http://www.dhs.gov> or 1-866-431-0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you,
- Identify which component(s) of the Department you believe may have the information about you,

- Specify when you believe the records would have been created,
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records,
- If your request is seeking records pertaining to other living individual, you must include a statement from the individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURE:

Same as "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

Same as "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Records are obtained from calls and correspondence from or on behalf of individuals who contact TSA with inquiries, comments, complaints, or claims, as well as from TSA employees or contractors and witnesses, and other third parties who provide pertinent information where applicable. Information may also be collected from documents such as records of the contact made with TSA, incident reports, and from other sources, such as employers, state and local agencies, other federal agencies, and related material for background as appropriate.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system are exempt under 5 §§ 552a(k)(1) and (k)(2) as reflected in the final rule published on June 25, 2004 (69 FR 35536).

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2010-8316 Filed 4-12-10; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS-2010-0016]

Privacy Act of 1974; Department of Homeland Security Transportation Security Administration—011, Transportation Security Intelligence Service Operations Files Systems of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice to alter an existing Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974 the Department of Homeland Security proposes to update and reissue a Department of Homeland Security system of records notice titled, Transportation Security Administration—011 Transportation Security Intelligence Service Operations Files previously published on December 10, 2004 to reflect necessary programmatic changes. As a result of the biennial review of this system, modifications are being made to the system of records' categories of individuals, categories of records, routine uses, record source categories, retention and disposal, and notification procedure. The Transportation Security Intelligence Service Operations Filing System contains records on individuals identified in intelligence, counterintelligence, transportation security and information systems security records that relate to the Transportation Security Administration's mission. For example, this system contains information on individuals involved in terrorism or the compromise of classified information.

Portions of this system are exempt under 5 U.S.C. 552a(j)(2), (k)(1), (k)(2) and (k)(5) as reflected in the final rule published in the **Federal Register** on August 4, 2006.

This updated system will continue to be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before May 13, 2010. This new system will be effective May 13, 2010.

ADDRESSES: You may submit comments, identified by docket number DHS-2010-0016 by one of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 703-483-2999.

- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Peter

Pietra, Privacy Officer, Transportation Security Administration, TSA-36, 601 South 12th Street, Arlington, VA 20598-6036 or TSAPrivacy@dhs.gov. For privacy issues please contact: Mary Ellen Callahan (703-235-0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) Transportation Security Administration (TSA) proposes to update and reissue a DHS/TSA system of records notice titled, DHS/TSA-011, Transportation Security Intelligence Service (TSIS) Operations Files System of Records (69 FR 71828, December 10, 2004).

TSA's mission is to protect the nation's transportation systems to ensure freedom of movement for people and commerce. To achieve this mission, TSA is required to develop and adapt its security programs to respond to evolving threats to transportation security. In accordance with the biennial review of this system, the following modifications are being made:

- The categories of records section is updated to include biometric records.
- DHS/TSA is incorporating four DHS standard routines uses. One routine use will allow release of information to appropriate agencies, entities, and persons when DHS/TSA suspects or has confirmed that the security or confidentiality of an information system of records has been compromised. Another routine use permits the release of information to the media when there exists a legitimate public interest in disclosing information. Release under this routine use will require the approval of the DHS Chief Privacy Officer in consultation with counsel. Another routine use allows the release of information to a court, magistrate, administrative tribunal or opposing counsel or parties where a Federal agency is a party or has an interest in the litigation or administrative proceeding. The fourth routine use allows DHS/TSA to release information to a former employee when it is necessary to consult with the former employee regarding a matter that is within that person's former area of responsibility.

- TSA is revising a routine use by adding indirect air carriers and other facility operators as potential recipients of information from these systems when appropriate to address a threat or potential threat to transportation security or national security, or when

required for administrative purposes related to the effective and efficient administration of transportation security laws.

- TSA is also revising a current routine use by adding indirect air carriers and other facility operators as potential recipients of information about individuals who are their employees, job applicants, or contractors, or persons to whom they issue identification credentials or grant clearances to secured areas in transportation facilities when relevant to such employment, application, contract, training or the issuance of such credentials or clearances.

- The record source categories are updated to reflect the use of commercial and public record databases and Web sites to obtain information regarding the identity of individuals who attempt to gain access to the sterile areas of the airport and for whom identity needs to be verified or individuals who are being vetted to qualify as Federal flight deck officers. The record source categories to include Federal, State, local and foreign agencies; formerly only U.S. agencies were included.

- For each system of records covered by this notice, the retention and disposal sections are updated to reflect the records retention schedules approved by the National Archives and Records Administration (NARA).

- The notification section for each system of records covered by this notice was changed to reflect that inquiries regarding whether the applicable system contains records about an individual should be directed to TSA's Freedom of Information Act (FOIA) Office.

The TSIS Operations Filing System contains records on individuals identified in intelligence, counterintelligence, transportation security and information systems security records that relate to TSA's mission. For example, this system contains information on individuals involved in terrorism or the compromise of classified information. DHS/TSA is revising its system of records to reflect necessary programmatic changes.

Portions of this system are exempt under 5 U.S.C. 552a(j)(2), (k)(1), (k)(2) and (k)(5) as reflected in the final rule published on August 4, 2006 in 71 FR 44223.

Consistent with the Privacy Act, information stored in the TSIS Operations Files System may be shared with other DHS components, as well as appropriate Federal, State, local, Tribal, foreign, or international government agencies. This sharing will only take place after DHS determines that the receiving component or agency has a

need to know the information to carry out national security, law enforcement, immigration, intelligence, or other functions consistent with the routine uses set forth in this system of records notice.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency recordkeeping practices transparent, to notify individuals regarding the uses to their records are put, and to assist individuals to more easily find such files within the agency. Below is the description of the DHS/TSA-011 TSIS Operations Files system of records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM OF RECORDS

DHS/TSA-011

SYSTEM NAME:

Transportation Security Administration 011 Transportation Security Intelligence Service (TSIS) Operations Files.

SECURITY CLASSIFICATION:

Classified, sensitive.

SYSTEM LOCATION:

Records are maintained at the Transportation Security Administration's Office of the Transportation Security Intelligence Service in Arlington, Virginia and field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals identified in intelligence, counterintelligence, transportation security, or information system security reports and supporting materials, including but not limited to individuals involved in matters of intelligence, law enforcement or transportation security, information systems security, the compromise of classified information, or terrorism.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include biographic and biometric information; intelligence requirements, analysis, and reporting; information systems security analysis and reporting; articles, public-source data, and other published information on individuals and events of interest to TSA; actual or purported compromises of classified intelligence; countermeasures in connection therewith; identification of classified source documents and distribution thereof; records related to transportation security matters (e.g., reports of security-related incidents), and law enforcement records as they pertain to issues involving transportation security.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 114; National Security Act of 1947, as amended, 50 U.S.C. 403–3(d); National Security Agency Act of 1959, Pub. L. 86–36, as amended, 50 U.S.C. 402 Note; E.O. 12333; E.O. 13292 and 12958; E.O. 9397; and National Security Directive 42.

PURPOSE(S):

To maintain records on intelligence, counterintelligence, transportation security, and information systems security matters as they relate to TSA's mission of protecting the nation's transportation systems. To identify potential threats to transportation security, uphold and enforce the law, and ensure public safety.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the privacy act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use

pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ) (including United States attorney Offices) or other Federal agency in anticipation of conducting, or conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;
2. Any current or former employee of DHS in his/her official capacity, or
3. Any current or former employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee, or
4. The United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other Federal agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. DHS has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information;

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, or others

performing or working on a contract, service, grant cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate Federal, State, Tribal, local, international, or foreign agency, including law enforcement, or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To the United States Department of Transportation, its operating administrations, or the appropriate State or local agency when relevant or necessary to:

1. Ensure safety and security in any mode of transportation;
2. Enforce safety- and security-related regulations and requirements;
3. Assess and distribute intelligence or law enforcement information related to transportation security;
4. Assess and respond to threats to transportation;
5. Oversee the implementation and ensure the adequacy of security measures at airports and other transportation facilities;
6. Plan and coordinate any actions or activities that may affect transportation safety and security or the operations of transportation operators; or
7. The issuance, maintenance, or renewal of a license, certificate, contract, grant, or other benefit.

I. To Federal, State, local, Tribal, territorial, foreign, or international agencies to provide intelligence, counterintelligence, information systems and transportation security information, and other information for the purpose of counterintelligence or antiterrorism activities authorized by U.S. law or Executive Order or for the purpose of enforcing laws that protect national security of the U.S.

J. To U.S. Government agencies regarding compromises of classified information including the document(s) apparently compromised, implications of disclosure of intelligence sources and methods, investigative data on

compromises, and statistical and substantive analysis of the data.

K. To any U.S. Government organization in order to facilitate any security, employment, detail, liaison, or contractual decision by any U.S. Government organization, or to facilitate access to any U.S. Government information system.

L. To U.S. agencies involved in the protection of intelligence sources and methods to facilitate such protection and to support intelligence analysis and reporting.

M. To a Federal, State, local, Tribal, territorial, foreign, or international agency, where such agency has requested information relevant or necessary for the hiring or retention of an individual, or the issuance of a security clearance, license, contract, grant, or other benefit.

N. To a Federal, State, local, Tribal, territorial, foreign, or international agency, if necessary to obtain information relevant to a DHS/TSA decision concerning the hiring or retention of an employee, the issuance of a security clearance, license, contract, grant, or other benefit.

O. To international and foreign governmental authorities in accordance with law and formal or informal international agreement.

P. To third parties during the course of or as follow-up to an investigation into violations or potential violations of the law, or an investigation related to the hiring or retention of an individual, or the issuance of a security clearance, license, contract, grant, or other benefit, to the extent necessary to obtain information pertinent to the follow-up inquiry or investigation.

Q. To airport operators, aircraft operators, maritime and surface transportation operators, indirect air carriers, and other facility operators about individuals who are their employees, job applicants, or contractors, or persons to whom they issue identification credentials or grant clearances to secured areas in transportation facilities when relevant to such employment, application, contract, training or the issuance of such credentials or clearances.

R. To the appropriate Federal, State, local, Tribal, territorial, foreign, or international agency regarding individuals who pose or are suspected of posing a risk to transportation or national security.

S. To airport operators, aircraft operators, maritime and surface transportation operators, indirect air carriers, or other facility operators when appropriate to address a threat or potential threat to transportation

security, or when required for administrative purposes related to the effective and efficient administration of transportation security laws.

T. To a court, magistrate, or administrative tribunal where a Federal agency is a party to the litigation or administrative proceeding in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings.

U. To a former employee of DHS, in accordance with applicable regulations, for purposes of responding to an official inquiry by a Federal, State, or local government entity or professional licensing authority; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

V. To the news media and the public, with the approval of the DHS Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy or a risk to transportation or national security.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be maintained on paper, audio and video recordings, and in computer-accessible storage media. Records may also be stored on microfiche and roll microfilm. Records that are sensitive or classified are safeguarded in accordance with agency procedures, and applicable Executive Orders and statutes.

RETRIEVABILITY:

Records may be retrieved by the individual's name, Social Security number, or other assigned personal identifier.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including

all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Pursuant to the approved National Archives and Records Administration records retention schedule N1-560-04-12, routine and insignificant case files are destroyed after thirty years; significant case files are retained permanently; watch logs are destroyed after thirty years; watchlists are destroyed 99 years after date of entry or seven years after confirmation of death, whichever is sooner.

SYSTEM MANAGER(S) AND ADDRESS:

Transportation Security Administration, Special Assistant, Office of Intelligence, TSA-10, 601 South 12th Street, Arlington, VA 20598.

NOTIFICATION PROCEDURE:

The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act because it is a law enforcement system. However, the Transportation Security Administration will consider individual requests to determine whether or not information may be released. Thus, individuals seeking notification and access to any record contained in the system of records, or seeking to contest its content, may submit a request in writing to the Headquarters or component's FOIA Officer, whose contact information can be found at <https://www.dhs.gov/foia> under "contacts." TSA's FOIA Officer is located at: Freedom of Information Act Office, TSA-20, 601 S. 12th Street, 11th Floor, East Tower, Arlington, VA 20598-6020, 1-866-FOIA-TSA or 571-227-2300, Fax: 571-227-1406, E-mail: foia.tsa@dhs.gov. If an individual believes more than one component maintains Privacy Act records concerning him or her the individual may submit the request to the Chief Privacy Officer, Department of Homeland Security, 245 Murray Drive, SW., Building 410, STOP-0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR part

5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Director, Disclosure and FOIA, <http://www.dhs.gov> or 1-866-431-0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you,
- Identify which component(s) of the Department you believe may have the information about you,
- Specify when you believe the records would have been created,
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records,
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURE:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURE:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from subject individuals; other Federal, State, local and foreign agencies and organizations; hard-copy media, including periodicals, newspapers, and broadcast transcripts, and commercial and public record databases and Web sites; public and classified reporting, intelligence source documents, investigative reports, and correspondence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system are exempt under 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), and (k)(5) as reflected in the final rule published on August 4, 2006, in 71 FR 44223.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2010-8315 Filed 4-12-10; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form N-600K, Revision of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection under Review: Form N-600K, Application for Citizenship and Issuance of Certificate under Section 322. OMB Control No. 1615-0087.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until June 14, 2010.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, NW., Washington, DC 20529-2210. Comments may also be submitted to DHS via facsimile to 202-272-8352, or via e-mail at rfs.regs@dhs.gov. When submitting comments by e-mail please add the OMB Control Number 1615-0087 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or

other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Citizenship and Issuance of Certificate under Section 322.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N-600K, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form provides an organized framework for establishing the authenticity of an applicant's eligibility and is essential for providing prompt, consistent and correct processing of such applications for citizenship under section 322 of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,500 responses at 1 hour and 35 minutes (1.583 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,374 annual burden hours.

If you need a copy of the information collection instrument, please visit: <http://www.regulations.gov/>.

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529-2210, telephone number 202-272-8377.

Dated: March 31, 2010.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2010-8361 Filed 4-12-10; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2010-0119]

Notification of the Imposition of Conditions of Entry for Certain Vessel Arriving to the United States From the Democratic Republic of Sao Tome and Principe

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces that it will impose conditions of entry on vessels arriving from the country of the Democratic Republic of Sao Tome and Principe.

DATES: The policy announced in this notice will become effective April 27, 2010.

ADDRESSES: This notice will be available for inspection and copying at the Docket Management Facility at the U.S. Department of Transportation, Room W12-140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call Mr. Michael Brown, International Port Security Evaluation Division, Coast Guard, telephone 202-372-1081. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826 or (toll free) 1-800-647-5527.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Section 70110 of title 46, United States Code, enacted as part of section 102(a) of the Maritime Transportation Security Act of 2002 (Pub. L. 107-295, Nov. 25, 2002), authorizes the Secretary of Homeland Security to prescribe conditions of entry into the United States on vessels arriving from ports that are not maintaining effective anti-terrorism measures and may deny entry into the United States to any vessel that does not meet such conditions. It also requires public notice of the ineffective anti-terrorism measures. The Secretary has delegated to the Coast Guard authority to carry out the provisions of this section. Previous notices have imposed or removed conditions of entry on vessels arriving from certain countries, and those conditions of entry and the countries they pertain to remain in effect unless modified by this notice.

Based on an assessment conducted pursuant to the provisions of 46 U.S.C. 70108 and the International Ship and Port Facility (ISPS) Code, the Coast Guard has determined that ports in the Democratic Republic of Sao Tome and Principe are not maintaining effective anti-terrorism measures. Inclusive to this determination is an assessment that the Democratic Republic of Sao Tome and Principe presents significant risk of introducing instruments of terror into international maritime commerce. The Coast Guard notified the Department of

State of this determination pursuant to 46 U.S.C. 70110(c).

The United States notified the Democratic Republic of Sao Tome and Principe of this determination in July of 2009, and identified steps necessary to improve the antiterrorism measures in use at ports in the Democratic Republic of Sao Tome and Principe, as required by 46 U.S.C. 70109. The United States conducted a visit in February 2010 reconfirming that the identified deficiencies have not been corrected.

Accordingly, effective April 27, 2010, the Coast Guard will impose the following conditions of entry on vessels that visited ports in the Democratic Republic of Sao Tome and Principe during their last five port calls. Vessels must:

- Implement measures per the ship's security plan equivalent to Security Level 2 while in a port in the Democratic Republic of Sao Tome and Principe. As defined in the ISPS Code and incorporated herein, "Security Level 2" refers to the "level for which appropriate additional protective security measures shall be maintained for a period of time as a result of heightened risk of a security incident."

- Ensure that each access point to the ship is guarded and that the guards have total visibility of the exterior (both landside and waterside) of the vessel while the vessel is in ports in the Democratic Republic of Sao Tome and Principe.

- Guards may be provided by the ship's crew; however, additional crewmembers should be placed on the ship if necessary to ensure that limits on maximum hours of work are not exceeded and/or minimum hours of rest are met, or provided by outside security forces approved by the ship's master and Company Security Officer. As defined in the ISPS Code and incorporated herein, "Company Security Officer" refers to the "person designated by the Company for ensuring that a ship security assessment is carried out, that a ship security plan is developed, submitted for approval, and thereafter implemented and maintained and for liaison with port facility security officers and the ship security officer."

- Attempt to execute a Declaration of Security while in port in the Democratic Republic of Sao Tome and Principe;

- Log all security actions in the ship's log; and

- Report actions taken to the cognizant Coast Guard Captain of the Port prior to arrival into U.S. waters.

In addition, based on the findings of a Coast Guard boarding or examination, vessels may be required to ensure that each access point to the ship is guarded

by armed, private security guards and that they have total visibility of the exterior (both landside and waterside) of the vessel while in U.S. ports. The number and position of the guards has to be acceptable to the cognizant Coast Guard Captain of the Port prior to the vessel's arrival.

Consistent with 46 U.S.C. 70110, the United States may deny entry into the United States to any vessel that does not meet the conditions set forth herein. This notice also informs passengers of the ineffective anti-terrorism measures at ports in the Democratic Republic of Sao Tome and Principe.

This notice is issued under authority of 46 U.S.C. 70110(a)(3).

Dated: March 25, 2010.

Sally Brice-O'Hara,

Rear Admiral, USCG, Deputy Commandant for Operations.

[FR Doc. 2010-8373 Filed 4-12-10; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5376-N-26]

Ginnie Mae Multiclass Securities Program Documents

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been 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.

This collection of information is required in connection with the Multiclass Securities Program. The intent of the Multiclass Securities program is to increase liquidity in the secondary mortgage market and to attract new sources of capital for federally insured or guaranteed residential loans.

DATES: *Comments Due Date: May 13, 2010.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2503-0030) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-5806.

FOR FURTHER INFORMATION CONTACT: Leroy McKinney, Jr., Reports

Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Leroy McKinney, Jr. at Leroy.McKinneyJr@hud.gov or telephone (202) 402-5564. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies

concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) 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 through 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: Ginnie Mae Multiclass Securities Program Documents.

OMB Approval Number: 2503-0030.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: This collection of information is required in connection with the Multiclass Securities Program. The intent of the Multiclass Securities program is to increase liquidity in the secondary mortgage market and to attract new sources of capital for federally insured or guaranteed residential loans.

Frequency of Submission: Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	15	8		141.1		16,933

Total Estimated Burden Hours: 16,933.

Status: Reinstatement, without change, of previously approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 6, 2010.

Leroy McKinney, Jr.,
Departmental Reports Management Officer,
Office of the Chief Information Officer.

[FR Doc. 2010-8319 Filed 4-12-10; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5377-N-01]

Notice of Proposed Information Collection: Youthbuild Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, 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: June 14, 2010.

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: Robert Duncan, Department of Housing Urban and Development, 451 7th Street, SW., Room 7149, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Nikki Bowser at telephone number 202-402-4395 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit 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 of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 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: Youthbuild Program.

OMB Control Number: 2506-0142.

Description of the need for the Information and proposed use: The Youthbuild Program was authorized under section 164 of the Housing and community development Act of 1992 (42 U.S.C. chapter 8011). Funded programs provide disadvantaged youth, predominately high school drop outs with educational opportunities and job skills training. The program was transferred to the U.S. Department of Labor effective with grants awarded from Fiscal Year 2007 and thereafter. This information collection effort is for grants awarded with FY 2006 and earlier grants by the U.S. Department of HUD. Information is collected from grant recipients to determine the use of funds and program results achieved. Information is also collected to allow the timely close-out of completed grants.

Agency form numbers, if applicable: HUD Forms 40211, Youthbuild Program Reports and HUD Form 40202, LOCCS Request Voucher for Grant Payment. SF1199A, Direct Deposit Sign-Up form, and HUD 27054, HUD LOCCS Voice Response System Access Authorization form.

Members of affected public: Public or private nonprofit agencies, including state or local housing agencies or authorities, State or units of local government, or any entity eligible to provide education and employment training under other Federal employment training programs.

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

HUD Form series 40211 is a semi-annual report and final report. The Youthbuild grant life cycle is approximately 30 months with approximately 86 currently active grantees and which number will decrease as those grantees complete and report on their program. Fiscal Year 2006 was the last year that Youthbuild grants were funded by the Department so that there will be a declining number of grantees reporting during the three-year cycle covered by this information request. Of the forms making up the series 40211, one group of forms are submitted on a semi-annual basis and the other group is only submitted as the final submission at grant closeout. The form HUD 40202, LOCCS Request Voucher for Grant Payment is submitted when the grantee requests a grant payment. The SF1199A is submitted one-time by new grantees as is the form HUD 27004, unless an organization changes banking information. The total estimate of burden hours is 7,570 hours.

Status of the proposed information collection: This notice precedes a continuation of the existing burden hour request. It is a proposed reduction from the prior approved request of 12,000. This decrease is due primarily to the end of the administration of new grants at the Department beginning in Federal Fiscal Year 2007.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: April 2, 2010.

Mercedes Márquez,

Assistant Secretary for Community Planning and Development.

[FR Doc. 2010-8318 Filed 4-12-10; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5332-N-02]

Notice of Availability: Notice of Funding Availability (NOFA) for HUD's Fiscal Year (FY) 2009 Rental Assistance for Non-Elderly Persons With Disabilities

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: Through this notice, HUD announces the availability on its website of the application information, submission deadlines, funding criteria, and other requirements for the Fiscal Year 2009 Rental Assistance for Non-Elderly Persons with Disabilities Notice of Funding Availability (NOFA). The

Omnibus Appropriations Act, 2009 (Pub. L. 111-8) makes available approximately \$40 million for incremental Section 8 Housing Choice Vouchers (HCV) for non-elderly disabled families served by entities (which the NOFA limits to public housing agencies) with demonstrated experience and resources for supportive services). This money should fund approximately 5,300 HCVs. The notice providing information regarding the application process, funding criteria and eligibility requirements is available on the Grants.gov Web site at https://apply07.grants.gov/apply/forms_apps_idx.html. A link to Grants.gov is also available on the HUD Web site at <http://www.hud.gov/offices/adm/grants/fundsavail.cfm>. The Catalogue of Federal Domestic Assistance (CFDA) numbers for Section 8 Housing Choice Vouchers is 14.871. Applications must be submitted electronically through Grants.gov.

FOR FURTHER INFORMATION CONTACT: Questions regarding specific HCV program requirements should be directed to Phyllis Smelkinson by phone at 202-402-4138 or by e-mail at Phyllis.A.Smelkinson@hud.gov or the NOFA Information Center at 800-HUD-8929 (toll-free). Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at 800-877-8339. The NOFA Information Center is open between the hours of 10 a.m. and 6:30 p.m. eastern time, Monday through Friday, except federal holidays.

Dated: April 1, 2010.

Deborah Hernandez,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 2010-8430 Filed 4-12-10; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5406-N-02]

Notice of a Federal Advisory Committee Meeting; Manufactured Housing Consensus Committee

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of a federal advisory committee meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a scheduled meeting of the Manufactured Housing Consensus Committee (the Committee). The meeting is open to the

public and the site is accessible to individuals with disabilities.

DATES: The meetings will be held on April 28-30, 2010.

ADDRESSES: These meetings will be held at: Marriott Tulsa Southern Hills, 1902 East 71st Street, Tulsa, OK 74136.

FOR FURTHER INFORMATION CONTACT: Office of Manufactured Housing Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9164, Washington, DC 20410-8000; telephone 202-708-6409 (this is not a toll-free number). Persons with hearing or speech challenges may access this number through TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.2) and 41 CFR 102-3.150. The Manufactured Housing Consensus Committee was established under section 604(a)(3) of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5403(a)(3), providing:

(A) **Purpose**—There is established a committee to be known as the “consensus committee”, which shall, in accordance with this title—

(i) Provide periodic recommendations to the Secretary to adopt, revise, and interpret the Federal manufactured housing construction and safety standards in accordance with this subsection;

(ii) Provide periodic recommendations to the Secretary to adopt, revise, and interpret the procedural and enforcement regulations, including regulations specifying the permissible scope and conduct of monitoring in accordance with subsection (b);

(iii) Be organized and carry out its business in a manner that guarantees a fair opportunity for the expression and consideration of various positions and for public participation; and

(iv) Be deemed to be an advisory committee not composed of Federal employees.

Tentative Agenda

Convening of Meeting by HUD.
Call to Order.
Roll Call/Establish Quorum.
Welcome/Introductions/New Members.

Announcements/Administrative Report from HUD officials.

Call for Committee Reports (information only).

Public Comments.

MHCC recommendations to the Secretary to adopt, revise, and interpret

the Federal manufactured housing construction and safety standards.

MHCC recommendations to the Secretary to adopt, revise, and interpret the procedural and enforcement regulations.

Dated: April 6, 2010.

David H. Stevens,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2010–8425 Filed 4–12–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDI02000.

L71220000.EO0000.LVTFD0975750]

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Dairy Syncline Mine and Reclamation Plan, Caribou County, ID

AGENCIES: Bureau of Land Management, Interior; U.S. Forest Service, Agriculture.

ACTION: Notice of Intent.

SUMMARY: Notice is hereby given that the Department of the Interior, Bureau of Land Management (BLM), Pocatello Field Office and the U.S. Department of Agriculture, Forest Service (FS), Caribou-Targhee National Forest, will jointly prepare an Environmental Impact Statement (EIS) to determine and analyze the effects of a proposed phosphate mine and reclamation plan on people and the environment. The BLM will serve as the lead agency. Plans have been developed and submitted for agency review of proposed open pit mining operations at the Dairy Syncline Phosphate Lease Area in Caribou County, Idaho by the J.R. Simplot Company (Simplot). The Dairy Syncline Phosphate Lease Area is located about 12 miles east of Soda Springs, Idaho.

The proposed new mining operations at the Dairy Syncline Phosphate Lease Area lie within the Caribou-Targhee National Forest on lands where the surface estate is administered by the FS, and the Federal mineral estate is administered by the BLM. In 2000, the BLM completed an EIS to support a decision to lease. The BLM issued Federal mineral lease I–28115 to Simplot by competitive bid in 2000. The Federal mineral lease I–0258 was transferred from P4 Production LLC to Simplot in 2009. These leases grant the

lease holder, Simplot in this case, exclusive rights to mine and otherwise dispose of the Federally owned phosphate deposit at the site. Through development of this EIS, the BLM will analyze environmental impacts of the proposed mining operations, land exchanges and reasonable alternatives. Appropriate mitigation measures also will be formulated.

DATES: To ensure comments will be considered, the BLM must receive written comments on the scope of the analysis described in this Notice by May 13, 2010. The BLM will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media news releases, and/or mailings.

ADDRESSES: Send written comments to: Dairy Syncline Mine EIS, Bureau of Land Management, Pocatello Field Office, 4350 Cliffs Drive, Pocatello, Idaho 83204. E-mail: Dairy_Syncline_EIS@blm.gov.

FOR FURTHER INFORMATION CONTACT: Barry Myers, Bureau of Land Management, Pocatello Field Office, 4350 Cliffs Drive, Pocatello, Idaho 83204, phone (208) 478–6369. Information is also available at: http://www.blm.gov/id/st/en/fo/pocatello/planning/dairy_syncline_mine.html.

SUPPLEMENTARY INFORMATION:

Agency Decisions: The BLM Idaho State Director or delegated official will make a decision regarding approval of the proposed mine and reclamation plan, proposed land sale with mitigation, proposed lease modification and/or fringe acreage lease approvals (enlargement of leased areas), appropriate land use authorizations on leased lands, and an amendment to the current Resource Management Plan (RMP) for the Pocatello Resource Area. Decisions will be based on the EIS and any recommendations the FS may have regarding surface management of leased National Forest System lands. The Caribou-Targhee National Forest Supervisor makes:

1. Recommendations to the BLM concerning surface management and mitigation on leased lands within the Caribou-Targhee National Forest; and
2. Decisions on mine related activities which occur off-lease.

Special use authorizations from the FS will be necessary for all off-lease support structures for the mine. A FS decision regarding the proposed exchange of FS land for private holdings will be issued by the Regional Director of Lands. The Army Corps of Engineers may also make decisions related to permits under section 404 of the Clean Water Act.

Scoping Procedure: The scoping procedure to be used for this EIS will involve: Notification in the **Federal Register**; a mailing to interested and potentially affected individuals, groups, Federal, State, and local government entities requesting comments, issues and concerns; news releases or legal notices; and public scoping meetings.

Please note that public comments and information submitted, including names, street addresses, and e-mail addresses of respondents, will be available for public review and disclosure at the address listed below during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Background: Simplot has operated the existing Smoky Canyon Mine since 1983. Simplot has indicated that they will eventually complete mining of currently permitted reserves, necessitating the proposed expansion to the Dairy Syncline phosphate leases. Because of the significant construction time associated with the infrastructure needed for the proposed mine (*i.e.* new mill and tailings impoundment), this proposal is being analyzed in advance of depleting the currently permitted reserves at the Smoky Canyon Mine.

The Dairy Syncline Phosphate Lease Area represents a significant phosphate ore deposit that is economically feasible for prolonged development. In total, approximately 2,133 acres are proposed for disturbance. The proposed project would include an open pit phosphate mine, a new milling facility, installation of underground phosphate slurry, tailings and water lines, a new tailings impoundment, a new power line, and a land sale with mitigation (BLM) and a land exchange (FS) of Federal lands for private holdings. The proposed mitigated land sale would require an amendment to the 1988 Pocatello RMP.

The proposal also includes six lease modification or fringe acreage lease areas that are contiguous with the existing leases that would allow for optimum recovery of the existing phosphate ore body. Disturbance on these proposed lease modification and/or fringe acreage lease areas represent approximately 347 acres of the total

proposed disturbance. The development of the ore deposits would result in six pits representing approximately 1,389 acres of pit disturbance. Proposed sequencing for the Dairy Syncline mine plan would begin with mining a portion of the west pit along with the north pit. Initial overburden from the west pit would be placed directly to the east of the initial disturbance in an external overburden storage facility on-lease. Mining would continue within the north pit, followed by the northeast pit, the east pit, south pit, and finally the southeast pit. There would be some concurrent mining of pits to maintain a consistent grade of ore available for milling purposes as well as maintaining an economic mine pit stripping ratio.

In their mine and reclamation plan, Simplot has proposed management practices to reduce environmental impacts. As mining progresses, reclamation would begin concurrently. Simplot's plan emphasizes total backfill of mine pits and limiting the amount of overburden placed external to the pits. In addition, Simplot's mine plan contains provisions aimed at limiting the amount of time seleniferous overburden is exposed to the elements. To reduce the potential for contaminant release to water or uptake into reclamation vegetation, Simplot is proposing to cover over all seleniferous overburden with non-seleniferous material consisting of approximately 2 feet of chert, overlain by 2 feet of Dinwoody and/or Salt Lake Formation, and finally a topsoil layer estimated at 6 to 12 inches, contingent upon the baseline soil resources study.

Associated new facilities that are proposed include: Main office/security building, mill and shop complex, support facilities, ore stockpile, tailings pond, groundwater supply well(s), and pipelines. The proposed location of the main office/security building is an area southeast of the mouth of Wilde Canyon and west of the Slug Creek Road. This location is on National Forest System lands off-lease and would require a Special Use Authorization from the FS. Approximately 5 acres would be disturbed for the office and parking areas.

The proposed location for the mill/shop complex is in the mining area between the north and south pits. The complex would disturb about 20 acres. The mill would be required to process the ore into concentrated slurry that would be pumped in a proposed 8-mile underground pipeline to a currently existing pipeline that connects to Simplot's Don Fertilizer Plant just outside of Pocatello, Idaho. The proposed mill is assumed to be

configured essentially the same as the operating Smoky Canyon Mill. In addition, a shop would be required for repairing and maintaining the mining equipment. The shop area would be included in the mill/shop complex.

An ore stockpile (of 750,000 to 1,000,000 tons) is proposed for supplying ore to the mill. The location of the stock pile would be on-lease near the mill building at the mill/shop complex. The stockpile would be approximately 13 acres in size. The simple milling process would consist of crushing and grinding the phosphate ore to a fine powder. Associated clay would be physically removed from the finely ground ore and would then be mixed with water and pumped into another new underground pipeline to the tailings impoundment. The product and tailings pipelines would be installed next to each other. To facilitate mobile equipment operation and personnel, some small support facilities at the active mining sites would be required. Typically, these facilities would consist of equipment ready lines (cold climate hot starts), electrical power, fuel and grease storage within secondary containment, communication, and safety structures. The location of these facilities would vary during the mining process.

A new tailings pond is proposed for the mining operation. The proposed location would be approximately 4.4 miles northwest of the Dairy Syncline leases. A land sale with mitigation (BLM) and a land exchange (FS) of Federal lands for private holdings are proposed for the proposed tailings pond area. An earthen dam structure on the north end of the pond would be constructed resulting in a design capacity of 20 million cubic yards of material. The proposed configuration would be large enough to hold all of the tailings expected to be generated during the life of the mine.

Three pipelines are proposed for the project; one each for delivery of tailings, ore concentrate, and a water return line. The pipelines would be buried in one earth covered trench. The ore concentrate pipeline would transport ore in slurry form from the proposed mill site to the existing pipeline. The buried 8-inch diameter steel pipe would be about 8 miles long. The proposed pipeline route would originate at the mill/shop complex, follow the access road on the north side of Wilde Canyon, and then follow the western side of the Slug Creek Valley where it would tie into the existing ore concentrate pipeline from Smoky Canyon to the Conda Pump Station. This pipeline

route represents approximately 14 acres of off-lease disturbance.

The tailings pipeline would transport tailings from the mill/shop complex to the proposed tailings pond. The pipeline would be approximately 5 miles long. The proposed pipeline route would originate at the mill/shop complex and be placed in the same trench as the ore concentrate pipeline. At a location near the tailings pond, the tailings line would go east to the southern end of the pond. A number of pipeline branches would be installed around the pond to ensure even distribution of tailings in the pond.

The water return line would transport water from the tailings pond back to the mill and would be approximately 5 miles long. As noted above, this line would be in the same trench as the tailings and concentrate pipeline.

Off-lease facilities would include the main office/security building, tailings pond, and portions of access roads, pipelines, a power line, and storm water control features. The proposed power line would run northeast to connect with an existing power line and existing corridor in Upper Dry Valley. It is estimated that off-lease activities would total about 337 acres of disturbance, which would include the assumed disturbance for the power line.

Truck haulage would transport both ore to the proposed on-lease ore stockpile and overburden to its permanent disposal site. Several external pit roads would be required throughout the life of the mine for both overburden and ore transportation. All of these roads are located on-lease and would be constructed of chert or limestone with cut side ditches, culverts as appropriate, and fill side berms where necessary for safety. Access to the mine site for employees, equipment, and supplies is proposed through Georgetown Canyon and along Slug Creek via the existing FS road. Upgrades to this road will be necessary for safe passage of two-way traffic.

Potential impacts to surface resources and water quality include erosion, sediment, and dissolved contaminants such as selenium. Simplot has proposed to implement practices designed to reduce, eliminate, or mitigate these impacts. Suitable topsoil would be salvaged from disturbed areas for use in reclamation. Reclamation of mining disturbances would include: removal of facilities and equipment, backfilling pits, regrading slopes, restoring drainages, spreading topsoil, stabilizing surfaces, revegetation, testing and treatment for remaining hydrocarbon contaminants, and environmental monitoring.

Issues initially identified for the proposed mining of the Dairy Syncline phosphate leases include potential effects on: Groundwater and surface water quantity and quality; wildlife and their habitats; livestock grazing; wetlands and riparian habitat; recreation; socio-economics; Native American rights, treaties, and land uses; inventoried roadless areas; visual resources; and cumulative effects.

The EIS will analyze the Proposed Action and the No Action Alternative. Other alternatives may consider: Alternative access road(s); alternative tailings pond locations; alternatives to the land sale with mitigation and land exchange; use of conveyors to transport ore to the existing mill; revising the layout or sequencing of the proposed mining facilities; different methods for reducing potential impacts from overburden handling; and other alternatives that could provide mitigation for potential impacts.

The tentative EIS project schedule is as follows:

- *Begin Public Scoping Period and Meetings:* Winter/Spring 2010.
- *Estimated date for Draft EIS and associated comment period:* Fall 2011.
- *Final EIS Publication:* June 2013.
- *Record of Decision:* August 2013.

At least four "open-house" style public scoping meetings will be held which will include displays explaining the project and providing a forum for commenting on the project. Meetings are currently planned for Pocatello, Fort Hall, Georgetown, and Soda Springs, Idaho. The dates, times, and locations of the public scoping meetings will be announced in mailings and public notices issued by the BLM (*see* contact information above). The BLM and FS are seeking information and written comments from Federal, State, and local agencies as well as Tribal entities, individuals and organizations interested in, or affected by, the Proposed Action or Alternatives. To assist the BLM and FS in identifying issues and concerns related to the Proposed Action or Alternatives, comments for scoping, and later for the Draft EIS, should be as specific as possible.

Joe Kraayenbrink,

District Manager, Idaho Falls District, Bureau of Land Management.

Brent Larson,

Forest Supervisor, Caribou-Targhee National Forest.

[FR Doc. 2010-8391 Filed 4-12-10; 8:45 am]

BILLING CODE 4310-GG-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUT9200000-10-L13200000-EL000, UTU-87041]

Notice of Invitation to Participate; Exploration for Coal in Utah License Application UTU-87041

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: All interested parties are hereby invited to participate with Reserve Coal Properties Company on a pro rata cost-sharing basis, in a program for the exploration of coal deposits owned by the United States of America in lands located in Emery and Sevier Counties, Utah.

DATES: Any party electing to participate in this exploration program must send written notice to Reserve Coal Properties Company and the Bureau of Land Management (BLM) as provided in the **ADDRESSES** section below by May 13, 2010 or 10 days after the last publication of this notice in the *Richfield Reaper* newspaper, whichever is later. This notice will be published once a week for two consecutive weeks in the *Richfield Reaper*, Richfield, Utah.

ADDRESSES: The exploration plan, as submitted by Reserve Coal Properties Company, is available for review in the public room of the BLM's Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah during normal business hours (9 a.m. to 4 p.m.), Monday through Friday. Any party electing to participate in this exploration program shall notify the BLM State Director, in writing, at the Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145 and Reserve Coal Properties Company, *Attn:* Tim Kirschbaum, P.O. Box 639, Sesser, Illinois 62884. The written notice must include a justification for participation and any recommended changes in the exploration plan with specific reasons for such changes.

FOR FURTHER INFORMATION CONTACT: Bill Buge at (801) 539-4086.

SUPPLEMENTARY INFORMATION: The authority for the notice is section 2(b) of the Mineral Leasing Act of 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976 and the regulations adopted as 43 CFR part 3410. The purpose of the exploration program is to gain additional geologic knowledge of the coal underlying the exploration area for the purpose of assessing the reserves contained in a potential lease. The

Federal coal resources are located in Emery and Sevier Counties, Utah:

T. 23 S., R. 5 E., SLM, Utah

Sec. 1, all;

Sec. 11, all;

Sec. 12, all;

Sec. 13, all;

Sec. 14, all;

T. 23 S., R. 6 E., SLM, Utah

Sec. 6, lots 6 and 7, S $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$;

Sec. 7, lots 1-4, NE $\frac{1}{4}$, E $\frac{1}{2}$ W $\frac{1}{2}$;

These lands contain 4,082.33 acres, more or less.

The above-described land is within the Wasatch Plateau Known Coal Leasing Area. The proposed exploration program will be conducted pursuant to an exploration plan to be approved by the BLM. The plan may be modified to accommodate the legitimate exploration needs of persons seeking to participate.

The foregoing is published in the **Federal Register** pursuant to 43 CFR 3410.2-1(c)(1).

Approved:

Selma Sierra

State Director.

[FR Doc. 2010-8392 Filed 4-12-10; 8:45 am]

BILLING CODE 4310-DQ-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCOS05400-L17110000 PA000 LXSIGGCA0000]

Notice of Final Supplementary Rules for Public Lands in Colorado: Gunnison Gorge National Conservation Area (GGNCA) and Adjacent Public Lands Administered by the Bureau of Land Management Uncompahgre Field Office, Montrose and Delta Counties, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Final supplementary rules for the GGNCA and adjacent public lands in southwestern Colorado.

SUMMARY: This notice contains final supplementary rules for the GGNCA and adjacent public lands included in the 2004 GGNCA Resource Management Plan (RMP) and managed by the GGNCA and Uncompahgre Field Offices in Montrose and Delta Counties, Colorado. The rules implement RMP decisions that relate to the use of the lands, conduct, health and safety of public land users, and protection of natural resources. The rules address motorized and non-motorized uses, safety, firearms, hunting and target shooting, pets and pack stock use, camping, waste disposal, group size limits, permit

requirements, and length of stay. These supplementary rules will be added to the current rules in effect for the GGNCA, Gunnison Gorge Wilderness, and adjacent public lands. The supplementary rules will be enforced by Bureau of Land Management (BLM) law enforcement rangers.

DATES: These rules are effective May 13, 2010.

ADDRESSES: These rules are available at the BLM Uncompahgre Field Office, 2465 S. Townsend Avenue, Montrose, Colorado 81401.

FOR FURTHER INFORMATION CONTACT: Karen Tucker, GGNCA (970) 240-5300, e-mail: karen_tucker@blm.gov or Ted Moe, BLM Law Enforcement Ranger, (970) 240-5341, e-mail: ted_moe@blm.gov.

SUPPLEMENTARY INFORMATION:

I. Background

These final supplementary rules apply to the GGNCA, approximately 62,844 acres of public lands that include the 17,784-acre Gunnison Gorge Wilderness, and 32,937 acres of adjacent public lands managed under the GGNCA management plan. The GGNCA was established by Public Law 106-76 on October 21, 1999.

The GGNCA is located 10 miles north of Montrose, Colorado, bordered by the Black Canyon of the Gunnison National Park to the south. The supplementary rules will help the BLM achieve management objectives and implement decisions in the GGNCA RMP approved on November 12, 2004. These supplementary rules will also allow the BLM to increase law enforcement efforts that will help mitigate damage to natural resources and provide for public health and safe public recreation.

II. Discussion of Public Comments

The Uncompahgre Field Office proposed these supplementary rules in the **Federal Register** on September 9, 2009. The BLM received two comment letters containing three substantive comments. The following is a summary of the comments:

(1) The first comment addressed the need to clarify that the rule for single track routes should specify only two-wheeled vehicles are permitted on these types of routes.

BLM Response: The BLM agrees with this additional clarification as this was the intent of the original rule. Rule 2(c) has been revised to reflect the clarification.

(2) The second comment addressed the need to clarify the rule for discharging firearms within the GGNCA to make it clear that licensed hunters

may not target shoot within the National Conservation Area (NCA), even while they are out legally hunting in the area.

BLM Response: The BLM agrees with this additional clarification as this was the intent of the original rule. Rule 3(a) has been revised to reflect the clarification.

(3) The third comment pertained to target shooting on the 32,937 acres of non-NCA public lands managed under the GGNCA management plan. Rule 3(b) states that: "On public lands adjacent to the GGNCA, you must not target shoot except in areas closed to that use by a BLM sign or map." The commenter requested the rule be changed to state: "On public lands adjacent to the GGNCA, you must not target shoot except in areas designated as open to such use by a BLM sign or map." The commenter noted that the change was needed to ensure visitor safety and be consistent with other GGNCA rules that disallow uses such as camping, wood collection, campfires, and motorized travel, except in areas designated open to such uses by BLM sign or map.

BLM Response: RMP decisions that close the GGNCA to target shooting and disallow uses such as camping, wood collection, motorized travel, and campfires except in areas designated as open to such uses by BLM sign or map, were determined necessary to: Protect the NCA's nationally significant scenic, geologic, recreation, wilderness, and other natural values; ensure and enhance the safety of the increasing number of NCA visitors which use the many recreation sites and trails constructed throughout the NCA; and protect the public's investment in those high use recreation sites and other BLM infrastructure.

However, the RMP allows for the BLM's discretion to authorize dispersed target shooting, and other multiple uses such as camping, firewood collecting, etc., on non-NCA public lands which, for the most part, do not attract high visitation due to: Lack of outstanding and/or nationally significant values; lack of developed recreation facilities and trails; and less obvious access.

The RMP decisions for non-NCA lands provide regulation of dispersed multiple uses at levels that are less restrictive than those imposed on uses within the NCA. These supplementary rules were developed with this difference in mind. This difference in the level of regulation allows the public to make choices regarding the locations for, and the type of, recreation uses they want to pursue.

The RMP states that patrols by law enforcement will be conducted on the non-NCA lands to ensure user

compliance with posted regulations. If monitoring of these lands indicates resource or other problems are occurring as a result of target shooting and/or other multiple uses, the areas may be closed.

The BLM believes that the rules that implement RMP management decisions related to regulating and monitoring dispersed multiple uses, including target shooting, on non-NCA lands are sufficient to provide for the safety of visitors and protection of these public lands. The BLM contends that Rule 3(b) was developed to allow for less restrictive, dispersed uses on non-NCA lands, and is consistent with RMP decisions for these public lands as stated, and does not need additional clarification.

Other than the changes noted, and with the exception of minor non-substantive grammatical and formatting changes, the final rules remain as proposed.

III. Discussion of Supplementary Rules

These final supplementary rules apply to a total of 95,781 acres of public lands managed by the BLM within the GGNCA RMP planning area. The area includes 62,844 acres of NCA lands and 32,937 acres of non-NCA lands within Montrose and Delta Counties, Colorado, in the following townships:

Colorado, Sixth Principal Meridian

T. 14 S., R. 95 W. through 93 W.
T. 15 S., R. 95 W. through 93 W.

New Mexico Principal Meridian

T. 51 N., R. 10 W. through 7 W.
T. 50 N., R. 10 W. through 6 W.
T. 49 N., R. 9 W. through 8 W.

These rules are consistent with the Record of Decision of the 2004 GGNCA RMP. In preparing the RMP, the BLM sought public review of four alternatives and then approved adaptive management, its preferred alternative. Adaptive management allows for flexibility in management actions based on the results of resource and visitor monitoring.

The RMP includes specific management actions that restrict certain activities and define allowable uses. The final supplementary rules implement these management actions within the GGNCA and adjacent public lands. Many of the supplementary rules apply to the entire area but some apply only to specific areas within the GGNCA. The rules are written to allow for the management flexibility that is available under the principles of adaptive management. These rules will be posted within the affected areas.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These supplementary rules are not significant regulatory actions and not subject to review by the Office of Management and Budget under Executive Order 12866. These supplementary rules will not have an annual effect of \$100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The supplementary rules do not materially alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients, nor do they raise novel legal or policy issues. These supplementary rules are merely rules of conduct for public use of a limited area of public lands.

National Environmental Policy Act

The final supplementary rules put forth in this notice implement key land use planning decisions in the Approved GGNCA RMP and Record of Decision signed by the BLM State Director of Colorado in November 2004. The four-year RMP process included extensive public input and development of a Draft and Proposed RMP and Final Environmental Impact Statement (EIS) for the GGNCA and Gunnison Gorge Wilderness, which was completed in January 2004. During the National Environmental Policy Act process, each alternative was fully analyzed, including the types of decisions set forth in these supplementary rules. The rationale for the decisions made can be found in Chapter 5, Environmental Consequences. The BLM has placed the Final EIS, Approved RMP, and Record of Decision on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended, 5 U.S.C. 601–612, to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These final supplementary rules do not have a significant economic

impact on entities of any size, but provide for the protection of persons, property, and resources on specific public lands. Therefore, the BLM has determined under the RFA that the supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

These supplementary rules are not “major” as defined under 5 U.S.C. 804(2). The supplementary rules merely establish rules of conduct for public use of a limited area of public lands and do not affect commercial or business activities of any kind.

Unfunded Mandates Reform Act

These supplementary rules do not impose an unfunded mandate on State, local, or tribal governments in the aggregate, or the private sector of more than \$100 million per year; nor do they have a significant or unique effect on small governments. The rules have no effect on governmental or tribal entities and would impose no requirements on any of these entities. The supplementary rules merely establish rules of conduct for public use of a limited selection of public lands and do not affect tribal, commercial, or business activities of any kind. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

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

These supplementary rules do not have significant takings implications, nor are they capable of interfering with Constitutionally protected property rights. The supplementary rules merely establish rules of conduct for public use of a limited area of public lands and do not affect anyone’s property rights. Therefore, the Department of the Interior has determined that these rules will not cause a “taking” of private property or require preparation of a takings assessment under this Executive Order.

Executive Order 13132, Federalism

These supplementary rules will not have a substantial direct effect on the States, the relationship between the national government and the States, nor the distribution of power and responsibilities among the various levels of government. These supplementary rules do not come into conflict with any state law or regulation.

Therefore, in accordance with Executive Order 13132, the BLM has determined that these supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that these rules will not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

In accordance with Executive Order 13175, the BLM has found that these supplementary rules do not include policies that have tribal implications. None of the lands included in these rules are Indian lands or affect Indian rights.

Paperwork Reduction Act

These supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* Any information collection requirements contained in these rules are exempt from the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3518(c)(1). Federal criminal investigations or prosecutions may result from these rules, and the collection of information for these purposes is exempt from the Paperwork Reduction Act.

Supplementary Rules for the Gunnison Gorge National Conservation Area (GGNCA) and Adjacent Public Lands

These supplementary rules apply, except as specifically exempted, to activities within the GGNCA and adjacent public lands administered by the Bureau of Land Management (BLM) near Montrose, Colorado. These supplementary rules are in effect on a year-round basis and will remain in effect until modified by the authorized officer.

1. General Travel Management

a. You must not enter an area designated as closed by a BLM sign or map.

b. You must not use roads and/or trails by motorized or mechanized vehicle or equestrian or pedestrian travel except where designated as open to such use by a BLM sign or map.

c. You must not park in areas not designated for parking by a BLM sign or map.

d. You must not launch or operate any motorized watercraft within the GGNCA or adjacent public lands.

e. You must not operate any vehicle that produces sound exceeding 96 decibels.

f. You must not operate an off-highway vehicle (OHV) with any object or person attached or being towed in any manner unless the off-road vehicle is designed and manufactured for such purposes.

2. Vehicle Size and Trail Width

a. You must not operate any vehicle except a motorcycle, All Terrain Vehicle (ATV), or a Utility Terrain Vehicle (UTV) (50 inches in width or less) for motorized cross-country travel and/or play within the Flat Top-Peach Valley Recreation Area designated open areas.

b. You must not operate any vehicle greater than 50 inches in width on any designated ATV/UTV routes.

c. You must not operate any vehicle greater than 36 inches in width or with more than two wheels on any designated single track routes.

3. Firearms, Hunting, Target Shooting and Fireworks

a. Within the GGNCA, you must not discharge a firearm of any kind, with the exception of licensed hunters, who are permitted to discharge firearms only when they are in legitimate pursuit of game during the proper season with appropriate firearms, as defined by the Colorado Division of Wildlife. Recreational or target shooting with any type of firearm is prohibited everywhere in the GGNCA at all times.

b. On public lands adjacent to the GGNCA, you must not target shoot in areas closed to that use by a BLM sign or map.

c. Target shooters must not shoot or discharge any weapon at any object containing glass, or other target material that can shatter and cause a public safety hazard as a result of the projectile impact or explosion.

d. You must not engage in any activities involving the use of paintballs.

e. Persons who shoot or discharge any weapon must remove and properly dispose of all shooting materials, including spent brass or shells, their containers, and any items used as targets.

f. You must not discharge any weapon within five hundred yards of any developed recreation site or any other area that has been closed to discharge of firearms.

g. You must not possess or discharge any fireworks.

4. Pets and Pack Stock

a. You must not bring any animal into the GGNCA that is not controlled by visual, audible, or physical means.

b. You must not leave any pets and/or pack stock unattended.

c. You must remove and properly dispose of pet and/or pack stock solid waste when and where indicated by a BLM sign or map.

5. Special Recreation Permits and Registration

a. You must register, purchase permits, and possess proof of permits as indicated by BLM sign or map.

b. If you use the Gunnison Gorge Wilderness as ingress to or egress from the Black Canyon National Park, you must register and purchase a Gunnison Gorge Wilderness permit and possess proof of the permit while in the Wilderness.

6. Group Size Limits

Exceeding group size limits, as indicated by a BLM sign or map, is prohibited.

7. Camping

a. You must not camp in sites or areas not designated as open to camping by a BLM sign or map.

b. Within the Gunnison Gorge Wilderness you must not camp in any site other than the designated campsite(s) reserved by you or your group through the Gunnison Gorge permit system.

c. In designated campsites or camping areas, you must maintain quiet within normal hearing range of any other person or persons, between 10 p.m. and 6 a.m. in accordance with applicable state time zone standards.

d. You must not leave personal belongings overnight in an unattended campsite.

e. You must keep campsites free of trash, litter and debris during the period of occupancy and shall remove all personal equipment and clean sites upon departure.

8. Length of Stay

a. Exceeding length of stay limits, as indicated by a BLM sign or map, is prohibited.

b. The hours of operation are sunrise to sunset in any area that is for day-use only as indicated by a BLM sign or map. You must not enter or remain in such an area after sunset or before sunrise.

9. Campfires and Wood Collecting

a. You must not cut, collect, or use live, dead or down wood except in areas designated open to such use by a BLM sign or map.

b. You must not start or maintain a fire in sites or areas not designated as open for such use by a BLM sign or map.

c. Where allowed, any fire must be fully contained in a metal fire grate, fire pan, or other metal device to contain ashes. Mechanical stoves and other appliances that are fueled by gas and equipped with a valve that allows the operator to control the flame are among the devices that meet this requirement.

d. When starting or maintaining a fire outside of a developed recreation site, you must not fail to contain and dispose of fire ashes and debris in the manner indicated by a BLM sign or map.

e. You must not burn wood or other material containing nails, glass, or any metal.

10. Human Waste Disposal

You must dispose of solid human waste as indicated by a BLM sign or map.

11. Other Use Authorizations

You must not violate any terms, conditions or stipulations of any permit or other authorization issued for special use of these public lands.

Exemptions: The following persons are exempt from these supplementary rules: Any Federal, State, local and/or military employee in the scope of their duties; members of any organized rescue or fire-fighting force in performance of an official duty; and persons, agencies, municipalities, or companies holding an existing special-use permit inside the GGNCA and operating within the scope of their permit.

Definitions: For the purpose of these supplementary rules, the following definitions apply unless modified within a specific part or regulation:

Adjacent public lands means those non-GGNCA BLM public lands immediately adjacent to the GGNCA and/or the Black Canyon of the Gunnison National Park whose management is addressed under the 2004 GGNCA Resource Management Plan (RMP). These lands include: Black Ridge, Fruitland Mesa, West Peach Valley, Flat Top, East Flat Top, and Jones Draw lands.

All Terrain Vehicle (ATV) or Utility Terrain Vehicle (UTV) means off-road vehicles 50 inches or less in overall width and weighing no more than 800 pounds.

Camping means erecting a tent or a shelter of natural or synthetic materials, preparing a sleeping bag or other bedding material for use, or parking a motor vehicle, motor home, or trailer for the purpose or apparent purpose of overnight occupancy while engaged in

recreational activities such as hiking, hunting, fishing, bicycling, sightseeing, off-road vehicle activities, or other generally recognized forms of recreation.

Designated campsite or site means a specific location identified by the BLM for camping or other purposes. Designated sites include individual sites in developed campgrounds that contain picnic tables, shelters, parking sites, and/or grills; dispersed campsites containing a sign and natural or man-made parking barricades denoting a designated camping area; and other use areas specifically designated by signs for use by a certain user type including, but not limited to hikers, boaters, equestrians, commercial outfitters, organized groups, or OHV users.

Designated route means roads and trails open to motorized vehicle use and identified on a map of designated roads and trails that is maintained and available for public inspection at the BLM Uncompahgre Field Office, Montrose, Colorado. Designated roads and motorized trails are open to public use in accordance with such limits and restrictions as are, or may be, specified in the RMP or in future decisions implementing the RMP. However, any road or trail with any restrictive signing or physical barrier, including gates, fences, posts, branches, or rocks intended to prevent use of the road or trail is not a designated motorized road or motorized trail.

Developed recreational site means any site or area that contains structures or capital improvements primarily used by the public for recreation purposes. Such areas or sites may include such features as: Delineated spaces or areas for parking, camping or boat launching; sanitation facilities; potable water; grills or fire rings; tables; or controlled access.

Flat Top-Peach Valley Recreation Area means the Flat Top-Peach Valley Special Recreation Management Area designated in the 2004 GGNCA RMP. The recreation area contains developed recreation sites, open riding areas where cross-country travel is permitted, and designated routes and encompasses approximately 9,754 acres of public lands in Montrose County including lands both within and outside the GGNCA.

Gunnison Gorge Wilderness means the congressionally designated Wilderness Area within the GGNCA. The Wilderness is managed by the BLM as a Special Recreation Management and Wilderness Area and encompasses approximately 17,784 acres of public lands in Montrose and Delta counties.

Gunnison Gorge permit system means the mandatory self-issuing special

recreation permit (SRP) and registration system that applies to all users 16 years of age and older in the Gunnison Gorge Wilderness. Users are required to sign in at a Wilderness trailhead or the Chukar boater put-in site, pay applicable day-use or camping fees, and reserve the designated boater or hiker campsite(s) they intend to use during their stay.

Motorized watercraft means any craft operated upon water that is self-propelled by a non-living power source, including electric power.

Off-highway vehicle (OHV) or off-road vehicle (ORV) means any motorized vehicle capable of, or designated for, travel on or immediately over land, water, or other natural terrain, excluding: (1) Any non-amphibious registered motorboat; (2) any military, fire, emergency, or law enforcement vehicle while being used for emergency purposes; (3) any vehicle whose use is expressly authorized by the authorized officer, or otherwise officially approved; (4) vehicles in official use; and (5) any combat or combat-support vehicle when used in times of national defense emergencies.

Utility Terrain Vehicle (UTV) means any multi-passenger off-highway vehicle most commonly known as UTVs (Utility Terrain Vehicle or just Utility Vehicle) or Side-by-Side Vehicles; they are also known as SxS, RUV (Recreational Utility Vehicle) or MUV (Multi-Use Vehicle). They are called Side-by-Side Vehicles because a driver and passenger(s) sit side-by-side in the vehicle.

Penalties: Any person who violates any of these supplementary rules may be tried before a United States Magistrate and fined no more than \$1,000 or imprisoned for no more than 12 months, or both. 43 U.S.C. 1733(a); 43 CFR 8360.0-7. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

David B. Hunsaker,

Acting State Director.

[FR Doc. 2010-8395 Filed 4-12-10; 8:45 am]

BILLING CODE 4310-JB-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

**[LLIDIO2000.L71220000.EO0000
LVTFD0980300; IDI-36468]**

Notice of Realty Action: Proposed Sale of Public Land in Caribou Co., ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) is proposing to sell a parcel of public land totaling 1,142.10 acres in Caribou County, Idaho by direct sale under the provisions of the Federal Land Policy and Management Act of 1976 (FLPMA). The land would be sold for not less than fair market value.

DATES: In order to ensure consideration in the environmental analysis of the proposed sale, comments must be received by May 28, 2010.

ADDRESSES: Address all comments concerning this notice to Field Manager, Bureau of Land Management (BLM), Pocatello Field Office, 4350 Cliffs Drive, Pocatello, Idaho 83204.

FOR FURTHER INFORMATION CONTACT: Jan Parmenter, Resource Coordinator, 1405 Hollipark Drive, Idaho Falls, Idaho 83401 or phone (208) 524-7562.

SUPPLEMENTARY INFORMATION: The following-described public land in Caribou County, Idaho, is being proposed for sale under the authority of Section 203 of the FLPMA (43 U.S.C. 1713):

Boise Meridian

T. 9 S., R. 44 E.,

Sec. 6, lots 3 to 7, inclusive, SWNE, SENW, E2SW, SE;

Sec. 7, lot 1, NE, E2NW, SE;

Sec. 17, lots 1 and 2, S2NE.

The area described contains 1,142.10 acres in Caribou County.

The J. R. Simplot Company submitted the Dairy Syncline Mine and Reclamation Plan (MRP) application to the BLM on October 6, 2008, for the Dairy Syncline Phosphate Lease Area. The MRP is currently under review by the BLM, and an environmental impact statement (EIS) will be prepared pursuant to the requirements of the National Environmental Policy Act to determine and analyze the impacts of the MRP as well as the proposed land sale.

According to the applicant, the parcel is a necessary component of the applicant's development of existing Federal mineral leases. Disposal of mill tailings is a critical aspect of the Dairy Syncline MRP, rendering the land identified for sale an integral part of the MRP. Disposal of mill tailings would require a tailings pond, an ore tailings line from the mill to the tailings pond, as well as a water main return pipeline from the tailings pond to the mill. These are all necessary components of the MRP and would occur on the lands proposed for direct sale. Without the lands proposed for sale, mineral development under this specific phosphate lease could be adversely affected.

The current 1988 BLM Pocatello Resource Management Plan (RMP) does not identify this parcel of public land for disposal; however, this plan is currently undergoing revision and includes alternatives addressing land tenure adjustments which do identify this parcel of public land for disposal. An amendment to the current 1988 plan may be necessary if the BLM ultimately decides to convey this parcel prior to the completion of the revision of this plan.

Conveyance of the identified public lands would be subject to valid existing rights and encumbrances of record, including but not limited to, rights-of-way for roads and public utilities. The conveyance would also be subject to an appropriate indemnification provision protecting the United States from claims arising out of the patentee's use, occupancy, or occupation on the patented lands. Conveyance of any mineral interests pursuant to Section 209 of the FLPMA will be analyzed during processing of the proposed sale.

The proposed direct sale is allowable pursuant to 43 CFR 2711-3.3(a)(2) and (a)(3). Specifically, the proposed sale is an integral part of the mineral lease development at the Dairy Syncline Phosphate Lease Area. According to the applicant, the economic viability of this project is dependent upon the successful transfer of this land through sale to the mineral lessee. The mineral lessee would suffer substantial economic loss if the proposed sale tracts were purchased by another party or if the tracts were made unavailable for sale or exchange.

The land proposed for sale would not be sold unless the BLM ultimately issues an approval for a mine and reclamation plan that includes this land as a component necessary for operation of the mine and development of the Federal mineral leases. On April 13, 2010, the above-described land will be segregated from all forms of appropriation under the public land laws, including the mining laws and mineral leasing laws, except the sale provisions of the FLPMA. Until completion of the sale or termination of the segregation, the BLM is no longer accepting land use applications affecting the identified public land, except applications for the amendment of previously filed right-of-way applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2807.15 and 2886.15.

The segregative effect will terminate upon issuance of a patent or other conveyance document, publication in the **Federal Register** of a termination of

the segregation, or on April 13, 2012, whichever occurs first, unless the segregation period is extended by the BLM State Director in accordance with 43 CFR 2711.1-2(d) prior to the termination date.

Public Comments: For a period until May 28, 2010, interested parties and the general public may submit written comments concerning the land proposed for sale, including notification of any encumbrances or other claims relating to the identified land, to Field Manager, BLM Pocatello Field Office, at the above address. In order to ensure consideration in the environmental analysis of the proposed sale, comments must be in writing and postmarked or delivered within 45 days of the initial date of publication of this Notice. Comments transmitted via e-mail will not be accepted. Comments, including names and street addresses of respondents, will be available for public review at the BLM Pocatello Field Office during regular business hours, except holidays.

Individual respondents may request confidentiality. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 CFR 2711.1-2.

Dated: April 8, 2010.

David A. Pacioretty,
Pocatello Field Manager.

[FR Doc. 2010-8390 Filed 4-12-10; 8:45 am]

BILLING CODE 4310-GG-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 1205-8]

Certain Footwear: Recommendations For Modifying the Harmonized Tariff Schedule of the United States

AGENCY: United States International Trade Commission.

ACTION: Notice of institution of investigation and opportunity to comment on proposed recommendations.

SUMMARY: Following receipt of a letter from the U.S. Department of the Treasury (Treasury), the Commission instituted investigation No. 1205-8,

Certain Footwear: Recommendations for Modifying the Harmonized Tariff Schedule of the United States, pursuant to section 1205 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3005), for the purpose of submitting recommendations to the President regarding the addition of an Additional U.S. Note and the amendment of certain classification provisions in Chapter 64 of the Harmonized Tariff Schedule of the United States (HTS) relating to certain footwear featuring outer soles of rubber or plastic to which a layer of textile material has been added.

DATES:

May 14, 2010: Deadline for filing written submissions relating to proposed HTS changes requested by Department of Treasury.

May 28, 2010: Preliminary Commission report containing proposed recommendations posted on the Commission Web site at http://www.usitc.gov/tariff_affairs/modifications_hts.htm.

June 25, 2010: Deadline for filing written submissions to be included in final recommendations.

July 12, 2010: Transmittal of final recommendations to the President.

ADDRESSES: All Commission offices are located in the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The public record for this collection of proposals may be viewed on the Commission's electronic docket (EDIS) at <http://www.usitc.gov/secretary/edis.htm>.

FOR FURTHER INFORMATION CONTACT:

Donnette Rimmer, Nomenclature Analyst (202-205-0663, donnette.rimmer@usitc.gov), or Janis L. Summers, Attorney Advisor (202-205-2605, janis.summers@usitc.gov), of the Office of Tariff Affairs and Trade Agreements (fax 202-205-2616). The media should contact Margaret O'Laughlin, Office of External Affairs (202-205-1819, margaret.olaughlin@usitc.gov). Hearing impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202-205-1810. General information concerning the Commission may also be obtained by accessing its Internet Web site (<http://www.usitc.gov>). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

Background: Section 1205(a) of the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Act) (19 U.S.C. 3005(a)) provides that the Commission shall keep the HTS under continuous review and periodically recommend to the President such modifications in the HTS as the Commission considers necessary or appropriate to accomplish five general objectives. Among these stated objectives, section 1205(a)(2) of the 1988 Act directs the Commission to consider changes to the HTS to promote the uniform application of the Harmonized System Convention and particularly the Protocol thereto, which contains the Harmonized System nomenclature structure and accompanying legal notes. Section 1205(a)(4) directs the Commission to consider changes to the HTS to alleviate unnecessary administrative burdens. Subsections (b) through (d) of section 1205 describe the procedures the Commission is to follow in formulating recommendations, including with respect to soliciting and considering views of interested Federal agencies and the public. Section 1205(b)(1) requires that the Commission give notice of proposed recommendations and afford reasonable opportunity for interested parties to present their views in writing.

In a letter dated January 15, 2010, from Timothy E. Skud, Deputy Assistant Secretary of the Treasury for Tax, Trade, and Tariff Policy, Treasury asked that the Commission conduct an investigation under section 1205 for the purpose of making recommendations to the President regarding the addition of an Additional U.S. Note and the amendment of certain classification provisions in Chapter 64 of the HTSUS relating to certain footwear featuring outer soles of rubber or plastics to which a layer of textile material has been added. The letter included Treasury's proposed language for an Additional U.S. Note and proposed changes in various U.S. tariff rate lines at the 8-digit level that take into account decisions of the Harmonized System Committee of the World Customs Organization (WCO) on the classification of particular footwear for purposes of the Harmonized System. Treasury's letter provided additional background on the tariff classification of footwear and relevant decisions of U.S. Customs and Border Protection (Customs) and noted the decisions that are the basis of Treasury's request. A copy of Treasury's letter is being posted on the Commission's Web site at <http://www.usitc.gov>.

The Harmonized Commodity Description and Coding System (HS) nomenclature, which is maintained by

the WCO, provides a uniform structural basis for the customs tariffs and statistical nomenclatures of all major trading countries of the world, including the United States. The HS establishes the broadest principles of classification and levels of categories in the HTS, comprising the General Rules of Interpretation, Section and Chapter titles, Section and Chapter legal notes, and heading and subheading texts to the 6-digit level of detail. Additional U.S. Notes, further subdivisions (8-digit subheadings and 10-digit statistical annotations) and statistical notes, as well as the entirety of chapters 98 and 99 and several appendixes, are national legal and statistical detail added for the administration of the U.S. tariff and statistical programs and are not part of the international HS.

An up-to-date copy of the HTS, which incorporates the international HS in its overall structure, can be found on the Commission's Web site (<http://www.usitc.gov/tata/hts/bychapter/index.htm>). Hard copies and electronic copies on CD can be found at many of the 1,400 Federal Depository Libraries located throughout the United States and its territories; further information about these locations can be found at <http://www.gpoaccess.gov/fdpl.html> or by contacting GPO Access at the Government Printing Office at this telephone number: 866-512-1800.

The Commission will prepare a preliminary report containing proposed recommendations in order to provide notice to the public of potential HTS changes and to solicit comment and input. In preparing these proposed recommendations, the Commission will take into account Treasury's request, as well as all other appropriate legal and technical considerations relating to HTS Chapter 64, and will include where appropriate the input submitted by other agencies and interested parties. The Commission will post its preliminary report containing the proposed recommendations on its Web site at http://www.usitc.gov/tariff_affairs/modifications_hts.htm by May 28, 2010. The preliminary report will also include a non-authoritative cross-reference table prepared by Commission staff that will show the likely existing and future tariff classifications of the goods concerned. Any additional submissions from other agencies and the public based on the preliminary report must be filed by June 25, 2010, in order to be taken into account. The Commission will then prepare its final report and recommendations to submit to the President. Interested parties should be aware that Customs has domestic legal

authority for tariff classification and that Customs may provide information, both before and after the proposed recommendations are posted, that indicates different or additional tariff classifications of some goods. Thus, the classifications that appear in the Commission's cross-reference table are subject to change during the investigation.

Written submissions should be filed in accordance with the procedures below. Interested parties should take into account the classification of the merchandise concerned under the international Harmonized System as well as domestic decisions and seek to further the goals set out by section 1205 of the 1988 Act and the Harmonized System Convention. No proposals for changes to existing U.S. rates of duty or to 10-digit statistical annotations or notes will be considered by the Commission during its review. However, the Commission will examine information concerning the rates of duty currently utilized by importers in liquidated and undisputed entries of specific footwear that is the subject of this investigation. The changes in the HTS that may result from this investigation are not intended to alter current tariff rates but instead are intended to ensure that existing tariff rates continue to be applicable following the implementation of new U.S. tariff provisions.

Written Submissions: Interested parties and agencies are invited to file written submissions relating to the recommendations that the Commission should propose based on Treasury's request. They may also file, following the posting of the Commission's proposed recommendations, submissions relating to the recommendations that the Commission must submit to the President. All written submissions should be addressed to the Secretary. Written submissions relating to Treasury's request should be received no later than May 14, 2010, and those relating to the final recommendations the Commission should submit to the President should be received no later than June 25, 2010. Submissions should refer to "Investigation No. 1205-8" in a prominent place on the cover page and/or the first page. All written submissions must conform with the provisions of section 201.8 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 requires that a signed original (or a copy so designated) and fourteen (14) copies of each document be filed. In the event that confidential treatment of a document is requested, at least four (4)

additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf). Persons with questions regarding electronic filing should contact the Secretary (202-205-2000).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the "confidential" or "non-confidential" version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties. Confidential business information received in the proposals may be made available to Customs and Census during the examination of these proposals. The Commission will not otherwise publish or release any confidential business information received, nor release it to other government agencies or other persons.

By order of the Commission.

Issued: April 8, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010-8360 Filed 4-12-10; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[USITC SE-10-008]

Sunshine Act Meeting Notice; Rescheduling of Commission Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

ORIGINAL DATE AND TIME: April 14, 2010 at 11 a.m.

NEW DATE AND TIME: April 15, 2010 at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436. *Telephone:* (202) 205-2000.

STATUS: Open to the public.

In accordance with 19 CFR 201.37, the Commission has determined to reschedule the above referenced Commission meeting. Earlier announcement of this rescheduling was not possible.

Issued: April 9, 2010.

By order of the Commission.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. 2010-8587 Filed 4-9-10; 4:15 pm]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140-0088]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: Advanced Explosives Destruction Techniques (AEDT) Training Course follow-up evaluation form.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) will be submitting 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. This proposed information collection was previously published in the **Federal Register** Volume 75, Number 27, page 6708 on February 10, 2010, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until May 13, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395-5806.

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:

- 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 agencies 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.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Advanced Explosives Destruction Techniques (AEDT) Training Course Follow-up Evaluation Form.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal Government. Other: none. Abstract: The information collected on the survey will provide ATF with data on how the training participants have transferred the knowledge and skills learned to their jobs. The Kirkpatrick 4-Level Model is used to evaluate ATF training programs.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 354 respondents, who will complete the survey within approximately 12 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 71 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry

Building, 601 D Street, NW.,
Washington, DC 20530.

Dated: April 7, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010-8345 Filed 4-12-10; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140-0068]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: Police check inquiry.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting 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. This proposed information collection was previously published in the **Federal Register** Volume 75, Number 27, page 6707 on February 10, 2010, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until May 13, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395-7285.

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:

—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 agencies 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.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Police Check Inquiry.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 8620.42. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* *Primary:* Individuals or households. *Other:* None. Abstract: ATF F 8620.42 has been designed as an internal use form to gather preliminary information from an individual requiring escorted access to ATF facilities. The information is necessary to permit ATF to complete and/or initiate a police check inquiry consisting of criminal record searches. In the event a contractor or other type of non-ATF personnel requires escorted access to facilities, ATF will perform a police check inquiry.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 1,000 respondents, who will complete the form within approximately 5 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 83 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: April 7, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010-8346 Filed 4-12-10; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140-0004]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: Interstate firearms shipment report of theft/loss.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) will be submitting 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. This proposed information collection was previously published in the **Federal Register** Volume 75, Number 27, page 6706-6707 on February 10, 2010, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until May 13, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395-5806.

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:

—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 agencies 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.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Interstate Firearms Shipment Report of Theft/Loss.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 3310.6. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(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. *Abstract:* The form is part of a voluntary program in which the common carrier and/or shipper report losses or thefts of firearms from interstate shipments. ATF uses this information to ensure that the firearms are entered into the National Crime Information Center to initiate investigations and to perfect criminal cases.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 550 respondents, who will complete the form within approximately 20 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 182 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: April 7, 2010.

Lynn Bryant,
Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010-8349 Filed 4-12-10; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140-0065]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: Requisition for forms or publications and requisition for firearms/explosives forms.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting 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. This proposed information collection was previously published in the **Federal Register** Volume 75, Number 27, page 6708 on February 10, 2010, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until May 13, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395-5806.

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:

- 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.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Requisition for Forms or Publications and Requisition for Firearms/Explosives Forms.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 1370.3 and ATF F 1370.2. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* *Primary:* Business or other for-profit. *Other:* Individuals or households. *Abstract:* The forms are used by the general public to request or order forms or publications from the ATF Distribution Center. The forms also notify ATF of the quantity required by the respondent and provide a guide as to annual usage of ATF forms and publications by the general public.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 30,000 respondents, who will complete each form within approximately 3 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 1,725 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: April 7, 2010.

Lynn Bryant,
Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010-8347 Filed 4-12-10; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE**Federal Bureau of Investigation**

[Docket No. FBI 121]

FBI Criminal Justice Information Services Division User Fees**AGENCY:** Federal Bureau of Investigation, Justice.**ACTION:** Notice.

SUMMARY: This notice establishes the user fee schedule for fingerprint-based and name-based criminal history record checks performed by the FBI's Criminal Justice Information Services (CJIS) Division.

DATES: *Effective Date:* May 13, 2010.

FOR FURTHER INFORMATION CONTACT: FBI, CJIS Division, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306. Attention: Christopher L. Enourato, 304-625-2910.

SUPPLEMENTARY INFORMATION: Pursuant to 28 CFR 20.31(e), the FBI may routinely establish and collect fees for noncriminal justice fingerprint-based and other identification services as authorized by federal law. These fees apply to federal, state and any other authorized entities requesting fingerprint identification records and name checks for noncriminal justice purposes. Elsewhere in today's issue of the **Federal Register** the FBI is publishing the final rule related to this notice codifying in the Code of Federal Regulations the FBI's authority in this area.

(1) The Director of the FBI shall review the amount of the fee periodically, but not less than every four years, to determine the current cost of processing fingerprint identification records and name checks for noncriminal justice purposes.

(2) Fee amounts and any revisions thereto shall be determined by current costs, using a method of analysis consistent with widely accepted accounting principles and practices, and calculated in accordance with the provisions of 31 U.S.C. 9701 and other federal law as applicable.

(3) Fee amounts and any revisions thereto shall be published as a Notice in the **Federal Register**.

The following fee schedule provides the user fees for fingerprint-based and name-based criminal history record information (CHRI) checks by the CJIS Division.

FINGERPRINT-BASED CHRI CHECKS

If the Check is a/an* * *	The fee is* * *
Electronic transaction	\$19.25
Electronic submission/manual response transaction* * *	\$26.00
Manual transaction	\$30.25
Volunteer under the VCA transaction* * *	\$15.25

NAME-BASED CHRI CHECKS

If the Check is a/an* * *	The fee is* * *
Electronic transaction* * * ...	\$2.25
Manual transaction* * *	\$6.00

This fee schedule will become effective 30 days following publication of this notice.

Dated: April 6, 2010.

Robert S. Mueller, III,*Director, Federal Bureau of Investigation.*

[FR Doc. 2010-8381 Filed 4-12-10; 8:45 am]

BILLING CODE 4410-02-P**DEPARTMENT OF LABOR****Office of Workers' Compensation Programs****Division of Longshore and Harbor Workers' Compensation; Proposed Collection; Comment Request****ACTION:** Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation (OWCP) is soliciting comments concerning the proposed collection: Securing Financial Obligations under the Longshore and Harbor Workers' Compensation Act and its Extension (LS-276, LS-275-IC and LS-275-SI). A copy of the proposed information collection request can be obtained by contacting the office listed

below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before June 14, 2010.

ADDRESSES: Mr. Vincent Alvarez, U.S. Department of Labor, 200 Constitution Ave., NW., Room S-3201, Washington, DC 20210, telephone (202) 693-0372, fax (202) 693-1378, E-mail

Alvarez.Vincent@dol.gov. Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:**I. Background**

The Longshore and Harbor Workers' Compensation Act (LHWCA) requires covered employers to secure the payment of compensation under the Act and its extensions by purchasing insurance from a carrier authorized by the Secretary of Labor to write Longshore Act Insurance, or by becoming authorized self-insured employers (33 U.S.C. 932 *et seq.*). Each authorized insurance carrier (or carrier seeking authorization) is required to establish annually that its Longshore obligations are fully secured either through an applicable State guaranty (or analogous) fund, a deposit of security with the Division of Longshore and Harbor Workers' Compensation (DLHWC), or a combination of both. Similarly, each authorized self-insurer (or employer seeking authorization) is required to fully secure its Longshore Act obligations by depositing security with DLHWC. These requirements are designed to assure the prompt and continued payment of compensation and other benefits by the responsible carrier or self-insurer to injured workers and their survivors. Forms LS-276, Application for Security Deposit Determination; LS-275-IC, Agreement and Undertaking (Insurance Carrier); and LS-275-SI, Agreement and Undertaking (Self-insured Employer) are used to cover the submission of information by insurance carriers and self-insured employers regarding their ability to meet their financial obligations under the Longshore Act and its extensions. This information collection is currently approved for use through September 30, 2010.

II. Review Focus

The Department of Labor 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 submissions of responses.

III. Current Actions

The Department of Labor seeks the approval for the extension of this currently-approved information collection in order to carry out its responsibility to ensure that a carrier's LHWCA obligations are sufficiently secured and, if necessary, to deposit security in an amount set by OWCP. This procedure will ensure the prompt and continued payments of compensation and medical benefits to injured workers and help protect the Longshore special funds assets from consequences flowing from insurance carriers' insolvencies.

Type of Review: Extension.

Agency: Office of Workers' Compensation Programs.

Title: Request for Earnings Information.

OMB Number: 1240-0005.

Agency Number: LS-276, LS-275-IC and LS-275-SI.

Affected Public: Business or other for-profit, Not-for-profit institution.

Total Respondents: 572.

Total Annual Responses: 651.

Estimated Total Burden Hours: 436.5.

Estimated Time per Response: 15 minutes to 60 minutes.

Frequency: Annually.

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintenance): \$169.52.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 2, 2010.

Vincent Alvarez,

Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.

[FR Doc. 2010-8408 Filed 4-12-10; 8:45 am]

BILLING CODE 4510-CF-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Mine Rescue Teams and Arrangements for Emergency Medical Assistance and Transportation for Injured Persons at Coal Mines

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR Sections 49.12, 49.13, 49.16, 49.17, 49.18, 49.19, 49.50, 75.1713-1(a),(b) and (e), and 77.1702(a), (b), and (e).

DATES: All comments must be received by midnight Eastern Daylight Savings Time on June 14, 2010.

ADDRESSES: Comments must clearly be identified with the rule title and may be submitted to MSHA by any of the following methods:

(1) *Electronic mail:* zzMSHA-Comments@dol.gov.

(2) *Facsimile:* (202) 693-9441.

(3) *Regular Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, VA 22209-3939.

(4) *Hand Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, VA 22209-3939. Sign in at the receptionist's desk on the 21st floor.

FOR FURTHER INFORMATION CONTACT:

Mario Distasio, Chief of the Economic Analysis Division, Office of Standards Regulations, and Variances, MSHA, at distasio.mario@dol.gov (e-mail), 202-693-9445 (voicemail), 202-693-9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

MSHA published a final rule revising the Agency's requirements for mine

rescue teams for underground coal mines on February 8, 2008.

The United Mine Workers of America challenged the final rule in the U.S. Court of Appeals for the District of Columbia Circuit (Court). On February 10, 2009, the Court vacated several of the rule's provisions. Consistent with the Court's decision, MSHA revised its requirements for mine rescue teams for underground coal mines on June 17, 2009. The 2008 mine rescue team standard and 2009 revision added burden to existing information collection requirements and imposed two new information collection requirements.

MSHA last submitted paperwork package 1219-0144 to OMB in May 2009, under the emergency review procedures in 5 CFR 1320.13.

Section 4 of the Mine Improvement and New Emergency Response (MINER) Act of 2006 required MSHA to promulgate standards for mine rescue teams for underground coal mines. The May 2009 paperwork package 1219-0144 addressed only the increased burden associated with the revised and new standards and did not include the information collection burden for the existing mine rescue team standard not addressed by the MINER Act, which had been approved under paperwork package 1219-0078 for both coal and metal and nonmetal mines. This paperwork package 1219-0144 combines the additional burden from the revised and new standards for underground coal mine rescue teams with the existing information collection burden, which has been removed from paperwork package 1219-0078. (The metal and nonmetal mine rescue team paperwork package, OMB control number 1219-0078, has been extended to February 28, 2013, ICR reference number 200912-1219-003.)

This package covers the following requirements for coal mines:

- Each operator of a coal mine who provides rescue teams is required to send the District Manager a statement describing the mine's method of compliance with the standard.

- Small or remote mines may submit an application of an arrangement for alternative mine rescue capability to MSHA for approval.

- A person trained in the use and care of the breathing apparatus is required to certify by signature and date that the required inspections and tests were done, take corrective action if indicated, and record any corrective action taken.

- Each member of a mine rescue team must be examined annually by a physician who must certify that each

person is physically fit to perform mine rescue and recovery work.

- A record of the training received by each mine rescue team member in the use, care, and maintenance of the type of breathing apparatus that will be used by the mine rescue team must be made and kept on file at the mine rescue station for a period of one year. The operator must provide the District Manager information concerning the schedule of upcoming training when requested.

- Each mine must have a mine rescue notification plan outlining the procedures to be followed in notifying the mine rescue teams when there is an emergency that requires their services.
- Underground coal mine operators must certify that each designated coal mine rescue team meets the requirements of 30 CFR part 49 subpart B.

- Coal mine operators must make arrangements for 24-hour emergency medical assistance and transportation for injured persons and to post this information at appropriate places at the mine, including the names, titles, addresses, and telephone numbers of all persons or services currently available under those arrangements.

II. Desired Focus of Comments

MSHA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the Internet by "Rules & Reg", and then selecting "FedReg.Docs".

On the next screen, select "Paperwork Reduction Act Supporting Statement" to view documents supporting the **Federal Register Notice**.

III. Current Actions

This request for collection of information contains notification and recordkeeping provisions Mine Rescue Teams and Arrangements for Emergency Medical Assistance and Transportation for Injured Persons at Coal Mines. MSHA does not intend to publish the results of this information collection and is not seeking approval to not display the expiration date or OMB approval number for this collection of information.

There are no certification exceptions identified with this information collection and the collection of this information does not employ statistical methods.

Type of Review: Renewal.

Agency: Mine Safety and Health Administration.

Title: Mine Rescue Teams, Arrangements for Emergency Medical Assistance and Transportation for Injured Persons; Agreements; Reporting Requirements; Posting Requirements and for Coal Mine Operators.

OMB Number: 1219-0144.

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Cost to Federal Government: 25,108.

Total Burden Respondents: 2,055.

Total Number of Responses: 24,767.

Total Burden Hours: 5,181.

Total Hour Burden Cost (operating/maintaining): \$863,397.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 7, 2010.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 2010-8356 Filed 4-12-10; 8:45 am]

BILLING CODE 4510-43-P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 10-04]

Notice of Quarterly Report (October 1, 2009—December 31, 2009)

AGENCY: Millennium Challenge Corporation.

SUMMARY: The Millennium Challenge Corporation (MCC) is reporting for the quarter October 1, 2009 through December 31, 2009, on assistance provided under section 605 of the Millennium Challenge Act of 2003 (22 U.S.C. 7701 *et seq.*), as amended (the Act), and on transfers or allocations of funds to other federal agencies under section 619(b) of the Act. The following report will be made available to the public by publication in the **Federal Register** and on the Internet Web site of the MCC (<http://www.mcc.gov>) in accordance with section 612(b) of the Act.

ASSISTANCE PROVIDED UNDER SECTION 605

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Madagascar Year: 2010 Quarter 1 Total Obligation: \$87,998,166				
Entity to which the assistance is provided: MCA Madagascar Total Quarterly Disbursement: \$4,193,753				
Land Tenure Project	\$30,123,098	Increase Land Titling and Security.	\$29,667,721	Area secured with land certificates or titles in the Zones. Proportion of the population informed about land tenure reforms in the Zones. Legal and regulatory reforms adopted. Number of land documents inventoried in the Zones and Antananarivo. Number of land documents restored in the Zones and Antananarivo. Number of land documents digitized in the Zones and Antananarivo.

ASSISTANCE PROVIDED UNDER SECTION 605—Continued

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Finance Project	25,937,781	Increase Competition in the Financial Sector.	23,535,849	Average time for Land Services Offices to issue a duplicate copy of a title. Average cost to a user to obtain a duplicate copy of a title from the Land Services Offices. Number of land certificates delivered in the Zones during the period. Number of new guichets fonciers operating in the Zones. The 256 Plan Local d'Occupation Foncier—Local Plan of Land Occupation (PLOFs) are completed. Volume of funds processed annually by the national payment system. The components necessary to implement the national payment system are operational: network equipment and integrator, real time gross settlement system (RTGS), retail payment clearing system, telecommunication facilities. Number of accountants and financial experts registered to become Certified Public Accountant (CPA).
Agricultural Business Investment Project.	13,687,196	Improve Agricultural Projection Technologies and Market Capacity in Rural Areas.	13,582,621	Percent of Micro-Finance Institution (MFI) loans recorded in the Central Bank database. Number of farmers that adopt new technologies or engage in higher value production. Number of enterprises that adopt new technologies or engage in higher value production. Number of farmers receiving technical assistance. Number of farmers employing technical assistance. Number of businesses receiving technical assistance. Number of Ministère de l'Agriculture, de l'Élevage et de la Pêche—Ministry of Agriculture, Livestock, and Fishing (MAEP) agents trained in marketing and investment promotion. Zones identified and description of beneficiaries within each zone submitted. Number of people receiving information from Agricultural Business Center (ABCs) on business opportunities. Zonal investment strategies for the Zones are developed. Number of ABC clients who register as formal enterprises, cooperatives, or associations. Number of marketing contracts of ABC clients.
Program Administration* and Control, Monitoring and Evaluation.	18,250,091	.....	17,583,512	
Pending subsequent reports**.	.....	.....	1,368,813	

* Program administration funds are used to pay items such as salaries, rent, and the cost of office equipment.

** These amounts represent disbursements made that will be allocated to individual projects in the subsequent quarter(s) and reported as such in subsequent quarterly report(s)

Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Honduras Year: 2010 Quarter 1 Total Obligation: \$205,000,000				
Entity to which the assistance is provided: MCA Honduras Total Quarterly Disbursement: \$23,018,243 Rural Development Project	69,907,000	Increase the productivity and business skills of farmers who operate small and medium-size farms and their employees..	45,706,605	Number of program farmers harvesting high-value horticulture crops. Number of hectares harvesting high-value horticulture crops. Number of business plans prepared by program farmers with assistance from the implementing entity.

Projects	Obligated	Objective	Cumulative disbursements	Measures
Transportation Project	119,005,876	Reduce transportation costs between targeted production centers and national, regional and global markets.	75,891,981	Total value of net sales. Total number of recruited farmers receiving technical assistance. Value of loans disbursed (disaggregated by trust fund, leveraged from trust fund, and institutions receiving technical assistance from ACDI-VOCA). Number of loans disbursed (disaggregated by trust fund, leveraged from trust fund, and institutions receiving technical assistance from ACDI-VOCA). Percentage of loan portfolio at risk (disaggregated by trust fund and institutions receiving technical assistance from ACDI-VOCA). Funds lent from the trust fund to financial intermediaries through lines of credit. Number of hectares under irrigation. Number of beneficial biological control agents developed for use by program farmers or other farmers for pilot testing. Number of improved coffee hybrids available for cloning. Number of farmers connected to the community irrigation system. Number of certified deliverables across all agricultural public goods grant. Freight shipment cost from Tegucigalpa to Puerto Cortes. Average annual daily traffic volume—CA-5. International roughness index (IRI)—CA-5. Kilometers of road upgraded—CA-5. Percent of contracted road works disbursed—CA-5. Average annual daily traffic volume—secondary roads. International roughness index (IRI)—secondary roads. Kilometers of road upgraded—secondary roads. Percent of contracted road works disbursed—secondary roads. Average annual daily traffic volume—rural roads. Average speed—rural roads. Kilometers of road upgraded—rural roads. Percent of contracted road works disbursed—rural roads. Signed contracts for feasibility and/or design studies. Percent of contracted studies disbursed. Kilometers (km) of roads under design. Signed contracts for roads works. Kilometers (km) of roads under works contracts.
Program Administration* and Control, Monitoring and Evaluation.	16,087,124	.....	9,027,708	
Pending subsequent reports**.	.....	.....	1,521,767	
Projects	Obligated	Objective	Cumulative disbursements	Measures

Country: Cape Verde Year: 2010 Quarter 1 Total Obligation: \$110,078,488

Entity to which the assistance is provided: MCA Cape Verde Total Quarterly Disbursement: \$8,048,329 Watershed and Agricultural Support.	11,001,130	Increase agricultural production in three targeted watershed areas on three islands.	8,116,030	Productivity: Horticulture, Paul watershed. Productivity: Horticulture, Faja watershed. Productivity: Horticulture, Mosteiros watershed. Number of farmers adopting drip irrigation. Area irrigated with drip irrigation. Percent of contracted irrigation works disbursed (cumulative). Reservoirs constructed.

Projects	Obligated	Objective	Cumulative disbursements	Measures
Infrastructure Improvement	83,160,208	Increase integration of the internal market and reduce transportation costs.	49,148,363	Number of farmers that have completed training in at least 3 of 5 core agricultural disciplines. Travel time ratio: percentage of beneficiary population further than 30 minutes from nearest market. Kilometers of roads rehabilitated. Percent of contracted Santiago Roads works disbursed (cumulative). Percent of contracted Santo Antao Bridge works disbursed (cumulative). Kilometers (km) of roads under design. Signed contracts for roads works. Kilometers (km) of roads under works contracts. Port of Praia: percent of contracted port works disbursed (cumulative). Cargo village: percent of works completed. Quay 2 improvements: percent of works completed. Access road: percent of works completed.
Private Sector Development.	2,081,223	Spur private sector development on all islands through increased investment in the priority sectors and through financial sector reform.	1,188,909	Micro-Finance Institution (MFI) recovery rate, adjusted. MFI portfolio at risk, adjusted. Ratio of MFIs operationally self-sufficient.
Program Administration* and Control, Monitoring and Evaluation.	13,835,927	.....	9,213,906	
Pending subsequent reports**.	.....	.....	1,471,195	
Projects	Obligated	Objective	Cumulative disbursements	Measures

Country: Nicaragua Year: 2010 Quarter 1 Total Obligation: \$113,599,752

Entity to which the assistance is provided: MCA Nicaragua Total Quarterly Disbursement: \$12,093,689 Property Regularization Project.	7,205,205	Increase Investment by strengthening property rights.	7,204,952	Automated database of registry and cadastre installed in the 10 municipalities of Leon. Value of land, urban. Value of land, rural. Time to conduct a land transaction. Number of additional parcels with a registered title, urban. Number of additional parcels with a registered title, rural. Number of protected areas demarcated. Area covered by cadastral mapping. Cost to conduct a land transaction.
Transportation Project	57,999,999	Reduce transportation costs between Leon and Chinandega and national, regional and global markets.	44,081,241	Annual Average daily traffic volume: N1 Section R1. Annual Average daily traffic volume: N1 Section R2. Annual Average daily traffic volume: Port Sandino (S13). Annual Average daily traffic volume: Villanueva—Guasaule Annual. Average daily traffic volume: Somotillo-Cinco Pinos (S1). Annual average daily traffic volume: León-Poneloya-Las Peñitas. International Roughness Index: N-I Section R1. International Roughness Index: N-I Section R2. International Roughness Index: Port Sandino (S13). International roughness index: Villanueva—Guasaule. International roughness index: Somotillo-Cinco Pinos. International roughness index: León-Poneloya-Las Peñitas. Kilometers of NI upgraded: R1 and R2 and S13. Kilometers of NI upgraded: Villanueva—Guasaule.

Projects	Obligated	Objective	Cumulative disbursements	Measures
Rural Development Project	32,897,500	Increase the value added of farms and enterprises in the region.	22,401,745	Kilometers of S1 road upgraded. Kilometers of S9 road upgraded. Kilometers of designed primary roads (including N-I/ Puerto Sandino and V-G). Kilometers of designed secondary roads. Number of beneficiaries with business plans prepared with assistance from the Rural Development Business Project. Numbers of <i>manzanas</i> (1 <i>Manzana</i> = 1.7 hectares), by sector, harvesting higher-value crops. Number of manzanas of beneficiaries of the program that harvest higher-value crops with irrigation or commercial reforestation under Improvement of Water Supply Activities. Number of beneficiaries implementing business plans. Average increase in income of beneficiaries due to program.
Program Administration*, Due Diligence, Monitoring and Evaluation. Pending subsequent reports**.	15,497,048	.....	10,375,380	
	.....	.....	3,759,039	
Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Georgia Year: 2010 Quarter 1 Total Obligation: \$395,300,000				
Entity to which the assistance is provided: MCA Georgia Total Quarterly Disbursement: \$45,135,334 Regional Infrastructure Rehabilitation.	310,750,000	Key Regional Infrastructure Rehabilitated.	136,600,072	Household savings from Infrastructure Rehabilitation Activities. Savings in vehicle operating costs (VOC). International roughness index (IRI). Annual average daily traffic (AADT). Travel Time. Kilometers of road paved. Percent of contracted works disbursed. Signed contracts for feasibility and/or design studies. Percent of contracted studies disbursed. Kilometers of roads under design. Signed contracts for road works. Kilometers of roads under works contracts. Sites rehabilitated (phases I, II, III)—pipeline. Construction works completed (phase II)—pipeline. Savings in household expenditures for all sub-projects. Population Served by all subprojects. Subprojects completed. Value of project grant agreements signed. Value of project works and goods contracts signed. Subprojects with works initiated.
Regional Enterprise Development.	52,200,000	Enterprises in Regions Developed.	38,387,329	Jobs Created by Agribusiness Development Activity (ADA) and by Georgia Regional Development Fund (GRDF). Household net income—ADA and GRDF. Jobs created—ADA. Firm income ADA. Household net income—ADA. Beneficiaries (direct and indirect)—ADA. Grant agreements signed—ADA. Increase in gross revenues of portfolio companies (PC). Increase in portfolio company employees. Increase in wages paid to the portfolio company employees. Cumulative number of portfolio companies. Funds disbursed to the portfolio companies.

Projects	Obligated	Objective	Cumulative disbursements	Measures
Program Administration*, Due Diligence, Monitoring and Evaluation.	32,350,000	.....	16,093,973	
Pending subsequent reports**.	.....	.....	0	

November 2008, MCC and the Georgian government signed a Compact amendment making up to \$100 million of additional funds available to the Millennium Challenge Georgia Fund. These funds will be used to complete works in the Roads, Regional Infrastructure Development, and Energy Rehabilitation Projects contemplated by the original Compact. The amendment was ratified by the Georgian parliament and entered into force on January 30, 2009.

Projects	Obligated	Objective	Cumulative disbursements	Measures

Country: Vanuatu Year: 2010 Quarter 1 Total Obligation: \$65,690,000

Entity to which the assistance is provided: MCA Vanuatu Total Quarterly Disbursement: \$6,590,285 Transportation Infrastructure Project.	60,162,579	Facilitate transportation to increase tourism and business development.	42,223,234	Number of international tourists—Efate. Number of international tourists—Santo. Number of room nights occupied—Efate. Number of room nights occupied—Santo. Average annual daily traffic—Efate. Average annual daily traffic—Santo. Kilometers of road upgraded—Efate. Kilometers of roads upgraded—Santo. Signed contracts for feasibility and/or design studies. Percent of contracted studies disbursed. Kilometers (km) of roads under design. Signed contracts for roads works. Kilometers (km) of roads under works contracts. Percent of contracted roads works disbursed.
Program Administration*, Due Diligence, Monitoring and Evaluation.	5,527,421	.....	2,835,051	
Pending subsequent reports**.	.....	.....	104,691	

Projects	Obligated	Objective	Cumulative disbursements	Measures

Country: Armenia Year: 2010 Quarter 1 Total Obligation: \$235,650,000

Entity to which the assistance is provided: MCA Armenia Total Quarterly Disbursement: \$12,688,383 Irrigated Agriculture Project (Agriculture and Water).	152,629,208	Increase agricultural productivity Improve and Quality of Irrigation.	35,432,441	Recovery of Water User Associations (WUA) operations and maintenance cost by water charges. Primary canals rehabilitated. Tertiary canals rehabilitated. Percent of contracted irrigation works disbursed. Value of signed contracts for irrigation works. Number of farmers using better on-farm water management. Number of farmers trained. Number of agribusinesses assisted. Value of agricultural loans to farmers/agribusinesses.
Rural Road Rehabilitation Project.	67,100,000	Better access to economic and social infrastructure.	7,870,944	Average annual daily traffic. International roughness index. Kilometers of roads rehabilitated. Percent of contracted roads works disbursed. Signed contracts for roads works. Percent of contracted studies disbursed. Kilometers (km) of roads under design.

Projects	Obligated	Objective	Cumulative disbursements	Measures
Program Administration*, Due Diligence, Monitoring and Evaluation. Pending subsequent reports**.	15,920,792	.....	9,731,968	Signed contracts for feasibility and/or design studies. Kilometers (km) of roads under works contracts.
	.....	.....	992,543	
Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Benin Year: 2010 Quarter 1 Total Obligation: \$307,298,040				
Entity to which the assistance is provided: MCA Benin Total Quarterly Disbursement: \$17,276,237 Access to Financial Services.	19,650,000	Expand Access to Financial Services.	3,337,246	Volume of credits granted by the Micro-Finance Institutions (MFI). Volume of saving collected by the Micro-Finance Institutions. Average portfolio at risk >90 days of microfinance institutions at the national level. Operational self-sufficiency of MFIs at the national level. Average time required by Cellule de Surveillance des Structures Financières Décentralisées (CSSFD) in treating MFI applications. Number of institutions receiving grants through the Facility.
Access to Justice	34,270,000	Improved Ability of Justice System to Enforce Contracts and Reconcile Claims.	1,940,659	Second call for proposal for grants launched. Number of MFIs <i>inspected by CSSFD</i> . Average time to enforce a contract. Percent of firms reporting confidence in the judicial system. Number of cases processed at Arbitration Center per year. Number of Information, Education and Communication Campaign (IEC) sessions hosted by Chamber of Commerce (CAMEC). Passage of new legal codes. Average time required for Tribunaux de premiere instance- arbitration centers and courts of first instance (TPI) to reach a final decision on a case. Average time required for Court of Appeals to reach a final decision on a case. Percent of cases resolved in TPI per year. Percent of cases resolved in Court of Appeals per year. Number of Court inspections per year. Number of Court employees trained. Number of beneficiaries of legal aid services. Complete construction on 9 new court houses. Average time required to register a business (<i>société</i>). Average time required to register a business (sole proprietorship). Number of businesses accessing CAMEC service.
Access to Land	36,020,000	Strengthen property rights and increase investment in rural and urban land.	12,582,598	Business registration center (CFE) information and outreach campaign executed throughout Benin. Total value of investment in targeted urban land parcels. Total value of investment in targeted rural land parcels. Average cost required to obtain a new land title through on demand process. Average cost required to convert occupancy permit to land title through systematic process. Percentage of respondents perceiving land security in the Occupancy Permit (PH) into Land titles (TF) or Rural Land Plan Foncier Rural (PFR) areas.

Projects	Obligated	Objective	Cumulative disbursements	Measures
Access to Markets	169,447,000	Improve Access to Markets through Improvements to the Port of Cotonou.	27,391,206	Number of new land disputes reported by commune heads. Seven studies complete. Land code texts adopted (laws, decrees and land code). Value (\$) of equipment purchased. Number of land certificates issued within MCA-Benin implementation. Number of habitation permits converted to land titles. Number of Continuously Operating Reference (CORS) stations installed. Number of public and private surveyors trained. Number of communes with new cadastres. Land market information system established. Volume of merchandise traffic through the Port Autonome de Cotonou. Bulk ship carriers waiting times at the port. Container ship waiting times at the port. Port design-build contract awarded. Port crime levels (number of thefts). Internal port circulation time. Average time to clear customs. Execution rate of training plan. Port meets—international port security standards (ISPS). Public consultation completed (3). Environmental permits issued.
Program Administration*, Due Diligence, Monitoring and Evaluation.	47,911,040	.....	20,768,780	
Pending subsequent reports**.	.....	.....	283,061	

Projects	Obligated	Objective	Cumulative disbursements	Measures

Country: Ghana Year: 2010 Quarter 1 Total Obligation: \$547,009,000

Entity to which the assistance is provided: MCA Ghana Total Quarterly Disbursement: \$33,331,317				
Agriculture Project	227,899,382	Enhance Profitability of cultivation, services to agriculture and product handling in support of the expansion of commercial agriculture among groups of smallholder farms.	60,896,888	Number of farmers trained. Number of agribusinesses assisted. Number of hectares under production with MCC support.
Rural Development Project	89,361,539	Strengthen the rural institutions that provide services complementary to, and supportive of, agricultural and agriculture business development.	12,640,404	Value of agricultural loans to farmers/agribusinesses. Value of signed contracts for feasibility and/or design studies (irrigation). Percent of contracted (design/feasibility) studies complete (irrigation). Value of signed contracts for irrigation works (irrigation). Percent of contracted irrigation works disbursed. Percent of people aware of their land rights. Total number of parcels surveyed in the Pilot Land Registration Areas (PLRAs). Volume of products passing through post-harvest treatment. Number of students enrolled in schools affected by Education Facilities Sub-Activity. Number of schools rehabilitated. Number of basic school blocks constructed to Ministry of Education (MOE) construction standards.

Projects	Obligated	Objective	Cumulative disbursements	Measures
Transportation	174,285,120	Reduce the transportation costs affecting agriculture commerce at sub-regional levels.	29,089,944	Number of schools designed and due diligence completed. Distance to collect water. Time to collect water. Incidence of guinea worm. Average number of days lost due to guinea worm. Number of people affected by Water and Sanitation Facilities Sub-Activity. Number of stand-alone boreholes/wells/non-conventional water systems constructed/rehabilitated. Number of small-town water systems constructed. Number of pipe extension projects constructed. Number of stand-alone boreholes/wells/non-conventional water systems identified and due diligence performed for rehabilitation/construction. Number of small-town water systems designed and due diligence completed for construction. Number of pipe extension projects designed and due diligence completed for construction. Number of agricultural processing plants in target districts with electricity due to Rural Electrification Sub-Activity. Number of electricity projects identified and due diligence completed. International roughness index. Annualized average daily traffic. Kilometers of road completed. Percent of contracted road works disbursed. Value of signed contracts for road works. Kilometers of road designed. Percent of contracted design/feasibility studies completed. Value of signed contracts for feasibility and/or design studies. Travel time for walk-on passengers. Travel time for small vehicles. Travel time for trucks. Annual average daily traffic (vehicles). Annual average daily traffic (passengers). Landing stages rehabilitated. Ferry terminal upgraded. Rehabilitation of Akosombo Floating Dock completed. Percent of contracted work disbursed landings and terminals. Value of signed contracts for works: ferry and floating dock. Value of signed contracts for works: landings and terminals.
Program Administration*, Due Diligence, Monitoring and Evaluation.	55,462,959	.....	19,243,257	
Pending subsequent reports**.	.....	.....	1,327,602	
Projects	Obligated	Objective	Cumulative disbursements	Measures

Country: El Salvador Year: 2010 Quarter 1 Total Obligation: \$460,940,000

Entity to which the assistance is provided: MCA El Salvador Total Quarterly Disbursement: \$16,870,583 Human Development Project.	94,963,736	Increase human and physical capital of residents of the Northern Zone to take advantage of employment and business opportunities.	11,720,541	Employment rate of graduates of middle technical schools. Graduation rates of middle technical schools. Middle technical schools remodeled and equipped.

Projects	Obligated	Objective	Cumulative disbursements	Measures
Productive Development Project.	87,850,853	Increase production and employment in the Northern Zone.	20,015,147	Scholarships granted to students of middle technical schools. Students of non-formal training. Cost of water. Time collecting water. Households benefiting with water solutions built. Potable water and basic sanitation systems with construction contracts signed. Cost of electricity. Electricity consumption. Households benefiting with a connection to the electricity network. Household benefiting with the installation of isolated solar systems. Kilometers of new electrical lines with construction contracts signed. Population benefiting from strategic infrastructure. Community Infrastructure Works with Construction Contracts Signed. Number of hectares under production with MCC support. Number of farmers trained. Value of agricultural loans to farmers/agribusinesses. Number of agribusinesses assisted.
Connectivity Project	233,389,335	Reduce travel cost and time within the Northern Zone, with the rest of the country, and within the region.	22,054,330	Average annual daily traffic. International roughness index. Kilometers of roads rehabilitated. Kilometers of roads under works contract.
Program Administration* and Control, Monitoring and Evaluation.	44,736,076	.....	12,356,366	Signed contracts for roads works. Percent of contracted roads works disbursed.
Pending Subsequent Report**.	.....	.....	0	
Projects	Obligated	Objective	Cumulative disbursements	Measures

Country: Mali Year: 2010 Quarter 1 Total Obligation: \$460,811,164

Entity to which the assistance is provided: MCA Mali Total Quarterly Disbursement: \$14,221,585 Bamako Sénou Airport Improvement Project.	181,254,264	Establish an independent and secure link to the regional and global economy.	9,140,789	Total wage bill of tourism industry. Freight volume. Employment at airport. Signature of design contract. Average number of weekly flights (arrivals). Passenger traffic (annual average). Percent works complete. Airside Infrastructure Design, and Airside Infrastructure Construction Supervision, (AIR A01) and Landside Infrastructure Design (New Terminal & Associated Works) and Landside Construction Supervision is launched. Time required for passenger processing at departures and arrivals. Passenger satisfaction level. Percent works complete. Percent of airport management and maintenance plan implemented. Airport meets Federal Aviation Administration (FAA) and International Civil Aviation Organization (ICAO) security standards. Technical assistance delivered to project.

Projects	Obligated	Objective	Cumulative disbursements	Measures
Alatona Irrigation Project ..	234,884,675	Increase the agricultural production and productivity in the Alatona zone of the ON.	32,430,172	Number of agricultural jobs created in Alatona zone. Main season rice yields. International roughness index (IRI) on the Niono-Goma Coura Route. Average daily vehicle count. Percentage works complete. Total irrigated land in the Alatona zone. Irrigation system efficiency on Alatona Canal during the rainy season and the dry season. Kilometers of road under design/feasibility study. Value of signed contracts for road works. Kilometers of road under works contract. Percent of works completed on main system construction. Percent of contracted irrigation works disbursed for tranche 1. Value of signed contracts for irrigation works. Value of signed contracts for feasibility and/or design studies. Percent of contracted (design/feasibility) studies disbursed. Area planted by new settlers (wet season). Titles registered in the land registration office of the Alatona zone (for 5- or 10-hectare farms). Total land payments made. Total market gardens allocated in Alatona zones for the populations affected by the project (PAPs). Decree transferring legal control of the project impact area is passed. Selection criteria for new settlers approved. Contractor implementing the "Mapping of Agricultural and Communal Land Parcels" contract is mobilized. School enrollment rate. Percent of Alatona population with access to drinking water. Number of schools available in the Alatona. Number of health centers available in the Alatona. Number of concessions that have been compensated. Resettlement census verified. Adoption rate of improved agriculture techniques among populations affected by the project (PAPs). Number of operational mixed cooperatives. Area planted by PAPs (wet season rice). Area planted with shallots during dry season. Number of farmers completing literacy training. Number of people completing the rice and shallot production techniques module. Number of farmers completing land titling training. Water management system design and capacity building strategy implemented. Call for proposals for the applied research grants launched. Average portfolio at risk among Alatona micro-finance institutions. Average loan repayment rate of Alatona clients (farmers organizations or individual farmers). Amount of credit extended to Alatona farmers. Number of farmers accessing grant assistance for first loan from financial institutions. Financial institution partners identified (report on assessment of the financial institutions in the Office du Niger—Office of Niger zone (ON zone).
Industrial Park Project	2,643,432	Develop a platform for industrial activity to be located within the Airport domain.	2,637,472	Occupancy level. Average number of days required for operator to connect to Industrial Park water and electricity services.
Program Administration* and Control, Monitoring and Evaluation.	42,028,793	.....	16,370,427	

Projects	Obligated	Objective	Cumulative disbursements	Measures
Pending Subsequent Report**.	.....	.....	0	
Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Mongolia Year: 2010 Quarter 1 Total Obligation: \$284,902,443				
Entity to which the assistance is provided: MCA Mongolia Total Quarterly Disbursement: \$1,895,217 Property Rights Project	22,910,728	Increase security and capitalization of land assets held by lower-income Mongolians, and increased peri-urban herder productivity and incomes.	824,383	Number of studies completed. Legal and regulatory reforms adopted. Number of landholders reached by public outreach efforts. Personnel Trained. Number of Buildings rehabilitated/constructed. Value of equipment purchased. Rural hectares Mapped. Urban Parcels Mapped. Rural Hectares Formalized. Urban parcels formalized.
Rail Project	188,378,000	Increase rail traffic and shipping efficiency.	369,560	Increase in gross domestic product due to rail improvements. Freight turnover. Mine traffic. Percent of wagons leased by private firms. Railway operating ratio. Customer satisfaction. Wagon time to destination. Average locomotive availability.
Vocational Education Project.	25,492,856	Increase employment and income among unemployed and under-employed Mongolians.	903,534	Rate of employment. Students completing newly designed long-term programs. Percent of active teachers receiving certification training. Technical and vocational education and training (TVET) legislation passed.
Health Project	16,969,757	Increase the adoption of behaviors that reduce non-communicable diseases (NCDIs) among target populations and improved medical treatment and control of NCDIs.	1,149,233	Diabetes and hypertension controlled. Percentage of cancer cases diagnosed in early stages. Road and traffic safety activity finalized and key interventions developed.
Program Administration* and Control, Monitoring and Evaluation.	31,151,102	.....	6,277,475	
Pending subsequent reports**.	.....	.....	265,000	

In late 2009, the MCC's Board of Directors approved the allocation of a portion of the funds originally designated for the rail project to the expansion of the health, vocational education and property right projects from the rail project, and the remaining portion to the addition of a road project.

Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Mozambique Year: 2010 Quarter 1 Total Obligation: \$506,924,053				
Entity to which the assistance is provided: MCA Mozambique Total Quarterly Disbursement: \$4,542,157 Water and Sanitation Project.	203,585,393	Increase access to reliable and quality water and sanitation facilities.	2,041,490	Time to get to non-private water source. Percent of urban population with improved water sources. Percent of urban population with improved sanitation facilities. Number of private household water connections in urban areas. Number of private household sanitation connections in urban areas. Number of standpipes in urban areas. Final detailed design for 5 towns submitted. Final detailed design for 3 cities submitted. Percent of rural population with access to improved water sources. Number of rural water points constructed. Final design report I (400 WP) submitted. Final design report II (200 Water points) submitted. Implementing agreement signed with the Administration for Water and Sanitation (AIAS) Infrastructure.
Road Rehabilitation Project	176,307,480	Increase access to productive resources and markets.	715,163	Change in international roughness index (IRI). Average annual daily traffic volume. Kilometers of road rehabilitated. Kilometers of road under design. Percent of Namialo—Rio Lúrio Road—Metoro feasibility, design, and supervision contract disbursed. Percent of Rio Ligonha Nampula feasibility, design, and supervision contract disbursed. Percent of Chimuara Niconadala feasibility, design, and supervision contract disbursed. Kilometers of roads under works contract. Percent of Namialo—Rio Lúrio Road construction contract disbursed. Percent of Rio Lúrio—Metoro Road construction contract disbursed. Percent of Rio Ligonha—Nampula Road construction contract disbursed. Percent of Chimuara Niconadala Road construction contract disbursed. Feasibility/Environmental and Social Assessment studies, design, supervision, and construction contract (ESA) for Namialo—Rio Lúrio-Metoro Road segment signed. Feasibility/ESA contract for Rio Ligonha Nampula Road segment signed. Feasibility/ESA contract for Chimuara—Niconadala Road signed. Time to get land usage rights direito de uso e aproveitamento da terra (state-granted land right) (DUAT).
Land Tenure Services Project.	39,068,307	Establish efficient, secure land access for households and investors.	2,182,331	Cost to get land usage rights DUAT. Total number of officials and residents reached with land strategy and policy awareness and outreach messages. Land strategy approved. Number of buildings rehabilitated or built. Total value of procured equipment and materials. Number of people trained. Rural hectares mapped in Site Specific Activity. Rural hectares mapped in Community Land Fund Initiative. Urban parcels mapped. Rural hectares formalized through Site Specific Activity. Rural hectares formalized through Community Land Fund Initiative.

Projects	Obligated	Objective	Cumulative disbursements	Measures
Farmer Income Support Project.	18,400,117	Improve coconut productivity and diversification into cash crop.	1,267,243	Urban parcels formalized. Number of communities delimited. Number of households having land formalized. Income from coconuts and coconut products. Survival rate of coconut seedling. Number of diseased or dead palm trees cleared. Number of coconut seedlings planted. Hectares under production. Number of farmers trained in pest and disease control. Number of farmers trained in crop diversification technologies. Contract for project implementation signed.
Program Administration* and Control, Monitoring and Evaluation.	69,562,756	.....	9,116,105	
Pending Subsequent Report**.	.....	.....	806,906	
Projects	Obligated	Objective	Cumulative disbursements	Measures

Country: Lesotho Year: 2010 Quarter 1 Total Obligation: \$362,514,382

Entity to which the assistance is provided: MCA Lesotho Total Quarterly Disbursement: \$3,674,696 Water Project	164,027,999	Improve the water supply for industrial and domestic needs, and enhance rural livelihoods through improved watershed management.	5,470,756	School days lost due to water borne diseases. Diarrhea notification at health centers. Time saved due to access to water source. Rural household (HH) provided with access to improved water supply. Rural HH provided with access to improved ventilated latrines. Rural water points constructed. Number of new latrines built. Urban HH with access to potable water supply. Number of enterprises connected to water network. Households connected to improved water network. Cubic meters of treated water from metolong dam delivered through a conveyance system to Water and Sewerage Authority (WASA). Value of water treatment contract works award. Value of conveyance system contract work award. Species population. Livestock grazing per area. Area put under conservation. People with HIV still alive 12 months after initiation of treatment. TB notification (per 100,000 pop.). Proportion of blood units collected annually.
Health Project	122,398,000	Increase access to life-extending ART and essential health services by providing a sustainable delivery platform..	3,194,630	Deliveries conducted in the health centers. Immunization coverage rate. Number of Health Centers (H/C) constructed and fully equipped. Value of contract works for health center construction. Percentage of contract works for health center construction disbursed. Percentage of contract works for Botshalo Complex disbursed. Percentage of contract works for Out-Patient Department (OPD) Centers disbursed. Percentage of HSS Contract disbursed. Proportion of People Living With AIDS(PLWA) receiving Antiretroviral treatment (ARV) (by age and sex). Referred tests from central laboratory per year by types (number).

Projects	Obligated	Objective	Cumulative disbursements	Measures
Private Sector Development Project.	36,470,318	Stimulate investment by improving access to credit, reducing transaction costs and increasing the participation of women in the economy.	1,961,646	Average time (days) required to enforce a contract. Pending commercial cases. Cases filed at the commercial court. Value of commercial cases. Judicial staff trained. Administrative and clerical staff trained. Awareness campaigns. Portfolio of loans. Loan processing time. Bank accounts. Paper-based payments. Electronic payments. Value of contract services signed. Debit/smart cards issued. Mortgage bonds registered. Value of registered mortgage bonds. New land disputes brought to the Land Tribunal and Courts of Law. Time to complete a land transaction. Time to complete transfer of land rights. Land transactions recorded. Land parcels formalized. Number of land administration personnel trained. Land Act adopted. People trained on gender equality and economic rights. ID cards issued. Population registered in the national database.
Program Administration* and Control, Monitoring and Evaluation.	39,654,682	.....	10,222,540	
Pending Subsequent Report**.	.....	.....	– 23,881	
Projects	Obligated	Objective	Cumulative disbursements	Measures

Country: Morocco Year: 2010 Quarter 1 Total Obligation: \$697,500,000

Entity to which the assistance is provided: MCA Lesotho Total Quarterly Disbursement: \$12,789,002				
Fruit Tree Productivity	300,898,445	Reduce volatility of agricultural production and increase volume of fruit agricultural production.	9,663,592	Total annual volume of production of dates and olives. Cropped area covered by olive trees. Survival rate of newly planted olive trees after 2 years project-supported establishment period. Yield of rehabilitated olive trees. Cropped area covered by date trees. Yield of rehabilitated date palms.
Small Scale Fisheries	116,168,027	Improve quality of fish moving through domestic channels and assure the sustainable use of fishing resources.	1,155,138	State of fish stock. Domestic fish consumption level. Fisherman net revenue. Average fisherman sales price at Points de Débarquement Aménagés (PDA). Volume sold at wholesale markets. Fish sale price. Average sales price. Volume of sales among mobile fish vendors.
Artisan and Fez Medina	111,873,858	Increase value added to tourism and artisan sectors.	384,852	Average revenue of potters receiving Artisan Production Activity. Employment and wages among project graduates. Tourist arrivals. Artisan profits (artisans engaged in product finishing and points of sale).

Projects	Obligated	Objective	Cumulative disbursements	Measures
Financial Services	46,200,000	Increase supply and decrease costs of financial services available to microenterprises.	12,937,907	Employment created. Small and Medium Enterprises (SME) value added. Gross loan portfolio outstanding of microcredit associations. Portfolio at risk >30 days ratio. Operating expense ratio.
Enterprise Support	33,850,000	Improved survival rate of new SMEs and INDH-funded income generating activities; increased revenue for new SMEs and INDH-funded income generating activities.	1,352,603	Average annual sales of participating businesses. Survival rate of participating businesses.
Program Administration* and Control, Monitoring and Evaluation.	88,511,670	.....	9,320,527	
Pending Subsequent Report**.	.....	.....	173,509	
Projects	Obligated	Objective	Cumulative disbursements	Measures

Country: Tanzania Year: 2010 Quarter 1 Total Obligation: \$698,136,000

Entity to which the assistance is provided: MCA Tanzania Total Quarterly Disbursement: \$3,161,608				
Energy Sector	206,471,000	Increase value added to businesses.	2,952,318	New power customers. Energy generation—Kigoma. Transmission capacity. Percentage disbursed for design and supervision contract Consulting Engineer (CE) year 1 budgeted.
Transport Sector	372,776,000	Increase cash crop revenue and aggregate visitor spending.	3,034,852	International roughness index (Tunduma, Tanga, Nantumbo, Peramiho). Average annual daily traffic (Tunduma, Tanga, Nantumbo, Peramiho). Kilometers upgraded/completed (Tunduma, Tanga, Nantumbo, Peramiho). Percent disbursed on construction works (Tunduma, Tanga, Nantumbo, Peramiho). Signed contracts for construction works (Tunduma, Tanga, Nantumbo, Peramiho). Percent disbursed for feasibility and/or design studies (Tunduma, Tanga, Nantumbo, Peramiho). Signed contracts for feasibility and/or design studies (Tunduma, Tanga, Nantumbo, Peramiho). Kilometers of roads under design (Tunduma, Tanga, Nantumbo, Peramiho). International roughness index (Zanzibar Rural Roads). Average annual daily traffic (Zanzibar Rural Roads). Kilometers upgraded/completed (Zanzibar Rural Roads). Percent disbursed on construction works (Zanzibar Rural Roads). Signed contracts for construction works (Zanzibar Rural Roads). Percent disbursed for feasibility and/or design studies (Zanzibar Rural Roads). Signed contracts for feasibility and/or design studies (Zanzibar Rural Roads). Kilometers of roads under design (Zanzibar Rural Roads). Passenger arrivals. Percentage of upgrade complete (airport). Percent disbursed on construction works (airport). Signed contracts for construction works (airport).

Projects	Obligated	Objective	Cumulative disbursements	Measures
Water Sector Project	66,335,000	Increase investment in human and physical capital and to reduce the prevalence of water-related disease.	1,095,219	Prevalence of diarrhea (Dar es Salaam). Prevalence of diarrhea (Morogoro). Prevalence of cholera (Dar es Salaam). Prevalence of cholera (Morogoro). Volume of individual water consumption (Dar es Salaam). Volume of individual water consumption (Morogoro). Number of households using improved source for drinking water (Dar es Salaam). Number of households using improved source for drinking water (Morogoro). Number of businesses using improved water source (Dar es Salaam). Number of businesses using improved water source (Morogoro). Volume of water produced (Lower Ruvu). Volume of water produced (Morogoro). Volume of non-revenue water (Dar es Salaam). Operations and maintenance cost recovery ratio (Dar es Salaam). Operations and maintenance cost recovery ratio (Morogoro). Percent disbursed on construction works. Signed contracts for construction works.
Program Administration* and Control, Monitoring and Evaluation.	52,554,000	.....	3,788,306	
Pending Subsequent Report**.	.....	.....	206,197	

Projects	Obligated	Objective	Cumulative disbursements	Measures

Country: Burkina Faso Year: 2010 Quarter 1 Total Obligation: \$478,943,569

Entity to which the assistance is provided: MCA Burkina Faso Total Quarterly Disbursement: \$2,397,440				
Roads Project	194,130,681	Enhance access to markets through investments in the road network.	14,871	To Be Determined (TBD).
Rural Land Governance Project.	59,934,614	Increase investment in land and rural productivity through improved land tenure security and land management.	465,530	TBD.
Agriculture Development Project.	141,910,059	Expand the productive use of land in order to increase the volume and value of agricultural production in project zones.	17,851	TBD.
Bright 2 Schools Project ...	26,829,669	Increase primary school completion rates.	26,829,669	TBD.
Program Administration* and Control, Monitoring and Evaluation.	56,138,546	.....	6,824,723	
Pending Subsequent Report**.	.....	.....	65,145	

Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Namibia Year: 2010 Quarter 1 Total Obligation: \$304,477,817				
Entity to which the assistance is provided: MCA Namibia Total Quarterly Disbursement: \$2,455,717				
Education Project	144,976,559	Improve the education sector's effectiveness, efficiency and quality.	338,267	To Be Determined (TBD).
Tourism Project	66,959,291	Increase incomes and create employment opportunities by improving the marketing, management and infrastructure of Etosha National Park.	78,360	TBD.
Agriculture Project	46,965,320	Sustainably improve the economic performance and profitability of the livestock sector and increase the volume of the indigenous natural products for export.	32,554	TBD.
Program Administration* and Control, Monitoring and Evaluation.	45,576,647	.....	4,045,476	
Pending Subsequent Report**.	.....	.....	0	

* Program administration funds are used to pay items such as salaries, rent, and the cost of office equipment.

** These amounts represent disbursements made that will be allocated to individual projects in the subsequent quarter(s) and reported as such in subsequent quarterly report(s)

619(b) Transfer or Allocation of Funds		
U.S. Agency to which Funds were Transferred or Allocated	Amount	Description of program or project
None	\$0	None

Dated: April 6, 2010.

Charles Cooper,

Vice President, Congressional and Public Affairs, Millennium Challenge Corporation.

[FR Doc. 2010-8314 Filed 4-12-10; 8:45 am]

BILLING CODE 9211-03-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT:

Michael P. McDonald, Advisory Committee Management Officer,

National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606-8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606-8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the

Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* May 3, 2010.

Time: 8:30 a.m. to 5 p.m.

Room: 315.

Program: This meeting will review applications for Landmarks of American History and Culture, submitted to the Division of Education Programs at the March 2, 2010 deadline.

2. *Date:* May 4, 2010.

Time: 8:30 a.m. to 5 p.m.

Room: 315.

Program: This meeting will review applications for Landmarks of American History and Culture, submitted to the Division of Education Programs at the March 2, 2010 deadline.

3. *Date:* May 5, 2010.

Time: 8:30 a.m. to 5 p.m.

Room: 315.

Program: This meeting will review applications for Landmarks of American

History and Culture, submitted to the Division of Education Programs at the March 2, 2010 deadline.

4. *Date:* May 6, 2010.

Time: 8:30 a.m. to 5 p.m.

Room: 315.

Program: This meeting will review applications for Landmarks of American History and Culture, submitted to the Division of Education Programs at the March 2, 2010 deadline.

5. *Date:* May 25, 2010.

Time: 9 a.m. to 5 p.m.

Room: 402

Program: This meeting will review applications for Digital Humanities Start-Up Grants, submitted to the Office of Digital Humanities at the March 23, 2010 deadline.

6. *Date:* May 26, 2010.

Time: 9 a.m. to 5 p.m.

Room: 402.

Program: This meeting will review applications for Digital Humanities Start-Up Grants, submitted to the Office of Digital Humanities at the March 23, 2010 deadline.

7. *Date:* May 27, 2010.

Time: 9 a.m. to 5 p.m.

Room: 402.

Program: This meeting will review applications for Digital Humanities Start-Up Grants, submitted to the Office of Digital Humanities at the March 23, 2010 deadline.

Michael P. McDonald,

Advisory Committee, Management Officer.

[FR Doc. 2010-8435 Filed 4-12-10; 8:45 am]

BILLING CODE 7536-01-P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission [NRC-2010-0002]

DATE: Weeks of April 12, 19, 26, May 3, 10, 17, 2010.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

Week of April 12, 2010

Thursday, April 15, 2010

9:30 a.m. Briefing on Resolution of Generic Safety Issue (GSI)-191, Assessment of Debris Accumulation on Pressurized Water Reactor (PWR) Sump Performance (Public Meeting). (Contact: Michael Scott, 301-415-0565.)

This meeting will be webcast live at the Web address—<http://www.nrc.gov>.

Week of April 19, 2010—Tentative

There are no meetings scheduled for the week of April 19, 2010.

Week of April 26, 2010—Tentative

Thursday, April 29, 2010

9:30 a.m. Briefing on the Fuel Cycle Oversight Process Revisions (Public Meeting). (Contact: Michael Raddatz, 301-492-3108.)

This meeting will be webcast live at the Web address—<http://www.nrc.gov>.

Week of May 3, 2010—Tentative

Tuesday, May 4, 2010

9:30 a.m. Briefing on Human Capital and Equal Employment Opportunity (Public Meeting). (Contact: Kristin Davis, 301-415-2673.)

This meeting will be webcast live at the Web address—<http://www.nrc.gov>.

Week of May 10, 2010—Tentative

Tuesday, May 11, 2010

9:30 a.m. Briefing on Federal and State Materials and Environmental Management Programs (FSME) Programs, Performance, & Future Plans (Public Meeting). (Contact: George Deegan, 301-415-7834.)

This meeting will be webcast live at the Web address—<http://www.nrc.gov>.

Week of May 17, 2010—Tentative

There are no meetings scheduled for the week of May 17, 2010.

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*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415-1292. Contact person for more information: Rochelle Baval, (301) 415-1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/about-nrc/policy-making/schedule.html>

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Angela Bolduc, Chief, Employee/Labor Relations and Work Life Branch, at 301-492-2230, TDD: 301-415-2100, or by e-mail at angela.bolduc@nrc.gov. Determinations on requests for

reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301-415-1969), or send an e-mail to darlene.wright@nrc.gov.

Dated: April 8, 2010.

Rochelle C. Baval,

Office of the Secretary.

[FR Doc. 2010-8507 Filed 4-9-10; 4:15 pm]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2010-0150]

Notice of Opportunity for Public Comment on the Proposed Model Safety Evaluation for Plant-Specific Adoption of Technical Specifications Task Force Traveler TSTF-514, Revision 1, "Revise BWR Operability Requirements and Actions for RCS Leakage Instrumentation"

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of opportunity for public comment.

SUMMARY: The NRC is requesting public comment on the enclosed proposed model application (with model no significant hazards consideration determination) and model safety evaluation (SE) for plant-specific adoption of Technical Specifications Task Force (TSTF) Traveler TSTF-514, Revision 1, "Revise BWR [boiling water reactor] Operability Requirements and Actions for RCS [reactor coolant system] Leakage Instrumentation." TSTF-514, Revision 1, is available in the Agencywide Documents Access and Management System (ADAMS) under Accession Number ML092510374. The proposed changes revise the Standard Technical Specifications (STS) to define a new time limit for restoring inoperable RCS leakage detection instrumentation to operable status and establish alternate methods of monitoring RCS leakage when one or more required monitors are inoperable. TS Bases changes that reflect the proposed changes and more accurately reflect the contents of the facility design bases related to the operability of the RCS leakage detection instrumentation are included. The model SE will facilitate expedited approval of plant-specific adoption of TSTF-514, Revision 1. This TS

improvement is part of the consolidated line item improvement process (CLIIP).

DATES: Comment period expires on May 13, 2010. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC-2010-0150 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC website and on the Federal rulemaking Web site [Regulations.gov](http://www.regulations.gov). Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal Rulemaking Web site: Go to <http://www.regulations.gov> and search for documents filed under Docket ID NRC-2010-0150. Address questions about NRC dockets to Carol Gallagher 301-492-3668; e-mail Carol.Gallagher@nrc.gov.

Mail comments to: Michael T. Lesar, Chief, Rulemaking, Announcements and Directives Branch (RADB), Division of Administrative Services, Office of Administration, Mail Stop: TWB-05-B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by fax to RDB at 301-492-3446.

You can access publicly available documents related to this notice using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are

problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The proposed models for plant-specific adoption of TSTF-514, Revision 1, are available electronically under ADAMS Accession Number ML093340364.

Federal Rulemaking Web site: Public comments and supporting materials related to this notice can be found at <http://www.regulations.gov> by searching on Docket ID: NRC-2010-0150.

FOR FURTHER INFORMATION CONTACT: Ms. Michelle C. Honcharik, Senior Project Manager, Licensing Processes Branch, Mail Stop: O-12 D1, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC, 20555-0001; telephone 301-415-1774 or e-mail at michelle.honcharik@nrc.gov.

SUPPLEMENTARY INFORMATION: TSTF-514, Revision 1, is applicable to BWR plants. The proposed changes revise the STS to define a new time limit for restoring inoperable RCS leakage detection instrumentation to operable status and establish alternate methods of monitoring RCS leakage when one or more required monitors are inoperable. TS Bases changes that reflect the proposed changes and more accurately reflect the contents of the facility design bases related to the operability of the RCS leakage detection instrumentation are included.

This notice provides an opportunity for the public to comment on proposed changes to the STS after a preliminary assessment and finding by the NRC staff that the agency will likely offer the changes for adoption by licensees. This notice solicits comment on proposed changes to the STS, which if implemented by a licensee will modify the plant-specific TS. The NRC staff will evaluate any comments received for the proposed changes and reconsider the changes or announce the availability of the changes for adoption by licensees as part of the CLIIP. Licensees opting to apply for this TS change are responsible for reviewing the NRC staff's SE, and the applicable technical justifications, providing any necessary plant-specific information, and assessing the completeness and accuracy of their license amendment request (LAR). The NRC will process each amendment application responding to the notice of availability according to applicable NRC rules and procedures.

The proposed changes do not prevent licensees from requesting an alternate approach or proposing changes other

than those proposed in TSTF-514, Revision 1. However, significant deviations from the approach recommended in this notice or the inclusion of additional changes to the license require additional NRC staff review. This may increase the time and resources needed for the review or result in NRC staff rejection of the LAR. Licensees desiring significant deviations or additional changes should instead submit an LAR that does not claim to adopt TSTF-514, Revision 1.

Dated at Rockville, Maryland, this 5th day of April 2010.

For the Nuclear Regulatory Commission.

Eric E. Bowman,

Acting Chief, Licensing Processes Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2010-8384 Filed 4-12-10; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-29205; File No. 812-13703]

Jackson National Life Insurance Company, et al.

April 7, 2010.

AGENCY: The Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under Section 6(c) of the Investment Company Act of 1940 (the "Act") granting exemptions from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder to permit the recapture of contract enhancements applied to purchase payments made under certain deferred variable annuity contracts.

APPLICANTS: Jackson National Life Insurance Company ("Jackson National"), Jackson National Separate Account—I (the "JNL Separate Account"), Jackson National Life Insurance Company of New York ("JNL New York" and collectively with Jackson National, the "Insurance Companies," and individually as made appropriate by the context, an "Insurance Company"), JNLNY Separate Account I (the "JNLNY Separate Account," collectively with the JNL Separate Account, the "Separate Accounts," and individually as made appropriate by the context, a "Separate Account") and Jackson National Life Distributors LLC ("Distributor," and collectively with the Insurance Companies and the Separate Accounts, "Applicants").

SUMMARY OF APPLICATION: Applicants seek an order under Section 6(c) of the

Act to exempt certain transactions from the provisions of Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder, to the extent necessary to permit the recapture, under specified circumstances, of certain contract enhancements applied to purchase payments made under the deferred variable annuity contracts described herein that Jackson National has issued and will issue through the JNL Separate Account (the "JNL Contracts") and that JNL New York has issued and will issue through the JNLNY Separate Account (the "JNLNY Contracts," and collectively with the JNL Contracts, the "Contracts") as well as other contracts that the Insurance Companies may issue in the future through their existing or future separate accounts ("Other Accounts") that are substantially similar in all material respects to the Contracts ("Future Contracts"). Applicants also request that the order being sought extend to any other Financial Industry Regulatory Authority ("FINRA") member broker-dealer controlling or controlled by, or under common control with, Jackson National, whether existing or created in the future, that serves as distributor or principal underwriter for the Contracts or Future Contracts ("Affiliated Broker-Dealers") and any successors in interest to the Applicants.

FILING DATE: The application was filed on September 24, 2009, and amended on October 16, 2009; January 8, 2010; February 24, 2010; and March 29, 2010.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 29, 2010, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090. Applicants: c/o Jackson National Life Insurance Company, 1 Corporate Way, Lansing, Michigan 48951, Attn: Anthony L. Dowling, Esq.

FOR FURTHER INFORMATION CONTACT: Ellen J. Sazzman, Senior Counsel, at (202) 551-6762, or Harry Eisenstein,

Branch Chief, at (202) 551-6795, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Applicants' Representations

1. Jackson National is a stock life insurance company organized under the laws of the state of Michigan in June 1961. Its legal domicile and principal business address is 1 Corporate Way, Lansing, Michigan 48951. Jackson National is admitted to conduct life insurance and annuity business in the District of Columbia and all states except New York. Jackson National is ultimately a wholly owned subsidiary of Prudential plc (London, England).

2. JNL New York is a stock life insurance company organized under the laws of the state of New York in July 1995. Its legal domicile and principal address is 2900 Westchester Avenue, Purchase, New York 10577. JNL New York is admitted to conduct life insurance and annuity business in Delaware, Michigan, and New York. JNL New York is ultimately a wholly owned subsidiary of Prudential plc (London, England).

3. The JNL Separate Account was established by Jackson National on June 14, 1993, pursuant to the provisions of Michigan law and the authority granted under a resolution of Jackson National's Board of Directors. The JNLNY Separate Account was established by JNL New York on September 12, 1997, pursuant to the provisions of New York law and the authority granted under a resolution of JNL New York's Board of Directors. Jackson National and JNL New York are the depositors of their respective Separate Accounts. Each of the Separate Accounts meets the definition of a "separate account" under the federal securities laws and each is registered with the Commission as a unit investment trust under the Act (File Nos. 811-8664 and 811-8401, respectively). JNL Separate Account and JNLNY Separate Account will fund, respectively, the variable benefits available under the JNL Contracts and the JNLNY Contracts. The registration statements relating to the offering of the Contracts were filed under the Securities Act of 1933 (the "1933 Act") (File Nos. 333-70472, 333-70384).

4. The Distributor is a wholly owned subsidiary of Jackson National and

serves as the distributor of the Contracts. The Distributor is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 (the "1934 Act") and is a member of FINRA. The Distributor enters into selling group agreements with affiliated and unaffiliated broker-dealers. The Contracts are sold by licensed insurance agents, where the Contracts may be lawfully sold, who are registered representatives of broker-dealers that are registered under the 1934 Act and are members of FINRA.

5. The Contracts require a minimum initial premium payment of \$5,000 or \$10,000 under most circumstances depending on the contract (\$2,000 for a qualified plan contract). Subsequent payments may be made at any time during the accumulation phase but before the contract anniversary after the owner's 85th birthday. Each subsequent payment must be at least \$500 (\$50 under an automatic payment plan). Prior approval of the relevant Insurance Company is required for aggregate premium payments of over \$1,000,000.

6. The Contracts permit owners to accumulate contract values on a fixed basis through allocations to one of six fixed accounts (the "Fixed Accounts"). In addition, if the optional LifeGuard Select Guaranteed Minimum Withdrawal Benefit ("GMWB") or the optional LifeGuard Select with Joint Option Guaranteed Minimum Withdrawal Benefit ("GMWB") is elected in the JNL Contracts, automatic transfers of an owner's contract value may be allocated to a fixed account designated for these guaranteed minimum withdrawal benefits ("GMWB Fixed Account").

7. The Contracts also permit owners to accumulate contract values on a variable basis, through allocations to one or more of the sub-accounts, also referred to as investment divisions, of the Separate Accounts (the "Investment Divisions," collectively with the Fixed Account and the GMWB Fixed Account, the "Allocation Options"). Under most Contracts, 98 Investment Divisions currently are expected to be offered through the Separate Accounts but additional Investment Divisions may be offered in the future and some could be eliminated or combined with other Investment Divisions in the future. Similarly, Future Contracts may offer additional or different Investment Divisions. Each Investment Division will invest in shares of a corresponding series ("Series") of JNL Series Trust ("Trust") or JNL Variable Fund LLC ("Fund") (collectively the "Trust and Fund"). Not all Investment Divisions may be available under every Contract.

The Trust and Fund are open-end management investment companies registered under the Act and their shares are registered under the 1933 Act.

8. Transfers among the Investment Divisions are permitted. The first 15 transfers in a contract year are free; subsequent transfers cost \$25. Certain transfers to, from and among the Fixed Account Options are also permitted during the Contracts' accumulation phase, but are subject to certain adjustments and limitations. Dollar cost averaging and rebalancing transfers are offered at no charge and do not count against the 15 free transfers permitted each year. If the optional LifeGuard Select GMWB or the optional LifeGuard Select with Joint Option GMWB is elected in the JNL Contracts, automatic transfers may be required to and from the GMWB Fixed Account according to non-discretionary formulas. These automatic transfers also do not count against the 15 free transfers permitted each year and are without charge.

9. If the owner dies during the accumulation phase of the Contracts, the beneficiary named by the owner is paid a death benefit by the Insurance Company. The Contracts' base death benefit, which applies unless an optional death benefit has been elected, is a payment to the beneficiary of the greater of: (i) Contract value on the date the Insurance Company receives proof of death and completed claim forms from the beneficiary or (ii) the total premiums paid under that Contract minus any prior withdrawals (including any withdrawal charges, recapture charges or other charges or adjustments applicable to such withdrawals).

10. The owner of a JNL Contract may be offered certain optional endorsements (for various fees) that can

change the death benefit paid to the beneficiary. First, an "Earnings Protection Benefit Endorsement" is offered to owners who are no older than age 75 when their Contracts are issued. Second, the owner of a JNL Contract currently may be offered six optional death benefits (state variations may apply) that would replace the base death benefit. The optional death benefits for the JNL Contract include the following: (i) A 5% Roll-Up death benefit, (ii) a 6% Roll-Up death benefit, (iii) a Highest Quarterly Anniversary Value Death Benefit, (iv) a Combination 5% Roll-Up and Highest Quarterly Anniversary Value Death Benefit, (v) a Combination 6% Roll-Up and Highest Quarterly Anniversary Value Death Benefit, and (vi) a death benefit available only in conjunction with the purchase of a particular GMWB (LifeGuard Freedom 6 GMWB).

11. The owner of a JNLNY Contract may also be offered certain optional endorsements that can change the death benefit paid to the beneficiary. The owner of a JNLNY Contract may be offered the following two optional death benefits that would replace the base death benefit: (i) A Highest Anniversary Value Death Benefit which is the greatest of the contract value on the date JNL New York receives proof of death and completed claim forms from the beneficiary; or total net premiums since the contract was issued; or the greatest contract value on any contract anniversary prior to the owner's 81st birthday, adjusted for any withdrawals subsequent to that contract anniversary (including any applicable withdrawal charges, recapture charges, and other charges or adjustments for such withdrawals), plus any premium paid subsequent to that contract anniversary; and (ii) a death benefit available only in

conjunction with the purchase of the LifeGuard Freedom 6 GMWB.

12. The Contracts offer fixed and variable versions of the following four types of annuity payment or "income payment": Life income, joint and survivor, life annuity with at least 120 or 240 monthly payments guaranteed to be paid (although not guaranteed as to amount if variable), and income for a specified period of 5 to 30 years. The Insurance Companies may also offer other income payment options. The Contracts may also offer an optional Guaranteed Minimum Income Benefit ("GMIB") endorsement and various GMWB optional endorsements.

13. All contract enhancements are paid from the Insurance Company's general account assets. The contract enhancement endorsements available are the 2% Contract Enhancement endorsement, 3% Contract Enhancement endorsement, 4% Contract Enhancement endorsement, or 5% Contract Enhancement endorsement. However, the 5% Contract Enhancement endorsement is not available under the JNLNY Contracts. If one of the optional contract enhancement endorsements is elected, the Insurance Company will add an additional amount to the owner's contract value (a "Contract Enhancement") for the initial premium payment, and for each subsequent premium payment received within the first seven contract years (five contract years for the 2% Contract Enhancement endorsement). The actual Contract Enhancement percentage applied to the premium payment varies, depending upon which Contract Enhancement endorsement is elected and the contract year in which the premium payment is received as follows:

		Contract year premium is received						
		0–1	1–2	2–3	3–4	4–5	5+	
2% Contract Enhancement Endorsement								
Contract Enhancement Percentage of the Premium Payment ...	2.00%	2.00%	1.25%	1.25%	0.50%	0%		
	Contract year premium is received							
	0–1	1–2	2–3	3–4	4–5	5–6	6–7	7+
3% Contract Enhancement Endorsement								
Contract Enhancement Percentage of the Premium Payment	3.00%	3.00%	2.25%	2.00%	2.00%	1.00%	1.00%	0%
4% Contract Enhancement Endorsement								
Contract Enhancement Percentage of the Premium Payment	4.00%	4.00%	3.00%	2.50%	2.50%	1.25%	1.25%	0%

	Contract year premium is received							
	0-1	1-2	2-3	3-4	4-5	5-6	6-7	7+
5% Contract Enhancement Endorsement (not available under JNLNY Contracts)								
Contract Enhancement Percentage of the Premium Payment	5.00%	4.50%	3.75%	3.00%	2.25%	1.75%	1.00%	0%

14. At issue, a Contract owner can choose only one of the Contract Enhancement endorsements. An owner may not elect the 3%, 4%, or 5% Contract Enhancement endorsement if the 20% additional free withdrawal endorsement is elected. The Insurance Companies will allocate the Contract Enhancement to the Fixed Accounts and/or Investment Divisions in the same proportion as the premium payment allocation. Contract Enhancement endorsements are available only to owners 87 years old and younger.

15. There is an asset-based charge for each of the Contract Enhancement endorsements. The 2% Contract Enhancement endorsement has a 0.395% charge that applies only for the first five contract years, as opposed to five years from the date of the premium payment. The asset-based charges for the other Contract Enhancement endorsements apply only for the first seven contract years, as opposed to

seven years from the date of the premium payment, and are 0.42%, 0.56%, and 0.695%, respectively, for the 3%, 4%, and 5% Contract Enhancement endorsements. These charges will also be assessed against any amounts that Contract owners have allocated to the Fixed Accounts, resulting in a lower annual credited interest rate that would apply to the Fixed Account if the Contract Enhancement endorsement had not been elected.

16. The Insurance Companies will recapture all or a declining portion of any Contract Enhancements by imposing a recapture charge whenever an owner: (i) Makes a total withdrawal within the recapture charge period (up to five years after a premium payment in the case of the 2% Contract Enhancement endorsement and up to seven years after a premium payment in the case of the other Contract Enhancement endorsements) or a partial withdrawal of corresponding premiums

within the recapture charge period in excess of those permitted under the Contracts' free withdrawal provisions, unless the withdrawal is made for certain health-related emergencies specified in the Contracts; (ii) elects to receive payments under an income option within the recapture charge period; or (iii) returns the Contract during the free-look period.

17. The amount of the recapture charge varies, depending upon (i) Which Contract Enhancement endorsement is elected; (ii) the corresponding declining amount of the Contract Enhancement based on the contract year when the premium payment being withdrawn was received; and (iii) when the charge is imposed based on Completed Years since receipt of the related premium. For Contracts with the 2% or 3% Contract Enhancement endorsement, the recapture charge is as follows:

CONTRACT ENHANCEMENT RECAPTURE CHARGE

[as a percentage of the corresponding premium payment withdrawn if an optional Contract Enhancement endorsement is selected]

Contract year premium is received	Completed years since receipt of premium							
	0-1	1-2	2-3	3-4	4-5	5-6	6-7	7+
2% Contract Enhancement Endorsement								
0-1	2%	2%	1.25%	1.25%	.50%	0%	0%	0%
1-2	2%	1.25%	1.25%	.50%	0%	0%	0%	0%
2-3	1.25%	1.25%	.50%	0%	0%	0%	0%	0%
3-4	1.25%	.50%	0%	0%	0%	0%	0%	0%
4-5	.50%	0%	0%	0%	0%	0%	0%	0%
5-6	0%	0%	0%	0%	0%	0%	0%	0%
6-7	0%	0%	0%	0%	0%	0%	0%	0%
7+	0%	0%	0%	0%	0%	0%	0%	0%
3% Contract Enhancement Endorsement								
0-1	3%	3%	2%	2%	2%	1%	1%	0%
1-2	3%	2%	2%	2%	1%	1%	0%	0%
2-3	2%	2%	1.25%	1%	1%	0%	0%	0%
3-4	2%	2%	1%	1%	0%	0%	0%	0%
4-5	2%	1%	1%	0%	0%	0%	0%	0%
5-6	1%	1%	0%	0%	0%	0%	0%	0%
6-7	1%	0%	0%	0%	0%	0%	0%	0%
7+	0%	0%	0%	0%	0%	0%	0%	0%

18. Following are recapture charges for JNL Contracts having the 4% or 5% Contract Enhancement endorsement. The 4% Contract Enhancement

Recapture Charge schedule applicable to JNLNY Contracts is provided later in this notice. The 5% Contract Enhancement Recapture Charge

schedule is not applicable to JNLNY Contracts because the 5% Contract Enhancement endorsement is not available under the JNLNY Contracts.

Completed years since receipt of premium	Contract year premium is received							
	0-1	1-2	2-3	3-4	4-5	5-6	6-7	7+
4% Contract Enhancement Endorsement (not applicable to JNLNY Contracts)								
0-1	4%	4%	2.50%	2.50%	2.50%	1.25%	1.25%	0%
1-2	4%	2.50%	2.50%	2.50%	1.25%	1.25%	0%	0%
2-3	2.50%	2.50%	2%	1.25%	1.25%	0%	0%	0%
3-4	2.50%	2.50%	1.25%	1.25%	0%	0%	0%	0%
4-5	2.50%	1.25%	1.25%	0%	0%	0%	0%	0%
5-6	1.25%	1.25%	0%	0%	0%	0%	0%	0%
6-7	1.25%	0%	0%	0%	0%	0%	0%	0%
7+	0%	0%	0%	0%	0%	0%	0%	0%
5% Contract Enhancement Endorsement (not available under JNLNY Contracts)								
0-1	4.50%	3.75%	3.25%	2.75%	2%	1.25%	1%	0%
1-2	3.75%	3.25%	2.75%	2%	1.25%	1%	0%	0%
2-3	3.25%	2.75%	2%	1.25%	1%	0%	0%	0%
3-4	2.75%	2%	1.25%	1%	0%	0%	0%	0%
4-5	2%	1.25%	1%	0%	0%	0%	0%	0%
5-6	1.25%	1%	0%	0%	0%	0%	0%	0%
6-7	1%	0%	0%	0%	0%	0%	0%	0%
7+	0%	0%	0%	0%	0%	0%	0%	0%

19. A "Completed Year" is the succeeding twelve months from the date on which the Insurance Companies receive a premium payment. Completed Years specify the years from the date of receipt of the premium and do not refer to contract years. If the premium receipt date is on the issue date of the Contract then Completed Year 0-1 does not include the first contract anniversary. The first contract anniversary begins Completed Year 1-2 and each successive contract anniversary. The first contract year (contract year 0-1) starts on the issue date and extends to, but does not include, the first contract anniversary. Subsequent contract years start on an anniversary date and extend to, but do not include, the next anniversary date. If the premium receipt date is other than the issue date or a subsequent contract anniversary, there is no correlation of the contract anniversary date and Completed Years. For example, if the issue date is January 15, 2010 and a premium payment is received on February 28, 2010, then, although the first contract anniversary is January 15, 2011, the end of Completed Year 0-1 for that premium payment would be February 27, 2011, and February 28, 2011 begins Completed Year 1-2.

20. The recapture charge percentage will be applied to the corresponding premium reflected in the amount withdrawn or the amount applied to income payments that remain subject to a recapture charge. The corresponding premium is determined by treating amounts withdrawn as withdrawals first of earnings, which bear no charge, and then purchase payments (oldest purchase payments first). The amount

recaptured will be taken from the Investment Divisions and the Fixed Account (and the GMWB Fixed Account, if applicable) in the proportion their respective values bear to the contract value. The dollar amount recaptured will never exceed the dollar amount of the Contract Enhancement added to the Contract. Recapture charges will be applied upon electing to commence income payments, even in a situation where the withdrawal charge is waived.

21. The Insurance Companies do not assess the recapture charge on any payments paid out as: Death benefits; withdrawals of earnings; withdrawals taken under the free withdrawal provisions, which allow for free withdrawals of up to 20% of remaining premium, less earnings (where a withdrawal is taken that exceeds the free withdrawal amount, the recapture charge is imposed only on the excess amount above the free withdrawal amount); withdrawals necessary to satisfy the required minimum distribution of the Internal Revenue Code (if the withdrawal requested exceeds the required minimum distribution, the recapture charge will not be waived on the required minimum distribution); if permitted by the owner's state, withdrawals of up to \$250,000 from the JNL Separate Account, the Fixed Account or the GMWB Fixed Account in connection with the owner's terminal illness or if the owner needs extended hospital or nursing home care as provided in the Contract (this recapture charge waiver is not available under the JNLNY Contracts); or if permitted by the owner's state, withdrawals of up to 25%

(12.5% for each of two joint owners) of contract value from the JNL Separate Account, the Fixed Account, or the GMWB Fixed Account in connection with certain serious medical conditions specified in the Contract (this recapture charge waiver is not available under the JNLNY Contracts).

22. The contract value will reflect any gains or losses attributable to a Contract Enhancement described above. Contract Enhancements, and any gains or losses attributable to a Contract Enhancement will be considered earnings under the Contract for tax purposes and for purposes of calculating free withdrawal amounts.

23. The JNL Contracts have a "free-look" period of ten days (twenty days for JNLNY Contracts) after the owner receives the Contract (or any longer period required by state law). Contract value (or premiums paid, as may be required by state law), less the full amount of any Contract Enhancement(s) is returned upon exercise of free-look rights by an owner. Therefore, 100% of the Contract Enhancement will be recaptured under all circumstances if an owner returns the Contract during the free-look period, but any gain or loss on investments of the Contract Enhancement would be retained by the owner. The dollar amount recaptured will never exceed the dollar amount of the Contract Enhancement added to the Contract. A withdrawal charge will not be assessed upon exercise of free look rights.

24. The withdrawal charges shown in the table below apply to differing versions of the JNL Contracts. The withdrawal charge schedules applicable to the JNLNY Contracts are provided

later in this notice. The amount of the withdrawal charge depends upon when the charge is imposed based on the

Completed Years since the receipt of the related premium as follows:

WITHDRAWAL CHARGE (AS A PERCENTAGE OF PREMIUM PAYMENTS) NOT APPLICABLE TO JNLNY CONTRACTS

Completed years since receipt of premium	0-1	1-2	2-3	3-4	4-5	5-6	6-7	7+
Withdrawal Charge (Base Withdrawal Charge Schedule for Offerings under File Nos. 333-70472 and 333-132128)	8.5%	8%	7%	6%	5%	4%	2%	0
Withdrawal Charge (Base Withdrawal Charge Schedule for Offering under File No. 333-119656)	8	8	7	6	0	0	0	0
Withdrawal Charge if Five-Year Period is elected (Optional Five-Year Withdrawal Charge Schedule for Offerings under File No. 333-70472)	8	7	6	4	2	0	0	0
Withdrawal Charge if Four-Year Period is elected (Optional Four-Year Withdrawal Charge Schedule for Offering under File No. 333-132128)	8	7	5.5	3.5	0	0	0	0

25. The Insurance Companies do not assess the withdrawal charge on any payments paid out as: Death benefits; election to begin income payments after the first contract year under JNL Contracts and after 13 months from the issue date under JNLNY Contracts; cancellation of the Contract upon exercise of free look rights by an owner; withdrawals of earnings; withdrawals taken under the free withdrawal provision, which allows for free withdrawals up to 20% of remaining premium, less earnings (where a withdrawal is taken that exceeds the free withdrawal amount, the withdrawal charge is imposed only on the excess amount above the free withdrawal amount); withdrawals necessary to satisfy the required minimum distribution of the Internal Revenue

Code (if the withdrawal requested exceeds the required minimum distribution, the withdrawal charge will not be waived on the required minimum distribution); if permitted by the owner's state law, withdrawals of up to \$250,000 from the Investment Divisions, Fixed Account, or GMWB Fixed Account of the Contracts in connection with the terminal illness of the owner of a Contract, or in connection with extended hospital or nursing home care for the owner (this withdrawal charge waiver is not available under JNLNY Contracts); and if permitted by the owner's state, withdrawals of up to 25% (12.5% each for two joint owners) of contract value from the Investment Divisions, Fixed Account, or GMWB Fixed Account of the Contracts in connection with certain serious medical

conditions specified in the Contract (this withdrawal charge waiver is not available under JNLNY Contracts).

26. The JNLNY Contracts are identical to the JNL Contracts in the operation of Contract Enhancements, Contract Enhancement charges, and Contract Enhancement recapture charges except that: (1) The 5% Contract Enhancement endorsement is not available under the JNLNY Contracts, (2) the recapture charge waivers for terminal illness and specified medical conditions are not available under JNLNY Contracts, and (3) the recapture charges for the 4% Contract Enhancement endorsement are 1% less for JNLNY Contracts in certain years than in the JNL Contracts, as indicated in the table below:

Completed years since receipt of premium	Contract year premium is received							
	0-1	1-2	2-3	3-4	4-5	5-6	6-7	7+
4% Contract Enhancement Recapture Charge for JNLNY Contracts								
0-1	3%	3%	2.50%	2.50%	2.50%	1.25%	1.25%	0%
1-2	3%	2.50%	2.50%	2.50%	1.25%	1.25%	0%	0%
2-3	2.50%	2.50%	2%	1.25%	1.25%	0%	0%	0%
3-4	2.50%	2.50%	1.25%	1.25%	0%	0%	0%	0%
4-5	2.50%	1.25%	1.25%	0%	0%	0%	0%	0%
5-6	1.25%	1.25%	0%	0%	0%	0%	0%	0%
6-7	1.25%	0%	0%	0%	0%	0%	0%	0%
7+	0%	0%	0%	0%	0%	0%	0%	0%

27. The withdrawal charges applicable to the JNLNY Contracts differ

from the withdrawal charges applicable to the JNL Contracts. The withdrawal

charges of the JNLNY Contracts are as follows:

WITHDRAWAL CHARGE
[as a percentage of premium payments]

Completed years since receipt of premium	0-1	1-2	2-3	3-4	4-5	5-6	6-7	7+
Withdrawal Charge (Base Withdrawal Charge Schedule for Offerings under File No. 333-70384)	7%	6%	5%	4%	3%	2%	1%	0
Withdrawal Charge (Base Withdrawal Charge Schedule for Offerings under File No. 333-119659)	7%	6%	5%	4%	0	0	0	0
Withdrawal Charge if Five-Year Period is elected (Optional Five-Year Withdrawal Charge Schedule for Offerings under File No. 333-70384)	6.5%	5%	3%	2%	1%	0	0	0

Applicants' Legal Analysis

1. Applicants state that Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request that the Commission, pursuant to Section 6(c) of the Act, grant the exemptions requested below with respect to the Contracts and any Future Contracts funded by the Separate Accounts or Other Accounts that are issued by the Insurance Companies and underwritten or distributed by the Distributor or Affiliated Broker-Dealers. Applicants undertake that Future Contracts funded by the Separate Accounts or Other Accounts, in the future, will be substantially similar in all material respects to the Contracts. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants state that Section 27 of the Act regulates and imposes certain restrictions on the sales of periodic payment plan certificates issued by any registered investment company. Subsection (i) of Section 27 of the Act provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for such a separate account or

sponsoring insurance company to sell a contract funded by the registered separate account unless such contract is a redeemable security. Section 2(a)(32) defines "redeemable security" as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

3. Applicants submit that the recapture of the Contract Enhancement in the circumstances set forth in the Application would not deprive an owner of his or her proportionate share of the issuer's current net assets. A Contract owner's interest in the amount of the Contract Enhancement allocated to his or her contract value upon the Insurance Companies' receipt of a premium payment is not fully vested until five or seven complete years following a premium payment. Until or unless the amount of any Contract Enhancement is vested, the Insurance Companies retain the right and interest in the Contract Enhancement amount, although not in the earnings attributable to that amount. Thus, Applicants urge that when one of the Insurance Companies recaptures any Contract Enhancement, it is simply retrieving its own assets, and because a Contract owner's interest in the Contract Enhancement is not vested, the Contract owner has not been deprived of a proportionate share of the Separate Account's assets, *i.e.*, a share of the Separate Account's assets proportionate to the Contract owner's contract value.

4. In addition, Applicants represent that it would be patently unfair to allow a Contract owner exercising the free-look privilege to retain the Contract Enhancement amount under a Contract that has been returned for a refund after a period of only a few days. If the

Insurance Companies could not recapture the Contract Enhancement, individuals could purchase a Contract with no intention of retaining it and simply return it for a quick profit. Furthermore, Applicants state that the recapture of the Contract Enhancement relating to withdrawals and to income payments within the first five or seven contract years is designed to protect the Insurance Companies against Contract owners not holding the Contract for a sufficient time period. This recapture of the Contract Enhancement would provide the Insurance Companies with sufficient time to recover the cost of the Contract Enhancement and to avoid the financial detriment that would result from a shorter recapture period.

5. Applicants represent that it is not administratively feasible to track the Contract Enhancement amount in the Separate Accounts after the Contract Enhancement(s) is applied. Accordingly, the asset-based charges applicable to the Separate Accounts will be assessed against the entire amounts held in the Separate Accounts, including any Contract Enhancement amounts. As a result, the aggregate asset-based charges assessed will be higher than those that would be charged if the Contract owner's contract value did not include any Contract Enhancement.

6. Applicants submit that the provisions for recapture of any Contract Enhancement under the Contracts do not violate Sections 2(a)(32) and 27(i)(2)(A) of the Act. Sections 26(e) and 27(i) were added to the Act to implement the purposes of the National Securities Markets Improvement Act of 1996 and Congressional intent. The application of a Contract Enhancement to premium payments made under the Contracts should not raise any questions as to compliance by the Insurance Companies with the provisions of

Section 27(i). However, to avoid any uncertainty as to full compliance with the Act, Applicants request an order providing an exemption from Sections 2(a)(32) and 27(i)(2)(A), to the extent deemed necessary, to permit the recapture of the Contract Enhancements under the circumstances described herein and in the Application, without the loss of relief from Section 27 provided by Section 27(i).

7. Applicants state that Section 22(c) of the Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company to accomplish the same purposes as contemplated by Section 22(a). Rule 22c-1 under the Act prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

8. Applicants state that it is possible that someone might view the Insurance Companies' recapture of the Contract Enhancements as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of the Separate Accounts. Applicants contend, however, that the recapture of the Contract Enhancement does not violate Rule 22c-1. The recapture of some or all of the Contract Enhancement does not involve either of the evils that Section 22(c) and Rule 22c-1 were intended to eliminate or reduce as far as reasonably practicable, namely: (i) The dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or repurchase at a price above it, and (ii) other unfair results, including speculative trading practices. To effect a recapture of a Contract Enhancement, the Insurance Companies will redeem interests in a Contract owner's contract value at a price determined on the basis of the current net asset value of the JNL and JNLNY Separate Accounts. The amount recaptured will be less than or equal to the amount of the Contract Enhancement that the Insurance Companies paid out of its general account assets. Although Contract

owners will be entitled to retain any investment gains attributable to the Contract Enhancement and to bear any investment losses attributable to the Contract Enhancement, the amount of such gains or losses will be determined on the basis of the current net asset values of the Separate Accounts. Thus, no dilution will occur upon the recapture of the Contract Enhancement. Applicants also submit that the second harm that Rule 22c-1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Contract Enhancement. Because neither of the harms that Rule 22c-1 was meant to address is found in the recapture of the Contract Enhancement, Rule 22c-1 should not apply to any Contract Enhancement. However, to avoid any uncertainty as to full compliance with Rule 22c-1, Applicants request an order granting an exemption from the provisions of Rule 22c-1 to the extent deemed necessary to permit them to recapture the Contract Enhancement under the Contracts.

9. Applicants submit that extending the requested relief to encompass Future Contracts and Other Accounts is appropriate in the public interest because it promotes competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications prior to introducing new variable annuity contracts. Investors would receive no benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issues under the Act not already addressed in the Application.

10. Applicants submit, for the reasons stated herein, that their exemptive request meets the standards set out in Section 6(c) of the Act, namely, that the exemptions requested are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,
Deputy Secretary.

[FR Doc. 2010-8369 Filed 4-12-10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61860; File No. 4-597]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Notice of Filing of Proposed Plan for the Allocation of Regulatory Responsibilities Between EDGA Exchange, Inc. and the Financial Industry Regulatory Authority, Inc.

April 7, 2010.

Pursuant to Section 17(d) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 17d-2 thereunder,² notice is hereby given that on April 2, 2010, EDGA Exchange, Inc. ("EDGA") and the Financial Industry Regulatory Authority, Inc. ("FINRA") (together with EDGA, the "Parties") filed with the Securities and Exchange Commission ("Commission") a plan for the allocation of regulatory responsibilities, dated March 31, 2010 (the "17d-2 Plan"). The Commission is publishing this notice to solicit comments on the 17d-2 Plan from interested persons.

I. Introduction

Section 19(g)(1) of the Act,³ among other things, requires every self-regulatory organization ("SRO") registered as either a national securities exchange or registered national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d)⁴ or Section 19(g)(2)⁵ of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO ("common members"). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act⁶ was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.⁷ With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the

¹ 15 U.S.C. 78q(d).

² 17 CFR 240.17d-2.

³ 15 U.S.C. 78s(g)(1).

⁴ 15 U.S.C. 78q(d).

⁵ 15 U.S.C. 78s(g)(2).

⁶ 15 U.S.C. 78q(d)(1).

⁷ See Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94-75, 94th Cong., 1st Session 32 (1975).

responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d-1 and Rule 17d-2 under the Act.⁸ Rule 17d-1 authorizes the Commission to name a single SRO as the designated examining authority ("DEA") to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.⁹ When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d-1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d-1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d-2 under the Act.¹⁰ Rule 17d-2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d-2, the Commission may declare such a plan effective if, after providing for appropriate notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors; to foster cooperation and coordination among the SROs; to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system; and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d-2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. Proposed 17d-2 Plan

The proposed 17d-2 Plan is intended to reduce regulatory duplication for firms that are common members of both

EDGA and FINRA.¹¹ Pursuant to the proposed 17d-2 Plan, FINRA would assume certain examination and enforcement responsibilities for common members with respect to certain applicable laws, rules, and regulations.

The text of the 17d-2 Plan delineates the proposed regulatory responsibilities between the Parties. Included in the 17d-2 Plan is an attachment ("EDGA Certification for 17d-2 Agreement with FINRA" referred to herein as the "Certification") that lists every EDGA rule and select federal securities laws, rules and regulations for which FINRA would bear responsibility under the 17d-2 Plan for overseeing and enforcing with respect to EDGA members that are also members of FINRA and the associated persons therewith ("Dual Members").

Specifically, under the 17d-2 Plan, FINRA would assume examination and enforcement responsibility relating to compliance by Dual Members with the rules of EDGA that are substantially similar to the applicable rules of FINRA, as well as any provisions of the federal securities laws and the rules and regulations thereunder delineated in the Certification ("Common Rules").¹² Common Rules would not include the application of any EDGA Rule or FINRA rule, or any rule or regulation under the Act, to the extent that it pertains to violations of insider trading activities, because such matters are covered by a separate multiparty agreement under Rule 17d-2.¹³ In the event that a Dual Member is the subject of an investigation relating to a transaction on EDGA, the 17d-2 Plan acknowledges that EDGA may, in its discretion,

exercise concurrent jurisdiction and responsibility for such matter.¹⁴

Under the 17d-2 Plan, EDGA would retain full responsibility for surveillance, examination, investigation, and enforcement with respect to trading activities or practices involving EDGA's own marketplace, including, without limitation, registration pursuant to its unique rules (*i.e.*, non-common rules); its duties as a DEA pursuant to Rule 17d-1 under the Act; and any rules that are not Common Rules, except for EDGA rules for any broker-dealer subsidiary of Direct Edge Holdings LLC.¹⁵

The text of the proposed 17d-2 Plan is as follows:

Agreement Between FINRA and EDGA Exchange, Inc. Pursuant to Rule 17d-2 Under the Securities Exchange Act of 1934

This Agreement, by and between the Financial Industry Regulatory Authority ("FINRA") and EDGA Exchange, Inc. ("EDGA"), is made this 31st day of March, 2010 (the "Agreement"), pursuant to Section 17(d) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 17d-2 thereunder which permits agreements between self-regulatory organizations to allocate regulatory responsibility to eliminate regulatory duplication. FINRA and EDGA may be referred to individually as a "party" and together as the "parties."

Whereas, FINRA and EDGA desire to reduce duplication in the examination of their Dual Members (as defined herein) and in the filing and processing of certain registration and membership records; and

Whereas, FINRA and EDGA desire to execute an agreement covering such subjects pursuant to the provisions of Rule 17d-2 under the Exchange Act and to file such agreement with the Securities and Exchange Commission (the "SEC" or "Commission") for its approval.

Now, therefore, in consideration of the mutual covenants contained hereinafter, FINRA and EDGA hereby agree as follows:

1. Definitions. Unless otherwise defined in this Agreement or the context otherwise requires, the terms used in this Agreement shall have the same meaning as they have under the

¹¹ The proposed 17d-2 Plan refers to these common members as "Dual Members." See Paragraph 1(c) of the proposed 17d-2 Plan.

¹² See paragraph 1(b) of the 17d-2 plan (defining Common Rules). See also paragraph 1(f) of the proposed 17d-2 Plan (defining Regulatory Responsibilities). Paragraph 2 of the 17d-2 Plan provides that annually, or more frequently as required by changes in either EDGA rules or FINRA rules, the parties shall review and update, if necessary, the list of Common Rules. Further, paragraph 3 of the Plan provides that EDGA shall furnish FINRA with a list of Dual Members, and shall update the list no less frequently than once each calendar quarter.

¹³ See Securities Exchange Act Release No. 58350 (August 13, 2008), 73 FR 48247 (August 18, 2008) (File No. 4-566) (notice of filing of proposed plan). See also Securities Exchange Act Release Nos. 58536 (September 12, 2008) (File No. 4-566) (order approving and declaring effective the plan) and 58806 (October 17, 2008) (File No. 4-566) (order approving and declaring effective an amendment to the plan). The Certification identifies several Common Rules that may also be addressed in the context of regulating insider trading activities pursuant to the proposed separate multiparty agreement.

¹⁴ See paragraph 6 of the proposed 17d-2 Plan.

¹⁵ Apparent violations of such EDGA rules by any broker-dealer subsidiary of Direct Edge Holdings LLC will be processed by, and enforcement proceedings will be conducted by, FINRA. See paragraphs 2(d) and 6 of the 17d-2 Plan. As of the date of this Agreement, Direct Edge ECN LLC is the only broker-dealer subsidiary of Direct Edge Holdings LLC.

⁸ 17 CFR 240.17d-1 and 17 CFR 240.17d-2, respectively.

⁹ See Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

¹⁰ See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

Exchange Act and the rules and regulations thereunder. As used in this Agreement, the following terms shall have the following meanings:

(a) “*EDGA Rules*” or “*FINRA Rules*” shall mean: (i) The rules of EDGA, or (ii) the rules of FINRA, respectively, as the rules of an exchange or association are defined in Exchange Act Section 3(a)(27).

(b) “*Common Rules*” shall mean the EDGA Rules that are substantially similar to the applicable FINRA Rules and certain provisions of the Exchange Act and SEC rules set forth on Exhibit 1 in that examination for compliance with such provisions and rules would not require FINRA to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the such provisions or rule, or a Dual Member’s activity, conduct, or output in relation to such rule; provided however, Common Rules shall not include the application of the SEC, EDGA or FINRA rules as they pertain to violations of insider trading activities, which is covered by a separate 17d–2 Agreement by and among the American Stock Exchange, LLC, Boston Stock Exchange, Inc., Chicago Board Options Exchange, Inc., Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange, LLC, NYSE Arca Inc., NYSE Regulation, Inc., and Philadelphia Stock Exchange, Inc. effective October 17, 2008, as may be amended from time to time.

(c) “*Dual Members*” shall mean those EDGA members that are also members of FINRA and the associated persons therewith.

(d) “*Effective Date*” shall be the date this Agreement is approved by the Commission.

(e) “*Enforcement Responsibilities*” shall mean the conduct of appropriate proceedings, in accordance with FINRA’s Code of Procedure (the Rule 9000 Series) and other applicable FINRA procedural rules, to determine whether violations of Common Rules have occurred, and if such violations are deemed to have occurred, the imposition of appropriate sanctions as specified under FINRA’s Code of Procedure and sanctions guidelines.

(f) “*Regulatory Responsibilities*” shall mean the examination responsibilities and Enforcement Responsibilities relating to compliance by the Dual Members with the Common Rules and the provisions of the Exchange Act and the rules and regulations thereunder, and other applicable laws, rules and

regulations, each as set forth on Exhibit 1 attached hereto.

2. Regulatory and Enforcement Responsibilities. FINRA shall assume Regulatory Responsibilities and Enforcement Responsibilities for Dual Members. Attached as Exhibit 1 to this Agreement and made part hereof, EDGA furnished FINRA with a current list of Common Rules and certified to FINRA that such rules are substantially similar to the corresponding FINRA rule (the “*Certification*”). FINRA hereby agrees that the rules listed in the Certification are Common Rules as defined in this Agreement. Each year following the Effective Date of this Agreement, or more frequently if required by changes in either the rules of EDGA or FINRA, EDGA shall submit an updated list of Common Rules to FINRA for review which shall add EDGA Rules not included in the current list of Common Rules that qualify as Common Rules as defined in this Agreement; delete EDGA Rules included in the current list of Common Rules that no longer qualify as Common Rules as defined in this Agreement; and confirm that the remaining rules on the current list of Common Rules continue to be EDGA Rules that qualify as Common Rules as defined in this Agreement. Within 30 days of receipt of such updated list, FINRA shall confirm in writing whether the rules listed in any updated list are Common Rules as defined in this Agreement. Notwithstanding anything herein to the contrary, it is explicitly understood that the term “*Regulatory Responsibilities*” does not include, and EDGA shall retain full responsibility for (unless otherwise addressed by separate agreement or rule) the following:

(a) Surveillance, examination, investigation and enforcement with respect to trading activities or practices involving EDGA’s own marketplace;

(b) registration pursuant to its applicable rules of associated persons (i.e., registration rules that are not Common Rules);

(c) discharge of its duties and obligations as a Designated Examining Authority pursuant to Rule 17d–1 under the Exchange Act, if applicable; and

(d) any EDGA Rules that are not Common Rules, except for EDGA Rules for any broker-dealer subsidiary of Direct Edge Holdings LLC, as provided in paragraph 6.

3. Dual Members. Prior to the Effective Date, EDGA shall furnish FINRA with a current list of Dual Members, which shall be updated no less frequently than once each quarter.

4. No Charge. There shall be no charge to EDGA by FINRA for performing the Regulatory Responsibilities and

Enforcement Responsibilities under this Agreement except as hereinafter provided. FINRA shall provide EDGA with ninety (90) days advance written notice in the event FINRA decides to impose any charges to EDGA for performing the Regulatory Responsibilities under this Agreement. If FINRA determines to impose a charge, EDGA shall have the right at the time of the imposition of such charge to terminate this Agreement; provided, however, that FINRA’s Regulatory Responsibilities under this Agreement shall continue until the Commission approves the termination of this Agreement.

5. Applicability of Certain Laws, Rules, Regulations or Orders. Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the SEC. To the extent such statute, rule, or order is inconsistent with one or more provisions of this Agreement, the statute, rule, or order shall supersede the provision(s) hereof to the extent necessary to be properly effectuated and the provision(s) hereof in that respect shall be null and void.

6. Notification of Violations.

(a) In the event that FINRA becomes aware of apparent violations of any EDGA Rules, which are not listed as Common Rules, discovered pursuant to the performance of the Regulatory Responsibilities assumed hereunder, FINRA shall notify EDGA of those apparent violations for such response as EDGA deems appropriate.

(b) In the event that EDGA becomes aware of apparent violations of any Common Rules, discovered pursuant to the performance of the Retained Responsibilities, EDGA shall notify FINRA of those apparent violations and such matters shall be handled by FINRA as provided in this Agreement.

(c) With respect to apparent violations of any EDGA Rules by any broker-dealer subsidiary of EDGA’s holding company, Direct Edge Holdings LLC, FINRA shall not make referrals to EDGA pursuant to this paragraph 6. Such apparent violations shall be processed by, and enforcement proceedings in respect thereto will be conducted by, FINRA as provided in this Agreement.

(d) Apparent violations of Common Rules and FINRA rules shall be processed by, and enforcement proceedings in respect thereto shall be conducted by FINRA as provided hereinbefore; provided, however, that in the event a Dual Member is the subject of an investigation relating to a transaction on EDGA, EDGA may in its discretion assume concurrent jurisdiction and responsibility.

(e) Each party agrees to make available promptly all files, records and witnesses necessary to assist the other in its investigation or proceedings.

7. Continued Assistance.

(a) FINRA shall make available to EDGA all information obtained by FINRA in the performance by it of the Regulatory Responsibilities hereunder in respect to the Dual Members subject to this Agreement. In particular, and not in limitation of the foregoing, FINRA shall furnish EDGA any information it obtains about Dual Members which reflects adversely on their financial condition. EDGA shall make available to FINRA any information coming to its attention that reflects adversely on the financial condition of Dual Members or indicates possible violations of applicable laws, rules or regulations by such firms.

(b) The parties agree that documents or information shared shall be held in confidence, and used only for the purposes of carrying out their respective regulatory obligations. Neither party shall assert regulatory or other privileges as against the other with respect to documents or information that is required to be shared pursuant to this Agreement.

(c) The sharing of documents or information between the parties pursuant to this Agreement shall not be deemed a waiver against third parties of regulatory or other privileges relating to the discovery of documents or information.

8. Statutory Disqualifications. When FINRA becomes aware of a statutory disqualification as defined in the Exchange Act with respect to a Dual Member, FINRA shall determine pursuant to Sections 15A(g) and/or Section 6(c) of the Exchange Act the acceptability or continued applicability of the person to whom such disqualification applies and keep EDGA advised of its actions in this regard for such subsequent proceedings as EDGA may initiate.

9. Customer Complaints. EDGA shall forward to FINRA copies of all customer complaints involving Dual Members received by EDGA relating to FINRA's Regulatory Responsibilities under this Agreement. It shall be FINRA's responsibility to review and take appropriate action in respect to such complaints.

10. Advertising. FINRA shall assume responsibility to review the advertising of Dual Members subject to the Agreement, provided that such material is filed with FINRA in accordance with FINRA's filing procedures and is

accompanied with any applicable filing fees set forth in FINRA Rules.

11. No Restrictions on Regulatory Action. Nothing contained in this Agreement shall restrict or in any way encumber the right of either party to conduct its own independent or concurrent investigation, examination or enforcement proceeding or against Dual Members, as either party, in its sole discretion, shall deem appropriate or necessary.

12. Termination. This Agreement may be terminated by EDGA or FINRA at any time upon the approval of the Commission after one (1) year's written notice to the other party, except as provided in paragraph 4.

13. Arbitration. In the event of a dispute between the parties as to the operation of this Agreement, EDGA and FINRA hereby agree that any such dispute shall be settled by arbitration in Washington, DC, in accordance with the rules of the American Arbitration Association then in effect, or such other procedures as the parties may mutually agree upon. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Each party acknowledges that the timely and complete performance of its obligations pursuant to this Agreement is critical to the business operations of the other party. In the event of a dispute between the parties, the parties shall continue to perform their respective obligations under this Agreement in good faith during the resolution of such dispute unless and until this Agreement is terminated in accordance with its provisions. Nothing in Section 13 shall interfere with a party's right to terminate this Agreement as set forth herein.

14. Notification of Members. EDGA and FINRA shall notify Dual Members of this Agreement after the Effective Date by means of a uniform joint notice.

15. Amendment. This Agreement may be amended in writing duly approved by each party. All such amendments must be filed with and approved by the Commission before they become effective.

16. Limitation of Liability. Neither FINRA nor EDGA nor any of their respective directors, governors, officers or employees shall be liable to the other party to this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory Responsibilities as provided hereby or for the failure to provide any such responsibility, except with respect

to such liability, loss or damages as shall have been suffered by one or the other of FINRA or EDGA and caused by the willful misconduct of the other party or their respective directors, governors, officers or employees. No warranties, express or implied, are made by FINRA or EDGA with respect to any of the responsibilities to be performed by each of them hereunder.

17. Relief from Responsibility. Pursuant to Sections 17(d)(1)(A) and 19(g) of the Exchange Act and Rule 17d-2 thereunder, FINRA and EDGA join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve EDGA of any and all responsibilities with respect to matters allocated to FINRA pursuant to this Agreement; provided, however, that this Agreement shall not be effective until the Effective Date.

18. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

19. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and such counterparts together shall constitute one and the same instrument.

In witness whereof, each party has executed or caused this Agreement to be executed on its behalf by a duly authorized officer as of the date first written above.

EDGA Exchange, Inc.

By: _____

Name:

Title:

Financial Industry Regulatory Authority

By: _____

Name:

Title:

EDGA Exchange, Inc. Certification

EDGA Certification for 17d-2 Agreement With FINRA

EDGA Exchange, Inc. hereby certifies that the requirements contained in the rules listed below are identical to, or substantially similar to, the comparable FINRA (NASD) Rule, Exchange Act provision or SEC rule identified ("Common Rules").

Rule 2.5, Interpretation and Policy .04, The Regulatory Element of Continuing Education Requirement for Authorized Traders of Members.	NASD Rule 1120(a)(1)–(4) Continuing Education Requirements.
Rule 3.1 Business Conduct of Members	FINRA Rule 2010 Standards of Commercial Honor and Principles of Trade.*
Rule 3.2 Violations Prohibited ¹⁶	FINRA Rule 2010 Standards of Commercial Honor and Principles of Trade and 3010 Supervision.*
Rule 3.3 Use of Fraudulent Devices	FINRA Rule 2020 Use of Manipulative, Deceptive or Other Fraudulent Device.
Rule 3.5(a) Advertising Practices	NASD Rule 2210(d)(1)(B) Communications with the Public.
Rule 3.5(b) Advertising Practices	NASD Rule 2210(d)(2)(C) Communications with the Public.
Rule 3.5(c) Advertising Practices	NASD Rule 2210(d)(1) Communications with the Public.
Rule 3.5(d) Advertising Practices	NASD Rule 2210(b)(1) Communications with the Public.
Rule 3.5(e) Advertising Practices	NASD Rule 2210(b)(2)(A) and 2210(c) Communications with the Public.
Rule 3.5(f) Advertising Practices	NASD Rule 2210(d)(2)(A) and 2210(d)(1)(E) Communications with the Public.
Rule 3.5(g) Advertising Practices	NASD Rule 2210(d)(1) Communications with the Public.
Rule 3.5(h) Advertising Practices	NASD Rule 2210(d)(1) Communications with the Public.
Rule 3.6 Fair Dealing with Customers	NASD Rule IM–2310–2(b)(1), (2), (4)(A)(i), (4)(A)(iii), (4)(A)(iv), and (5) Fair Dealing with Customers.
Rule 3.7(a) Recommendations to Customers	NASD Rule 2310(a) Recommendations to Customers (Suitability).
Rule 3.8(a) The Prompt Receipt and Delivery of Securities	NASD Rule 3370 Purchases.
Rule 3.8(b) The Prompt Receipt and Delivery of Securities	SEC Regulation SHO.
Rule 3.9 Charges for Services Performed	NASD Rule 2430 Charges for Services Performed.
Rule 3.10 Use of Information	FINRA Rule 2060 Use of Information Obtained in Fiduciary Capacity.
Rule 3.11 Publication of Transactions and Quotations	FINRA Rule 5210 Publication of Transactions and Quotations.
Rule 3.12 Offers at Stated Prices	FINRA Rule 5220 Offers at Stated Prices.
Rule 3.14 Disclosure on Confirmations	NASD Rule 2230 Confirmations and SEA Rule 10b–10 Confirmation of Transactions.
Rule 3.15 Disclosure of Control	FINRA Rule 2262 Disclosure of Control Relationship with Issuer.
Rule 3.16 Discretionary Accounts	NASD Rule 2510 Discretionary Accounts.
Rule 3.17 Customer's Securities or Funds	FINRA Rule 2150(a) Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts.
Rule 3.18 Prohibition Against Guarantees	FINRA Rule 2150(b) Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts.
Rule 3.19 Sharing in Accounts; Extent Permissible	FINRA Rule 2150(c)(1) Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts.
Rule 4.1 Requirements	Section 17 of the Exchange Act and the Rules Thereunder.
Rule 4.3 Record of Written Complaints	NASD Rule 3110(d) and (e) Books and Records.**
Rule 4.4 Disclosure of Financial Condition	NASD Rule 2270 Disclosure of Financial Condition to Customers & SEA Rule 17a–5(c).
Rule 5.1 Written Procedures	NASD Rule 3010(b)(1) Supervision—Written Procedures.*
Rule 5.2 Responsibility of Members	NASD Rule 3010(a)(4) and (b)(4) Supervision.*
Rule 5.3 Records	NASD Rule 3010(a)(1), (b) and (c) Supervision.*
Rule 5.4 Review of Activities	NASD Rule 3010(c)(1) Supervision—Internal Inspections.*
Rule 5.5 Information Barrier Procedures	Section 15(f) of Exchange Act.
Rule 5.6 Anti-Money Laundering Compliance Program	FINRA Rule 3310 Anti-Money Laundering Compliance Program.
Rule 9.3 Predispute Arbitration Agreements	NASD Rule 3110(f) Books and Records (Requirements When Using Predispute Arbitration Agreements for Customer Accounts).
Rule 12.3 Excessive Sales by a Member	FINRA Rule 6140(c) Other Trading Practices.***
Rule 12.5 Dissemination of False Information	FINRA Rule 6140(e) Other Trading Practices.***
Rule 12.11 Best Execution	NASD Rule 2320 Best Execution and Interpositioning.
Rule 12.13 Trading Ahead of Research Reports	FINRA Rule 5280 Trading Ahead of Research Reports.
Rule 13.3 Forwarding of Issuer Materials	FINRA Rule 2251 Forwarding of Proxy and Other Issuer-Related Materials.

In addition, the following provisions shall be part of this 17d–2 Agreement:
SEC Rules:

Rule 200 of Regulation SHO—Definition of “Short Sale” and Marking Requirements
Rule 203 of Regulation SHO—Borrowing and Delivery Requirements
Rule 606 of Regulation NMS—Disclosure of Order Routing Information

¹⁶ FINRA shall only have Regulatory Responsibility regarding the first phrase of the EDGA rule regarding prohibitions from violating the Securities Exchange Act of 1934 and the rules and regulations thereunder; responsibility for the remainder of the Rule shall remain with EDGA.

Rule 607 of Regulation NMS—Customer Account Statements

* FINRA shall not have any Regulatory Responsibilities for these rules as they pertain to violations of insider trading activities, which is covered by a separate 17d–2 Agreement by and among the American Stock Exchange, LLC, Boston Stock Exchange, Inc., Chicago Board Options Exchange, Inc., Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange, LLC, NYSE Arca Inc., NYSE Regulation, Inc., and Philadelphia Stock

Exchange, Inc. effective October 17, 2008, as may be amended from time to time.

** FINRA shall only have any Regulatory Responsibilities for the first three years regarding EDGA's five year requirement of keeping and preserving a file of all written complaints of customers and action taken by the Member in respect thereof.

*** FINRA shall not have any Regulatory Responsibilities for these rules as they pertain to trading practices involving securities that do not meet the definition of NMS stock as defined in Rule 600(b)(47) of SEC Regulation NMS.

* * * * *

III. Date of Effectiveness of the Proposed Plan and Timing for Commission Action

Pursuant to Section 17(d)(1) of the Act¹⁷ and Rule 17d-2 thereunder,¹⁸ after April 28, 2010, the Commission may, by written notice, declare the plan submitted by EDGA and FINRA, File No. 4-597, to be effective if the Commission finds that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among self-regulatory organizations, or to remove impediments to and foster the development of the national market system and a national system for the clearance and settlement of securities transactions and in conformity with the factors set forth in Section 17(d) of the Act.

IV. Solicitation of Comments

In order to assist the Commission in determining whether to approve the proposed 17d-2 Plan and to relieve EDGA of the responsibilities which would be assigned to FINRA, interested persons are invited to submit written data, views, and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number 4-597 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.
- All submissions should refer to File Number 4-597. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/other.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed 17d-2 Plan that are filed with the Commission, and all written communications relating to the proposed 17d-2 Plan 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the proposed 17d-2 Plan also will be available for inspection and copying at the principal office of the EDGA and FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4-597 and should be submitted on or before April 28, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010-8367 Filed 4-12-10; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61861; File No. 4-598]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Notice of Filing of Proposed Plan for the Allocation of Regulatory Responsibilities Between EDGX Exchange, Inc. and the Financial Industry Regulatory Authority, Inc.

April 7, 2010.

Pursuant to Section 17(d) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 17d-2 thereunder,² notice is hereby given that on April 2, 2010, EDGX Exchange, Inc. ("EDGX") and the Financial Industry Regulatory Authority, Inc. ("FINRA") (together with EDGX, the "Parties") filed with the Securities and Exchange Commission ("Commission") a plan for the allocation of regulatory responsibilities, dated March 31, 2010 (the "17d-2 Plan"). The Commission is publishing this notice to solicit comments on the 17d-2 Plan from interested persons.

I. Introduction

Section 19(g)(1) of the Act,³ among other things, requires every self-regulatory organization ("SRO") registered as either a national securities exchange or registered national

securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d)⁴ or Section 19(g)(2)⁵ of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO ("common members"). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act⁶ was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.⁷ With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d-1 and Rule 17d-2 under the Act.⁸ Rule 17d-1 authorizes the Commission to name a single SRO as the designated examining authority ("DEA") to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.⁹ When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d-1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d-1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the Federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission

⁴ 15 U.S.C. 78q(d).

⁵ 15 U.S.C. 78s(g)(2).

⁶ 15 U.S.C. 78q(d)(1).

⁷ See Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94-75, 94th Cong., 1st Session 32 (1975).

⁸ 17 CFR 240.17d-1 and 17 CFR 240.17d-2, respectively.

⁹ See Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

¹⁷ 15 U.S.C. 78q(d)(1).

¹⁸ 17 CFR 240.17d-2.

¹⁹ 17 CFR 200.30-3(a)(34).

¹⁵ U.S.C. 78q(d).

² 17 CFR 240.17d-2.

³ 15 U.S.C. 78s(g)(1).

adopted Rule 17d-2 under the Act.¹⁰ Rule 17d-2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d-2, the Commission may declare such a plan effective if, after providing for appropriate notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors; to foster cooperation and coordination among the SROs; to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system; and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d-2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. Proposed 17d-2 Plan

The proposed 17d-2 Plan is intended to reduce regulatory duplication for firms that are common members of both EDGX and FINRA.¹¹ Pursuant to the proposed 17d-2 Plan, FINRA would assume certain examination and enforcement responsibilities for common members with respect to certain applicable laws, rules, and regulations.

The text of the 17d-2 Plan delineates the proposed regulatory responsibilities between the Parties. Included in the 17d-2 Plan is an attachment ("EDGX Certification for 17d-2 Agreement with FINRA" referred to herein as the "Certification") that lists every EDGX rule and select Federal securities laws, rules and regulations for which FINRA would bear responsibility under the 17d-2 Plan for overseeing and enforcing with respect to EDGX members that are also members of FINRA and the associated persons therewith ("Dual Members").

Specifically, under the 17d-2 Plan, FINRA would assume examination and enforcement responsibility relating to compliance by Dual Members with the rules of EDGX that are substantially similar to the applicable rules of FINRA, as well as any provisions of the Federal securities laws and the rules and regulations thereunder delineated in the Certification ("Common Rules").¹²

Common Rules would not include the application of any EDGX Rule or FINRA rule, or any rule or regulation under the Act, to the extent that it pertains to violations of insider trading activities, because such matters are covered by a separate multiparty agreement under Rule 17d-2.¹³ In the event that a Dual Member is the subject of an investigation relating to a transaction on EDGX, the 17d-2 Plan acknowledges that EDGX may, in its discretion, exercise concurrent jurisdiction and responsibility for such matter.¹⁴

Under the 17d-2 Plan, EDGX would retain full responsibility for surveillance, examination, investigation, and enforcement with respect to trading activities or practices involving EDGX's own marketplace, including, without limitation, registration pursuant to its unique rules (*i.e.*, non-common rules); its duties as a DEA pursuant to Rule 17d-1 under the Act; and any rules that are not Common Rules, except for EDGX rules for any broker-dealer subsidiary of Direct Edge Holdings LLC.¹⁵

The text of the proposed 17d-2 Plan is as follows:

Agreement Between FINRA and EDGX Exchange, Inc. Pursuant to Rule 17d-2 Under the Securities Exchange Act of 1934

This Agreement, by and between the Financial Industry Regulatory Authority ("FINRA") and EDGX Exchange, Inc. ("EDGX"), is made this 31st day of March, 2010 (the "Agreement"), pursuant to Section 17(d) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 17d-2 thereunder which permits agreements

Responsibilities). Paragraph 2 of the 17d-2 Plan provides that annually, or more frequently as required by changes in either EDGX rules or FINRA rules, the parties shall review and update, if necessary, the list of Common Rules. Further, paragraph 3 of the Plan provides that EDGX shall furnish FINRA with a list of Dual Members, and shall update the list no less frequently than once each calendar quarter.

¹³ See Securities Exchange Act Release No. 58350 (August 13, 2008), 73 FR 48247 (August 18, 2008) (File No. 4-566) (notice of filing of proposed plan). See also Securities Exchange Act Release Nos. 58536 (September 12, 2008) (File No. 4-566) (order approving and declaring effective the plan) and 58806 (October 17, 2008) (File No. 4-566) (order approving and declaring effective an amendment to the plan). The Certification identifies several Common Rules that may also be addressed in the context of regulating insider trading activities pursuant to the proposed separate multiparty agreement.

¹⁴ See paragraph 6 of the proposed 17d-2 Plan.

¹⁵ Apparent violations of such EDGX rules by any broker-dealer subsidiary of Direct Edge Holdings LLC will be processed by, and enforcement proceedings will be conducted by, FINRA. See paragraphs 2(d) and 6 of the 17d-2 Plan. As of the date of this Agreement, Direct Edge ECN LLC is the only broker-dealer subsidiary of Direct Edge Holdings LLC.

between self-regulatory organizations to allocate regulatory responsibility to eliminate regulatory duplication. FINRA and EDGX may be referred to individually as a "party" and together as the "parties."

Whereas, FINRA and EDGX desire to reduce duplication in the examination of their Dual Members (as defined herein) and in the filing and processing of certain registration and membership records; and

Whereas, FINRA and EDGX desire to execute an agreement covering such subjects pursuant to the provisions of Rule 17d-2 under the Exchange Act and to file such agreement with the Securities and Exchange Commission (the "SEC" or "Commission") for its approval.

Now, therefore, in consideration of the mutual covenants contained hereinafter, FINRA and EDGX hereby agree as follows:

1. *Definitions.* Unless otherwise defined in this Agreement or the context otherwise requires, the terms used in this Agreement shall have the same meaning as they have under the Exchange Act and the rules and regulations thereunder. As used in this Agreement, the following terms shall have the following meanings:

(a) "*EDGX Rules*" or "*FINRA Rules*" shall mean: (i) The rules of EDGX, or (ii) the rules of FINRA, respectively, as the rules of an exchange or association are defined in Exchange Act Section 3(a)(27).

(b) "*Common Rules*" shall mean the EDGX Rules that are substantially similar to the applicable FINRA Rules and certain provisions of the Exchange Act and SEC rules set forth on Exhibit 1 in that examination for compliance with such provisions and rules would not require FINRA to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the such provisions or rule, or a Dual Member's activity, conduct, or output in relation to such rule; provided however, Common Rules shall not include the application of the SEC, EDGX or FINRA rules as they pertain to violations of insider trading activities, which is covered by a separate 17d-2 Agreement by and among the American Stock Exchange, LLC, Boston Stock Exchange, Inc., Chicago Board Options Exchange, Inc., Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange, LLC, NYSE Arca Inc., NYSE Regulation, Inc., and Philadelphia Stock Exchange, Inc.

¹⁰ See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

¹¹ The proposed 17d-2 Plan refers to these common members as "Dual Members." See Paragraph 1(c) of the proposed 17d-2 Plan.

¹² See paragraph 1(b) of the 17d-2 plan (defining Common Rules). See also paragraph 1(f) of the proposed 17d-2 Plan (defining Regulatory

effective October 17, 2008, as may be amended from time to time.

(c) “*Dual Members*” shall mean those EDGX members that are also members of FINRA and the associated persons therewith.

(d) “*Effective Date*” shall be the date this Agreement is approved by the Commission.

(e) “*Enforcement Responsibilities*” shall mean the conduct of appropriate proceedings, in accordance with FINRA’s Code of Procedure (the Rule 9000 Series) and other applicable FINRA procedural rules, to determine whether violations of Common Rules have occurred, and if such violations are deemed to have occurred, the imposition of appropriate sanctions as specified under FINRA’s Code of Procedure and sanctions guidelines.

(f) “*Regulatory Responsibilities*” shall mean the examination responsibilities and Enforcement Responsibilities relating to compliance by the Dual Members with the Common Rules and the provisions of the Exchange Act and the rules and regulations thereunder, and other applicable laws, rules and regulations, each as set forth on Exhibit 1 attached hereto.

2. *Regulatory and Enforcement Responsibilities.* FINRA shall assume Regulatory Responsibilities and Enforcement Responsibilities for Dual Members. Attached as Exhibit 1 to this Agreement and made part hereof, EDGX furnished FINRA with a current list of Common Rules and certified to FINRA that such rules are substantially similar to the corresponding FINRA rule (the “*Certification*”). FINRA hereby agrees that the rules listed in the Certification are Common Rules as defined in this Agreement. Each year following the Effective Date of this Agreement, or more frequently if required by changes in either the rules of EDGX or FINRA, EDGX shall submit an updated list of Common Rules to FINRA for review which shall add EDGX Rules not included in the current list of Common Rules that qualify as Common Rules as defined in this Agreement; delete EDGX Rules included in the current list of Common Rules that no longer qualify as Common Rules as defined in this Agreement; and confirm that the remaining rules on the current list of Common Rules continue to be EDGX Rules that qualify as Common Rules as defined in this Agreement. Within 30 days of receipt of such updated list, FINRA shall confirm in writing whether the rules listed in any updated list are Common Rules as defined in this Agreement. Notwithstanding anything herein to the contrary, it is explicitly understood that the term “*Regulatory*

Responsibilities” does not include, and EDGX shall retain full responsibility for (unless otherwise addressed by separate agreement or rule) the following:

(a) Surveillance, examination, investigation and enforcement with respect to trading activities or practices involving EDGX’s own marketplace;

(b) Registration pursuant to its applicable rules of associated persons (*i.e.*, registration rules that are not Common Rules);

(c) Discharge of its duties and obligations as a Designated Examining Authority pursuant to Rule 17d–1 under the Exchange Act, if applicable; and

(d) Any EDGX Rules that are not Common Rules, except for EDGX Rules for any broker-dealer subsidiary of Direct Edge Holdings LLC, as provided in paragraph 6.

3. *Dual Members.* Prior to the Effective Date, EDGX shall furnish FINRA with a current list of Dual Members, which shall be updated no less frequently than once each quarter.

4. *No Charge.* There shall be no charge to EDGX by FINRA for performing the Regulatory Responsibilities and Enforcement Responsibilities under this Agreement except as hereinafter provided. FINRA shall provide EDGX with ninety (90) days advance written notice in the event FINRA decides to impose any charges to EDGX for performing the Regulatory Responsibilities under this Agreement. If FINRA determines to impose a charge, EDGX shall have the right at the time of the imposition of such charge to terminate this Agreement; provided, however, that FINRA’s Regulatory Responsibilities under this Agreement shall continue until the Commission approves the termination of this Agreement.

5. *Applicability of Certain Laws, Rules, Regulations or Orders.*

Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the SEC. To the extent such statute, rule, or order is inconsistent with one or more provisions of this Agreement, the statute, rule, or order shall supersede the provision(s) hereof to the extent necessary to be properly effectuated and the provision(s) hereof in that respect shall be null and void.

6. *Notification of Violations.*

(a) In the event that FINRA becomes aware of apparent violations of any EDGX Rules, which are not listed as Common Rules, discovered pursuant to the performance of the Regulatory Responsibilities assumed hereunder, FINRA shall notify EDGX of those apparent violations for such response as EDGX deems appropriate.

(b) In the event that EDGX becomes aware of apparent violations of any Common Rules, discovered pursuant to the performance of the Retained Responsibilities, EDGX shall notify FINRA of those apparent violations and such matters shall be handled by FINRA as provided in this Agreement.

(c) With respect to apparent violations of any EDGX Rules by any broker-dealer subsidiary of EDGX’s holding company, Direct Edge Holdings LLC, FINRA shall not make referrals to EDGX pursuant to this paragraph 6. Such apparent violations shall be processed by, and enforcement proceedings in respect thereto will be conducted by, FINRA as provided in this Agreement.

(d) Apparent violations of Common Rules and FINRA rules shall be processed by, and enforcement proceedings in respect thereto shall be conducted by FINRA as provided hereinbefore; provided, however, that in the event a Dual Member is the subject of an investigation relating to a transaction on EDGX, EDGX may in its discretion assume concurrent jurisdiction and responsibility.

(e) Each party agrees to make available promptly all files, records and witnesses necessary to assist the other in its investigation or proceedings.

7. *Continued Assistance.*

(a) FINRA shall make available to EDGX all information obtained by FINRA in the performance by it of the Regulatory Responsibilities hereunder in respect to the Dual Members subject to this Agreement. In particular, and not in limitation of the foregoing, FINRA shall furnish EDGX any information it obtains about Dual Members which reflects adversely on their financial condition. EDGX shall make available to FINRA any information coming to its attention that reflects adversely on the financial condition of Dual Members or indicates possible violations of applicable laws, rules or regulations by such firms.

(b) The parties agree that documents or information shared shall be held in confidence, and used only for the purposes of carrying out their respective regulatory obligations. Neither party shall assert regulatory or other privileges as against the other with respect to documents or information that is required to be shared pursuant to this Agreement.

(c) The sharing of documents or information between the parties pursuant to this Agreement shall not be deemed a waiver against third parties of regulatory or other privileges relating to the discovery of documents or information.

8. *Statutory Disqualifications.* When FINRA becomes aware of a statutory disqualification as defined in the Exchange Act with respect to a Dual Member, FINRA shall determine pursuant to Sections 15A(g) and/or Section 6(c) of the Exchange Act the acceptability or continued applicability of the person to whom such disqualification applies and keep EDGX advised of its actions in this regard for such subsequent proceedings as EDGX may initiate.

9. *Customer Complaints.* EDGX shall forward to FINRA copies of all customer complaints involving Dual Members received by EDGX relating to FINRA's Regulatory Responsibilities under this Agreement. It shall be FINRA's responsibility to review and take appropriate action in respect to such complaints.

10. *Advertising.* FINRA shall assume responsibility to review the advertising of Dual Members subject to the Agreement, provided that such material is filed with FINRA in accordance with FINRA's filing procedures and is accompanied with any applicable filing fees set forth in FINRA Rules.

11. *No Restrictions on Regulatory Action.* Nothing contained in this Agreement shall restrict or in any way encumber the right of either party to conduct its own independent or concurrent investigation, examination or enforcement proceeding of or against Dual Members, as either party, in its sole discretion, shall deem appropriate or necessary.

12. *Termination.* This Agreement may be terminated by EDGX or FINRA at any time upon the approval of the Commission after one (1) year's written notice to the other party, except as provided in paragraph 4.

13. *Arbitration.* In the event of a dispute between the parties as to the operation of this Agreement, EDGX and FINRA hereby agree that any such dispute shall be settled by arbitration in Washington, DC, in accordance with the rules of the American Arbitration Association then in effect, or such other

procedures as the parties may mutually agree upon. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Each party acknowledges that the timely and complete performance of its obligations pursuant to this Agreement is critical to the business operations of the other party. In the event of a dispute between the parties, the parties shall continue to perform their respective obligations under this Agreement in good faith during the resolution of such dispute unless and until this Agreement is terminated in accordance with its provisions. Nothing in Section 13 shall interfere with a party's right to terminate this Agreement as set forth herein.

14. *Notification of Members.* EDGX and FINRA shall notify Dual Members of this Agreement after the Effective Date by means of a uniform joint notice.

15. *Amendment.* This Agreement may be amended in writing duly approved by each party. All such amendments must be filed with and approved by the Commission before they become effective.

16. *Limitation of Liability.* Neither FINRA nor EDGX nor any of their respective directors, governors, officers or employees shall be liable to the other party to this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory Responsibilities as provided hereby or for the failure to provide any such responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or the other of FINRA or EDGX and caused by the willful misconduct of the other party or their respective directors, governors, officers or employees. No warranties, express or implied, are made by FINRA or EDGX with respect to any of the responsibilities to be performed by each of them hereunder.

17. *Relief From Responsibility.* Pursuant to Sections 17(d)(1)(A) and 19(g) of the Exchange Act and Rule

17d-2 thereunder, FINRA and EDGX join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve EDGX of any and all responsibilities with respect to matters allocated to FINRA pursuant to this Agreement; provided, however, that this Agreement shall not be effective until the Effective Date.

18. *Severability.* Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

19. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and such counterparts together shall constitute one and the same instrument.

In witness whereof, each party has executed or caused this Agreement to be executed on its behalf by a duly authorized officer as of the date first written above.

EDGX EXCHANGE, INC.

By: _____

Name: _____

Title: _____

FINANCIAL INDUSTRY REGULATORY AUTHORITY

By: _____

Name: _____

Title: _____

EDGX Exchange, Inc. Certification

EDGX Certification for 17d-2 Agreement With FINRA

EDGX Exchange, Inc. hereby certifies that the requirements contained in the rules listed below are identical to, or substantially similar to, the comparable FINRA (NASD) Rule, Exchange Act provision or SEC rule identified ("Common Rules").

Rule 2.5, Interpretation and Policy .04, The Regulatory Element of Continuing Education Requirement for Authorized Traders of Members.

Rule 3.1 Business Conduct of Members

Rule 3.2 Violations Prohibited ¹⁶

Rule 3.3 Use of Fraudulent Devices

Rule 3.5(a) Advertising Practices

Rule 3.5(b) Advertising Practices

Rule 3.5(c) Advertising Practices

Rule 3.5(d) Advertising Practices

NASD Rule 1120(a)(1)-(4) Continuing Education Requirements.

FINRA Rule 2010 Standards of Commercial Honor and Principles of Trade.*

FINRA Rule 2010 Standards of Commercial Honor and Principles of Trade and 3010 Supervision.*

FINRA Rule 2020 Use of Manipulative, Deceptive or Other Fraudulent Device.

NASD Rule 2210(d)(1)(B) Communications with the Public.

NASD Rule 2210(d)(2)(C) Communications with the Public.

NASD Rule 2210(d)(1) Communications with the Public.

NASD Rule 2210(b)(1) Communications with the Public.

Rule 3.5(e) Advertising Practices	NASD Rule 2210(b)(2)(A) and 2210(c) Communications with the Public.
Rule 3.5(f) Advertising Practices	NASD Rule 2210(d)(2)(A) and 2210(d)(1)(E) Communications with the Public.
Rule 3.5(g) Advertising Practices	NASD Rule 2210(d)(1) Communications with the Public.
Rule 3.5(h) Advertising Practices	NASD Rule 2210(d)(1) Communications with the Public.
Rule 3.6 Fair Dealing with Customers	NASD Rule IM-2310-2(b)(1), (2), (4)(A)(i), (4)(A)(iii), (4)(A)(iv), and (5) Fair Dealing with Customers.
Rule 3.7(a) Recommendations to Customers	NASD Rule 2310(a) Recommendations to Customers (Suitability).
Rule 3.8(a) The Prompt Receipt and Delivery of Securities	NASD Rule 3370 Purchases.
Rule 3.8(b) The Prompt Receipt and Delivery of Securities	SEC Regulation SHO.
Rule 3.9 Charges for Services Performed	NASD Rule 2430 Charges for Services Performed.
Rule 3.10 Use of Information	FINRA Rule 2060 Use of Information Obtained in Fiduciary Capacity.
Rule 3.11 Publication of Transactions and Quotations	FINRA Rule 5210 Publication of Transactions and Quotations.
Rule 3.12 Offers at Stated Prices	FINRA Rule 5220 Offers at Stated Prices.
Rule 3.14 Disclosure on Confirmations	NASD Rule 2230 Confirmations and SEA Rule 10b-10 Confirmation of Transactions.
Rule 3.15 Disclosure of Control	FINRA Rule 2262 Disclosure of Control Relationship with Issuer.
Rule 3.16 Discretionary Accounts	NASD Rule 2510 Discretionary Accounts.
Rule 3.17 Customer's Securities or Funds	FINRA Rule 2150(a) Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts.
Rule 3.18 Prohibition Against Guarantees	FINRA Rule 2150(b) Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts.
Rule 3.19 Sharing in Accounts; Extent Permissible	FINRA Rule 2150(c)(1) Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts.
Rule 4.1 Requirements	Section 17 of the Exchange Act and the Rules Thereunder.
Rule 4.3 Record of Written Complaints	NASD Rule 3110(d) and (e) Books and Records.**
Rule 4.4 Disclosure of Financial Condition	NASD Rule 2270 Disclosure of Financial Condition to Customers & SEA Rule 17a-5(c).
Rule 5.1 Written Procedures	NASD Rule 3010(b)(1) Supervision—Written Procedures.*
Rule 5.2 Responsibility of Members	NASD Rule 3010(a)(4) and (b)(4) Supervision.*
Rule 5.3 Records	NASD Rule 3010(a)(1), (b) and (c) Supervision.*
Rule 5.4 Review of Activities	NASD Rule 3010(c)(1) Supervision—Internal Inspections.*
Rule 5.5 Information Barrier Procedures	Section 15(f) of Exchange Act.
Rule 5.6 Anti-Money Laundering Compliance Program	FINRA Rule 3310 Anti-Money Laundering Compliance Program.
Rule 9.3 Predispute Arbitration Agreements	NASD Rule 3110(f) Books and Records (Requirements When Using Predispute Arbitration Agreements for Customer Accounts).
Rule 12.3 Excessive Sales by a Member	FINRA Rule 6140(c) Other Trading Practices.***
Rule 12.5 Dissemination of False Information	FINRA Rule 6140(e) Other Trading Practices.***
Rule 12.11 Best Execution	NASD Rule 2320 Best Execution and Interpositioning.
Rule 12.13 Trading Ahead of Research Reports	FINRA Rule 5280 Trading Ahead of Research Reports.
Rule 13.3 Forwarding of Issuer Materials	FINRA Rule 2251 Forwarding of Proxy and Other Issuer-Related Materials.

¹⁶ FINRA shall only have Regulatory Responsibility regarding the first phrase of the EDGX rule regarding prohibitions from violating the Securities Exchange Act of 1934 and the rules and regulations thereunder; responsibility for the remainder of the Rule shall remain with EDGX.

In addition, the following provisions shall be part of this 17d-2 Agreement:

SEC Rules

Rule 200 of Regulation SHO—Definition of "Short Sale" and Marking Requirements.

Rule 203 of Regulation SHO—Borrowing and Delivery Requirements.

Rule 606 of Regulation NMS—Disclosure of Order Routing Information.

Rule 607 of Regulation NMS—Customer Account Statements.

* FINRA shall not have any Regulatory Responsibilities for these rules as they pertain to violations of insider trading activities, which is covered by a separate 17d-2 Agreement by and among the American Stock Exchange, LLC, Boston Stock Exchange, Inc., Chicago Board Options Exchange, Inc., Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange, LLC, NYSE Arca Inc., NYSE Regulation, Inc., and Philadelphia Stock Exchange, Inc. effective October 17, 2008, as may be amended from time to time.

** FINRA shall only have any Regulatory Responsibilities for the first three years regarding EDGX's five year requirement of keeping and preserving a file of all written complaints of customers and action taken by the Member in respect thereof.

*** FINRA shall not have any Regulatory Responsibilities for these rules as they pertain to trading practices involving securities that do not meet the definition of NMS stock as defined in Rule 600(b)(47) of SEC Regulation NMS.

* * * * *

III. Date of Effectiveness of the Proposed Plan and Timing for Commission Action

Pursuant to Section 17(d)(1) of the Act¹⁷ and Rule 17d-2 thereunder,¹⁸ after April 28, 2010, the Commission may, by written notice, declare the plan submitted by EDGX and FINRA, File No. 4-598, to be effective if the Commission finds that the plan is

¹⁷ 15 U.S.C. 78q(d)(1).

¹⁸ 17 CFR 240.17d-2.

necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among self-regulatory organizations, or to remove impediments to and foster the development of the national market system and a national system for the clearance and settlement of securities transactions and in conformity with the factors set forth in Section 17(d) of the Act.

IV. Solicitation of Comments

In order to assist the Commission in determining whether to approve the proposed 17d-2 Plan and to relieve EDGX of the responsibilities which would be assigned to FINRA, interested persons are invited to submit written data, views, and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number 4-598 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number 4-598. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/other.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed 17d-2 Plan that are filed with the Commission, and all written communications relating to the proposed 17d-2 Plan 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the proposed 17d-2 Plan also will be available for inspection and copying at the principal office of the EDGX and FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4-598 and should be submitted on or before April 28, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010-8368 Filed 4-12-10; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61853; File No. 4-596]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Notice of Filing of Proposed Plan for the Allocation of Regulatory Responsibilities Between the International Securities Exchange, LLC and the Financial Industry Regulatory Authority, Inc. Concerning Ballista Securities LLC

April 6, 2010.

Pursuant to Section 17(d) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 17d-2 thereunder,² notice is hereby given that on March 19, 2010, the International Securities Exchange, LLC ("ISE") and the Financial Industry Regulatory Authority, Inc. ("FINRA") (together with the ISE, the "Parties") filed with the Securities and Exchange Commission ("Commission") a plan for the allocation of regulatory responsibilities (the "17d-2 Plan"). The Commission is publishing this notice to solicit comments on the 17d-2 Plan from interested persons.

I. Introduction

Section 19(g)(1) of the Act,³ among other things, requires every self-regulatory organization ("SRO") registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d)⁴ or Section 19(g)(2)⁵ of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO ("common members"). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act⁶ was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.⁷ With respect to a common member, Section 17(d)(1)

authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d-1 and Rule 17d-2 under the Act.⁸ Rule 17d-1 authorizes the Commission to name a single SRO as the designated examining authority ("DEA") to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.⁹ When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d-1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d-1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the Federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d-2 under the Act.¹⁰ Rule 17d-2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d-2, the Commission may declare such a plan effective if, after providing for notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system, and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d-2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

¹ 15 U.S.C. 78q(d).

² 17 CFR 240.17d-2.

³ 15 U.S.C. 78s(g)(1).

⁴ 15 U.S.C. 78q(d).

⁵ 15 U.S.C. 78s(g)(2).

⁶ 15 U.S.C. 78q(d)(1).

⁷ See Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94-75, 94th Cong., 1st Session 32 (1975).

⁸ 17 CFR 240.17d-1 and 17 CFR 240.17d-2, respectively.

⁹ See Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

¹⁰ See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976) ("Rule 17d-2 Adopting Release").

¹⁹ 17 CFR 200.30-3(a)(34).

II. Proposed Plan

On June 5, 2009, ISE Holdings, Inc. ("ISE Holdings"), the parent of ISE, entered into a Membership Purchase Agreement ("Purchase Agreement") with Optifreeze LLC, a Delaware Limited Liability Company ("Optifreeze"). ISE Holdings acquired membership interests in Optifreeze by contributing cash to the capital of Optifreeze. As a result of the purchase, ISE Holdings has an 8.57% membership interest in Optifreeze, which wholly owns and operates an Electronic Access Member of the ISE, Ballista Securities LLC ("Ballista"). The ownership interest of ISE Holdings in Ballista is subject to the conditions set forth in the Commission's approval order relating to ISE Holdings' purchase of Optifreeze.¹¹

Recognizing that the Commission has previously expressed concern regarding (1) the potential for conflicts of interest in instances where an exchange is affiliated with one of its members, and (2) the potential for informational advantages that could place an affiliated member of an exchange at a competitive advantage vis-à-vis the other non-affiliated members, the ISE submitted a proposed rule change to amend ISE Rule 312 to permit the proposed affiliation subject to several conditions and limitations, including that a condition that the Exchange shall enter into a plan with a non-affiliated self-regulatory organization to regulate and oversee the activities of Ballista, pursuant to Rule 17d-2 under the Act.¹²

On March 19, 2010, the Parties submitted the proposed 17d-2 Plan to the Commission. The text of the 17d-2 Plan delineates regulatory responsibilities between the Parties, including responsibility for ISE rules, with respect to Ballista, which is a common member. In particular, under the 17d-2 Plan, FINRA would assume examination and enforcement responsibility relating to compliance by Ballista and persons associated therewith, with the rules of ISE that are substantially similar to the rules of FINRA, as well as any provisions of the Federal securities laws and the rules and regulations thereunder delineated in the Exhibit 1 to the 17d-2 Plan ("Common Rules").¹³ In addition, FINRA would assume regulatory responsibility, with respect to Ballista, for other ISE rules that do not qualify as Common Rules. Under the 17d-2 Plan,

ISE would retain full responsibility for surveillance, examination, investigation, and enforcement with respect to trading activities or practices involving ISE's own marketplace; registration pursuant to its unique rules (*i.e.*, registration rules that are not Common Rules); its duties as a Designated Examining Authority pursuant to Rule 17d-1 under the Act; and any rules that are not substantially similar to the rules of FINRA, except for ISE rules for any ISE member that acts as an inbound router for the ISE and is a member of the ISE and FINRA ("Inbound Router Member").¹⁴ For purposes of the proposed 17d-2 Plan, Ballista would qualify as an Inbound Router Member. Accordingly, FINRA would be allocated regulatory responsibility for Ballista.

The text of the 17d-2 Plan is as follows:

Agreement Between Financial Industry Regulatory Authority, Inc. and International Securities Exchange, LLC Pursuant to Rule 17d-2 Under the Securities Exchange Act of 1934

This Agreement, by and between the Financial Industry Regulatory Authority, Inc. ("FINRA") and the International Securities Exchange, LLC ("ISE"), is made this 8th day of September, 2009 (the "Agreement"), pursuant to Section 17(d) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 17d-2 thereunder which permits agreements between self-regulatory organizations to allocate regulatory responsibility to eliminate regulatory duplication. FINRA and ISE may be referred to individually as a "party" and together as the "parties."

Whereas, International Securities Exchange Holdings, Inc. ("ISE Holdings"), the parent company of ISE, maintains an ownership interest in Optifreeze LLC ("Optifreeze"), the parent company of Ballista Securities LLC ("Ballista").

Whereas, ISE desires to eliminate conflicts of interest that would exist if ISE were to regulate Ballista, a member of ISE, which operates a broker-dealer, which among other things, routes inbound orders to ISE.

Whereas, ISE and FINRA desire to reduce duplication in the examination of their Dual Members (as defined herein); and

Whereas, FINRA and ISE desire to execute an agreement covering such subjects pursuant to the provisions of Rule 17d-2 under the Exchange Act and

to file such agreement with the Securities and Exchange Commission (the "SEC" or "Commission") for its approval.

Now, therefore, in consideration of the mutual covenants contained hereinafter, FINRA and ISE hereby agree as follows:

1. *Definitions.* Unless otherwise defined in this Agreement or the context otherwise requires, the terms used in this Agreement shall have the same meaning as they have under the Exchange Act and the rules and regulations thereunder. As used in this Agreement, the following terms shall have the following meanings:

(a) "*ISE Rules*" or "*FINRA Rules*" shall mean the rules of the ISE or FINRA, respectively, as the rules of an exchange or association are defined in Exchange Act Section 3(a)(27).

(b) "*Common Rules*" shall mean the ISE Rules that are substantially similar to the applicable FINRA Rules and certain provisions of the Exchange Act and SEC rules set forth on *Exhibit 1* in that examination for compliance with such rules would not require FINRA to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the rule, or a Dual Member's activity, conduct, or output in relation to such rule; provided, however, Common Rules shall not include the application of the SEC, ISE or FINRA rules as they pertain to violations of insider trading activities, which is covered by a separate 17d-2 Agreement by and among the American Stock Exchange, LLC, BATS Exchange, Inc., Boston Stock Exchange, Inc., CBOE Stock Exchange, LLC, Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange, LLC, NYSE Arca Inc., NYSE Regulation, Inc., and Philadelphia Stock Exchange, Inc. approved by the Commission on October 17, 2008, as may be amended from time to time.

(c) "*Dual Members*" shall mean those ISE members that are also members of FINRA and the associated persons therewith, but for purposes of this Agreement is limited to Ballista and its associated persons.

(d) "*Effective Date*" shall be the date this Agreement is approved by the Commission.

(e) "*Enforcement Responsibilities*" shall mean the conduct of appropriate proceedings, in accordance with the FINRA Code of Procedure (the Rule 9000 Series) and other applicable FINRA procedural rules, to determine

¹¹ See Securities Exchange Act Release No. 60598 (September 1, 2009), 74 FR 46280 (September 8, 2009).

¹² See Securities Exchange Act Release No. 60382 (July 24, 2009), 74 FR 38068 (July 30, 2009).

¹³ See paragraph 2 of the 17d-2 plan.

¹⁴ Apparent violations of such ISE rules by any Inbound Router Member will be processed by, and enforcement proceedings will be conducted by, FINRA. See paragraphs 2(d) and 5 of the 17d-2 Plan.

whether violations of pertinent laws, rules or regulations have occurred, and if such violations are deemed to have occurred, the imposition of appropriate sanctions as specified under the FINRA's Code of Procedure and sanction guidelines.

(f) "*Regulatory Responsibilities*" shall mean the examination responsibilities and Enforcement Responsibilities relating to compliance by the Dual Members with the Common Rules and the provisions of the Exchange Act and the rules and regulations thereunder, and other applicable laws, rules and regulations, each as set forth on *Exhibit 1* attached hereto.

2. *Regulatory and Enforcement Responsibilities.* FINRA shall assume Regulatory Responsibilities and Enforcement Responsibilities for Ballista, which is a Dual Member. Attached as *Exhibit 1* to this Agreement and made part hereof, ISE furnished FINRA with a current list of Common Rules and certified to FINRA that such rules are substantially similar to the corresponding FINRA rule (the "Certification"). FINRA hereby agrees that the rules listed in the Certification are Common Rules as defined in this Agreement. Each year following the Effective Date of this Agreement, or more frequently if required by changes in either the rules of ISE or FINRA, ISE shall submit an updated list of Common Rules to FINRA for review which shall add ISE Rules not included in the current list of Common Rules that qualify as Common Rules as defined in this Agreement; delete ISE Rules included in the current list of Common Rules that no longer qualify as Common Rules as defined in this Agreement; and confirm that the remaining rules on the current list of Common Rules continue to be ISE Rules that qualify as Common Rules as defined in this Agreement. Within 30 days of receipt of such updated list, FINRA shall confirm in writing whether the rules listed in any updated list are Common Rules as defined in this Agreement.

Notwithstanding anything herein to the contrary, it is explicitly understood that the term "Regulatory Responsibilities" does not include, and ISE shall retain full responsibility for (unless otherwise addressed by separate agreement or rule) (collectively, the "Retained Responsibilities") the following:

(a) Surveillance, examination, investigation and enforcement with respect to trading activities or practices involving ISE's own marketplace, including without limitation ISE's rules relating to the rights and obligations of market makers;

(b) Registration pursuant to its applicable rules of associated persons (*i.e.*, registration rules that are not Common Rules);

(c) Discharge of its duties and obligations as a Designated Examining Authority pursuant to Rule 17d-1 under the Exchange Act; and

(d) Any ISE Rules that are not Common Rules, except for ISE Rules for any ISE member that acts as an inbound router for the ISE and is a member of the ISE and FINRA ("Inbound Router Member") as provided in paragraph 5. As of the date of this Agreement, Direct Edge ECN LLC and Ballista are the only Inbound Router Members.

3. *No Charge.* There shall be no charge to ISE by FINRA for performing the Regulatory Responsibilities and Enforcement Responsibilities under this Agreement except as hereinafter provided. FINRA shall provide ISE with ninety (90) days advance written notice in the event FINRA decides to impose any charges to ISE for performing the Regulatory Responsibilities under this Agreement. If FINRA determines to impose a charge, ISE shall have the right at the time of the imposition of such charge to terminate this Agreement; provided, however, that FINRA's Regulatory Responsibilities under this Agreement shall continue until the Commission approves the termination of this Agreement.

4. *Reassignment of Regulatory Responsibilities.* Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the Commission, or industry agreement, restructuring the regulatory framework of the securities industry or reassigning Regulatory Responsibilities between self-regulatory organizations. To the extent such action is inconsistent with this Agreement, such action shall supersede the provisions hereof to the extent necessary for them to be properly effectuated and the provisions hereof in that respect shall be null and void.

5. *Notification of Violations.*

(a) In the event that FINRA becomes aware of apparent violations of any ISE Rules, which are not listed as Common Rules, discovered pursuant to the performance of the Regulatory Responsibilities assumed hereunder, FINRA shall notify ISE of those apparent violations for such response as ISE deems appropriate. With respect to apparent violations of any ISE Rules by any Inbound Router Members, FINRA shall not make referrals to ISE pursuant to this paragraph 5. Such apparent violations shall be processed by, and enforcement proceedings in respect thereto will be conducted by, FINRA as provided in this Agreement.

(b) In the event that ISE becomes aware of apparent violations of any Common Rules, discovered pursuant to the performance of the Retained Responsibilities, ISE shall notify FINRA of those apparent violations and such matters shall be handled by FINRA as provided in this Agreement.

(c) Apparent violations of Common Rules, FINRA Rules, Federal securities laws, and rules and regulations thereunder, shall be processed by, and enforcement proceedings in respect thereto shall be conducted by FINRA as provided hereinbefore; provided, however, that in the event a Dual Member is the subject of an investigation relating to a transaction on ISE, ISE may in its discretion assume concurrent jurisdiction and responsibility.

(d) Each party agrees to make available promptly all files, records and witnesses necessary to assist the other in its investigation or proceedings.

6. *Continued Assistance.*

(a) FINRA shall make available to ISE all information obtained by FINRA in the performance by it of the Regulatory Responsibilities hereunder in respect to the Inbound Router Members subject to this Agreement. In particular, and not in limitation of the foregoing, FINRA shall furnish ISE any information it obtains about Inbound Router Members which reflects adversely on their financial condition. ISE shall make available to FINRA any information coming to its attention that reflects adversely on the financial condition of Inbound Router Members or indicates possible violations of applicable laws, rules or regulations by such firms.

(b) The parties agree that documents or information shared shall be held in confidence, and used only for the purposes of carrying out their respective regulatory obligations. Neither party shall assert regulatory or other privileges as against the other with respect to documents or information that is required to be shared pursuant to this Agreement.

(c) The sharing of documents or information between the parties pursuant to this Agreement shall not be deemed a waiver as against third parties of regulatory or other privileges relating to the discovery of documents or information.

7. *Statutory Disqualifications.* When FINRA becomes aware of a statutory disqualification as defined in the Exchange Act with respect to a Inbound Router Member, FINRA shall determine pursuant to Sections 15A(g) and/or Section 6(c) of the Exchange Act the acceptability or continued applicability of the person to whom such

disqualification applies and keep ISE advised of its actions in this regard for such subsequent proceedings as ISE may initiate.

8. *Branch Office Information.* FINRA shall also be responsible for processing and, if required, acting upon all requests for the opening, address changes, and terminations of branch offices by Inbound Router Members and any other applications required of Inbound Router Members with respect to the Common Rules as they may be amended from time to time. Upon request, FINRA shall advise ISE of the opening, address change and termination of branch and main offices of Inbound Router Members and the names of such branch office managers.

9. *Customer Complaints.* ISE shall forward to FINRA copies of all customer complaints involving Inbound Router Members received by ISE relating to FINRA's Regulatory Responsibilities under this Agreement. It shall be FINRA's responsibility to review and take appropriate action in respect to such complaints.

10. *Advertising.* FINRA shall assume responsibility to review the advertising of Inbound Router Members subject to the Agreement, provided that such material is filed with FINRA in accordance with FINRA's filing procedures and is accompanied with any applicable filing fees set forth in FINRA Rules. Such review shall be made in accordance with then applicable FINRA Rules and interpretations. The advertising of Inbound Router Members shall be subject only to compliance with appropriate FINRA Rules and interpretations.

11. *No Restrictions on Regulatory Action.* Nothing contained in this Agreement shall restrict or in any way encumber the right of either party to conduct its own independent or concurrent investigation, examination or enforcement proceeding of or against Inbound Router Members, as either party, in its sole discretion, shall deem appropriate or necessary.

12. *Termination.* This Agreement shall terminate on the earlier of (a) the date on which ISE Holdings, the parent company of ISE, ceases to maintain an

ownership interest in Optifreeze, or (b) the date on which the Commission approves termination of this Agreement after one (1) year's written notice by ISE or FINRA to the other party or such shorter period as may be agreed to by the parties, except as provided in paragraph 3.

13. *Arbitration.* In the event of a dispute between the parties as to the operation of this Agreement, ISE and FINRA hereby agree that any such dispute shall be settled by arbitration in Washington, DC in accordance with the rules of the American Arbitration Association then in effect, or such other procedures as the parties may mutually agree upon. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Each party acknowledges that the timely and complete performance of its obligations pursuant to this Agreement is critical to the business and operations of the other party. In the event of a dispute between the parties, the parties shall continue to perform their respective obligations under this Agreement in good faith during the resolution of such dispute unless and until this Agreement is terminated in accordance with its provisions. Nothing in this Section 14 shall interfere with a party's right to terminate this Agreement as set forth herein.

14. *Separate Agreement.* This Agreement is wholly separate from the Agreements made pursuant to Rule 17d-2 of the Securities Exchange Act of 1934 between Financial Industry Regulatory Authority, Inc. and the International Securities Exchange LLC entered into on December 20, 2006 and on November 21, 2008, and as may be amended from time to time.

15. *Amendment.* This Agreement may be amended in writing duly approved by each party. All such amendments must be filed with and approved by the Commission before they become effective.

16. *Limitation of Liability.* Neither FINRA nor ISE nor any of their respective directors, governors, officers or employees shall be liable to the other party to this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any

delays, inaccuracies, errors or omissions with respect to the provision of Regulatory Responsibilities as provided hereby or for the failure to provide any such responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or the other of FINRA or ISE and caused by the willful misconduct of the other party or their respective directors, governors, officers or employees. No warranties, express or implied, are made by FINRA or ISE with respect to any of the responsibilities to be performed by each of them hereunder.

17. *Relief From Responsibility.* Pursuant to Sections 17(d)(1)(A) and 19(g) of the Exchange Act and Rule 17d-2 thereunder, FINRA and ISE join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve ISE of any and all responsibilities with respect to matters allocated to FINRA pursuant to this Agreement; provided, however, that this Agreement shall not be effective until the Effective Date.

18. *Severability.* Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

19. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and such counterparts together shall constitute one and the same instrument.

Exhibit 1

ISE Rules Certification for 17d-2 Agreement with FINRA

ISE hereby certifies that the requirements contained in the ISE Rules listed below are identical to, or substantially similar to, the comparable FINRA (NASD) Rule, Exchange Act provision or SEC rule identified ("Common Rules").

ISE rule(s)	FINRA (NASD) or SEC section
408(a)(1). Prevention of the Misuse of Material, Nonpublic Information	Section 15(f) of the Securities Exchange Act of 1934.
409. Disciplinary Action	NASD Rule 3070(a)(1) and (10) Reporting Requirements.
604. Continuing Education for Registered Persons	NASD Rule 1120 Continuing Education Requirements.
622. Transfer of Accounts	NASD Rule 11870 Customer Account Transfer Contracts.
624. Broker's Blanket Bonds	NASD Rule 3020 Fidelity Bonds ¹ .
626. Telephone Solicitation	NASD Rule 2212 Telemarketing.
1400. Maintenance, Retention, and Furnishing of Books, Records and Other Information.	NASD Rule 3110(a) Books and Records—Requirements.

ISE rule(s)	FINRA (NASD) or SEC section
2114. Doing Business with the Public ²	NASD Rules 2310 Recommendations to Customers (Suitability); 2320 Best Execution and Interpositioning; 2330 Customers' Securities or Funds; 2340 Customer Account Statements; 2341 Margin Disclosure Statement; 2350 Broker/Dealer Conduct on the Premises of Financial Institutions; 2360 Approval Procedures for Day-Trading Accounts; 2361 Day-Trading Risk Disclosure Statement; 2370 Borrowing From or Lending to Customers.

¹ FINRA shall have Regulatory Responsibilities for Dual Members to the extent that a Dual Member is, and remains, a member of SIPC.

² In connection with the approval of ISE Rule 2114, the Commission noted that since ISE is requiring Equity EAMs that do business with the public to become members of NASD (n/k/a FINRA), those ISE members are required to comply with FINRA (NASD) rules that govern the practice of members when doing business with the public. The Commission noted that, among other things, these members would be obligated to comply with these listed FINRA (NASD) Rules. See Exchange Act Release No. 54401 (September 1, 2006), 71 FR 53483 (September 11, 2006) (Order Granting Accelerated Approval of SR-ISE-2006-53).

* * * * *

III. Date of Effectiveness of the Proposed Plan and Timing for Commission Action

Pursuant to Section 17(d)(1) of the Act¹⁵ and Rule 17d-2 thereunder,¹⁶ after April 28, 2010, the Commission may, by written notice, declare the plan submitted by ISE and FINRA, File No. 4-596, to be effective if the Commission finds that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among self-regulatory organizations, or to remove impediments to and foster the development of the national market system and a national system for the clearance and settlement of securities transactions and in conformity with the factors set forth in Section 17(d) of the Act.

IV. Solicitation of Comments

In order to assist the Commission in determining whether to approve the 17d-2 Plan and to relieve ISE of the responsibilities which would be assigned to FINRA, interested persons are invited to submit written data, views, and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. 4-596 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File No. 4-596. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission,¹⁷ 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the plan also will be available for inspection and copying at the principal offices of ISE and FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. 4-596 and should be submitted on or before April 28, 2010.

¹⁷ The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov>.

¹⁸ 17 CFR 200.30-3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Florence E. Harmon,
Deputy Secretary.

[FR Doc. 2010-8350 Filed 4-12-10; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61848; File No. SR-NYSE-2010-31]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Amending Rule 70 in Order To Update Functionality Relating to the Entry of D-Quotes and Pegging E-Quotes

April 6, 2010.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on April 1, 2010, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 70 in order to update functionality relating to the entry of d-Quotes and pegging e-Quotes. The text of the proposed rule change is available at the Exchange, on the Commission's Web site at <http://www.sec.gov>, the

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

¹⁵ 15 U.S.C. 78q(d)(1).

¹⁶ 17 CFR 240.17d-2.

Commission's Public Reference Room, and <http://www.nyse.com>.

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 self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its rules to provide that d-Quotes and pegging e-Quotes that are entered 10 seconds or less before the scheduled close will automatically be rejected by Exchange systems. Accordingly, on a regular trading day, Exchange systems will reject d-Quotes or pegging e-Quotes entered at or after 3:59:50 p.m. On days where trading closes at 1 p.m., e.g., the day after Thanksgiving, Exchange systems will reject d-Quotes or pegging e-Quotes eligible for the close entered at or after 12:59:50 p.m.⁴

The Exchange believes that the 10 second cut-off will contribute to a more orderly closing process, by providing an opportunity for contra-side interest, including the new Closing Offset ("CO") order, to flow into the Exchange market. This proposed change is consistent with the Exchange's ongoing effort to streamline the closing process and enhance transparency at the close. In light of recent enhancements to the imbalance feed information, the Exchange believes that designating a cut-off time before the close for the entry of d-Quotes and pegging e-Quotes will contribute to these objectives.

Currently, d-Quotes and pegging e-Quotes are added to the pre-close data feed beginning at 3:55 p.m., and updated every five seconds until the close. The Exchange believes that a 10 second cut-off prior to the close for entry of d-Quotes and pegging e-Quotes will provide sufficient time for all market participants to electronically

recognize and respond to this information by entering offsetting interest to mitigate market impact, by entering limit orders or the new CO order.⁵ The Exchange further believes that the 10-second cut off will not materially impact a Floor broker's ability to represent customer interest in the closing transaction because, like other market participants, Floor brokers can enter offsetting market-on-close or limit-on-close orders or CO orders in that 10-second period. Floor brokers also continue to have the ability to represent interest orally at the close. However, the Exchange believes that the proposed cut-off period will have minimal impact on current trading practices of Floor brokers because the manual entry process for d-Quotes in the handheld devices creates physical constraints that naturally limit the number of d-Quotes that can be sent in the last 10 seconds. Therefore, the cut-off time should not impose a significant limitation on Floor brokers that is not already present because of the manual aspect of d-Quote entry. The proposed change is also consistent with ongoing regulatory guidance that encourages all market participants, including Floor brokers, to avoid holding back large interest until at or near the close.⁶

To effect this change, the Exchange proposes to amend Rules 70.25(a)(ii) and 70.26(iii) to provide that Exchange systems will reject d-Quotes or pegging e-Quotes, as applicable, that are entered 10 seconds or less before the scheduled close. The Exchange also proposes to add to Rule 70(h)(i) to cross reference Supplementary Material .25 and .26 of Rule 70 to reflect that those rules also impact how Floor broker agency interest interacts in the closing process. The Exchange notes that any d-Quotes or pegging e-Quotes eligible for the close that were entered before this proposed cut-off time remain eligible to participate in the close. The Exchange will notify members and member organizations, including Floor brokers, of these rule changes and the date they will be implemented by issuing a Trader Notice and/or publication of an Information Memorandum.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the

Act,⁷ which requires the rules of an exchange 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. The proposed rule change also is designed to support the principles of Section 11A(a)(1)⁸ of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets and the practicability of brokers executing investor's orders in the best market. The Exchange believes that the proposed updates to Floor broker functionality meet such goals as it will contribute to a more orderly closing process, by providing an opportunity for contra-side interest to flow into the Exchange market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition 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

Because the foregoing proposed rule change does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) Impose any significant burden on competition; and
- (iii) Become operative for 30 days

from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

At any time within 60 days of the filing of the proposed rule change, the

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78k-1(a)(1).

⁹ 15 U.S.C. 78s(b)(3)(A).

⁵ See Securities Exchange Act Release Nos. 61233 (Dec. 23, 2009), 74 FR 69169 (Dec. 30, 2009) (SR-NYSE-2009-111); 61244 (Dec. 28, 2009), 75 FR 4797 [sic] (Jan. 5, 2010) (SR-NYSEAmex-2009-81). The Exchange implemented these rule changes for both NYSE and NYSE Amex Equities on March 1, 2010.

⁶ See e.g., NYSE Regulation Information Memo 09-29 (June 19, 2009), published at <http://www.nyse.com>.

¹⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

⁴ NYSE Amex LLC has filed a companion rule proposal to conform its equities rules to the changes proposed in this filing. See SR-NYSEAmex-2010-34.

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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2010-31 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2010-31. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File

Number SR-NYSE-2010-31 and should be submitted on or before May 4, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010-8363 Filed 4-12-10; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61857; File No. SR-CBOE-2010-030]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add a Note to Rule 4.11 Advising the Delta-Based Equity Hedge Exemption Is Not Currently Available for Customers

April 7, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that, on March 26, 2010, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under Section 19(b)(3)(A)(i) of the Act, and Rule 19b-4(f)(1) thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to add a note to the beginning of Interpretation and Policy .04 (c) to Rule 4.11, *Delta-Based Equity Hedge Exemption*, advising that this exemption is not currently available to customers. The text of the rule proposal is available on the Exchange's Web site (<http://www.cboe.org/legal>), at the Exchange's Office of the Secretary and at the Commission.

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission previously approved CBOE's proposed rule change, as modified [sic] Amendment No. 1, to extend the delta hedging exemption from equity option position limits to positions of customers who hedge those positions in accordance with a pricing model maintained and operated by the Options Clearing Corporation.³ Consistent with Amendment No. 1 and the approval order, which provided that CBOE was adopting the delta hedging exemption for customers but not implementing it immediately, the purpose of this rule change is to add a note the beginning of Interpretation and Policy .04 (c) to Rule 4.11, *Delta-Based Equity Hedge Exemption*, advising that this exemption is not currently available to customers. Specifically, the Exchange proposes to add the following language,

*** Note:** The Delta-Based Equity Hedge Exemption for customers is not currently available and customers may not seek to rely on the Delta-Based Equity Hedge Exemption. The Exchange will issue a Regulatory Circular to announce when the Delta-Based Equity Hedge Exemption is available to customers.

2. Statutory Basis

The Exchange believes this rule proposal is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.⁴ Specifically, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) Act⁵ requirements that the rules of an

³ See Securities Exchange Act Release No. 60555 (August 21, 2009), 74 FR 43741 (August 27, 2009).

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. In particular, the proposed rule change seeks to provide an advisory note to notify customers that the Delta-Based Equity Hedge Exemption for customers is not currently available and that the Exchange will issue a Regulatory Circular announcing when the exemption becomes available for customers.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

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 proposed rule change will take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)(i) of the Act⁶ and Rule 19b-4(f)(1) thereunder,⁷ because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2010-030 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2010-030. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2010-030 and should be submitted on or before May 4, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010-8366 Filed 4-12-10; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61854; File No. SR-NASDAQ-2010-044]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Members Using the NASDAQ Market Center

April 6, 2010.

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 March 30, 2010, The NASDAQ Stock Market LLC ("NASDAQ") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. Pursuant to Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ NASDAQ has designated this proposal as establishing or changing a due, fee, or other charge, which renders the proposed rule change effective upon filing. 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 the Substance of the Proposed Rule Change

NASDAQ proposes to modify pricing for NASDAQ members using the NASDAQ Market Center. NASDAQ will implement the proposed change on April 1, 2010. The text of the proposed rule change is available at <http://nasdaqomx.cchwallstreet.com/>, at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 C.F.R. 240.19b-4(f)(2).

⁶ 15 U.S.C. 78s(b)(3)(A)(i).

⁷ 17 CFR 240.19b-4(f)(1).

⁸ 17 CFR 200.30-3(a)(12).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is making modifications to its pricing schedule for execution of orders in securities priced at \$1 or more through the NASDAQ Market Center.⁵ First, NASDAQ is eliminating volume-based pricing tiers that currently apply to executions of orders in the NASDAQ Market Center for securities listed on NASDAQ or the New York Stock Exchange ("NYSE"). As a result of this change, the fee to access liquidity in the NASDAQ Market Center will be \$0.0030 per share executed, regardless of whether the security being traded is listed on NASDAQ, NYSE, NYSE Amex, or any other listing venue. The change is designed to ensure that NASDAQ does not lose money on trade executions, as is currently the case when the order of a member in the most favorable "take" tier (fee of \$0.0028 per share executed for members with an average daily volume of more than 145 million share of liquidity routed, removed, and/or provided, and more than 35 million shares of liquidity provided) is matched with the order of a member in the two most favorable liquidity provider rebate tiers (credit of \$0.00295 per share executed for members providing an average of more than 95 million share of liquidity per day, or \$0.0029 per share executed for members providing an average of more than 35 million share of liquidity per day).

Second, NASDAQ is increasing the liquidity provider rebate for securities listed on exchanges other than NASDAQ and NYSE. Currently, with respect to displayed quotes/orders, NASDAQ pays a liquidity provider rebate of \$0.0025 per share executed to members providing an average of between 20,000,001 and 35 million shares of liquidity per day, and a rebate of \$0.0020 per share executed to members providing 20 million or fewer shares of liquidity per day. As a result of the change, NASDAQ will provide a rebate of \$0.0026 per share executed to members providing 35 million or fewer shares of liquidity per day. Rebates to members that provide more than 35 million shares of liquidity per day remain unchanged.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the

provisions of Section 6 of the Act,⁶ in general, and with Section 6(b)(4) of the Act,⁷ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls. The impact of the price changes upon the net fees paid by a particular market participant will depend upon a number of variables, including the relative availability of liquidity on NASDAQ and other venues, the prices of the market participant's quotes and orders relative to the national best bid and offer (*i.e.*, its propensity to add or remove liquidity), the types of securities that it trades, and the member's trading volumes. NASDAQ notes that the proposed elimination of "take" tiers will result in a fee schedule with less variability and will eliminate circumstances in which NASDAQ loses money on order executions by paying a rebate that is higher than the take fee it charges. The increase in the rebate for securities listed on exchanges other than NASDAQ and NYSE is intended to increase the attractiveness of NASDAQ as a venue for trading these securities.

NASDAQ notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. Accordingly, if particular market participants object to the proposed fee changes, they can avoid paying the fees by directing orders to other venues. NASDAQ believes that its fees continue to be reasonable and equitably allocated to members on the basis of whether they opt to direct orders to NASDAQ.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order execution and routing is extremely competitive, members may readily direct orders to NASDAQ's competitors if they object to the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁸ and subparagraph (f)(2) of Rule 19b-4 thereunder.⁹ At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2010-044 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2010-044. This file number should be included on the subject line if e-mail is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and

⁵ Fees and credits for executions of orders for securities priced below \$1 remain unchanged.

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78s(b)(3)(a)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2010-044, and should be submitted on or before May 4, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010-8365 Filed 4-12-10; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61852; File No. SR-CBOE-2010-034]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Temporary Membership Status and Interim Trading Permit Access Fees

April 6, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on March 29, 2010, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to adjust (i) the monthly access fee for persons granted temporary CBOE membership status ("Temporary Members") pursuant to Interpretation and Policy .02 under CBOE Rule 3.19 ("Rule 3.19.02") and (ii) the monthly access fee for Interim Trading Permit ("ITP") holders under CBOE Rule 3.27. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/Legal/>), at the Exchange's

Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE 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 current access fee for Temporary Members under Rule 3.19.02² and the current access fee for ITP holders under Rule 3.27³ are both \$4,875 per month. Both access fees are currently set at the indicative lease rate⁴ for March 2010. The Exchange proposes to adjust both access fees effective at the beginning of April 2010. Specifically, instead of setting these access fees at the indicative lease rate, the Exchange proposes to revise both the Temporary Member access fee and the ITP access fee to be \$7,500 per month commencing on April 1, 2010.

Because Temporary Members and ITP holders possess a feature that does not exist in the typical lease arrangement for a CBOE transferable membership, the Exchange believes that it is equitable to assess Temporary Members and ITP holders an access fee that is higher than

the indicative lease rate.⁵ Specifically, under CBOE Rules 3.19 and 3.27, access to the Exchange by Temporary Members and ITP holders may only be terminated at their own direction except in the following limited circumstances: (i) As a result of regulatory action against the Temporary Member or ITP holder, (ii) in the event of a demutualization, or (iii) through a rule change approved by the Commission. On the other hand, the typical lease arrangement for a transferable membership can be terminated by the lessor without cause upon a month's notice to the lessee. As a result, Temporary Members and ITP holders enjoy more certainty than lessees with respect to their trading access to the Exchange.

CBOE also believes that the proposed access fees are reasonable when compared to the average indicative lease rate over the last six months and to indicative lease rate levels during the past year. Specifically, the average indicative lease rate between October 2009 and March 2010 was \$8,493, which is in excess of the proposed \$7,500 rate. Additionally, the indicative lease rate was above \$10,000 between June 2009 and November 2009, peaking at \$11,900 in October 2010. Also, in as recently as January 2010, the indicative lease rate exceeded the proposed \$7,500 when the indicative lease rate was \$7,928. Accordingly, the Exchange considers \$7,500 to be a reasonable rate for monthly access to the Exchange.

Each of the proposed access fees will remain in effect until such time either that the Exchange submits a further rule filing pursuant to Section 19(b)(3)(A)(ii) of the Act⁶ to modify the applicable access fee or the applicable status (*i.e.*, the Temporary Membership status or the ITP status) is terminated. Accordingly, the Exchange may further adjust the proposed access fees in the future if the Exchange determines that it would be appropriate to do so.

The procedural provisions of the CBOE Fee Schedule related to the assessment of each proposed access fee are not proposed to be changed and will remain the same as the current procedural provisions relating to the assessment of that access fee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(4)

² See Securities Exchange Act Release No. 56458 (September 18, 2007), 72 FR 54309 (September 24, 2007) (SR-CBOE-2007-107) for a description of the Temporary Membership status under Rule 3.19.02.

³ See Securities Exchange Act Release No. 58178 (July 17, 2008), 73 FR 42634 (July 22, 2008) (SR-CBOE-2008-40) for a description of the Interim Trading Permits under Rule 3.27.

⁴ The indicative lease rate is defined under Rule 3.27(b) as the highest clearing firm floating monthly rate of the CBOE Clearing Members that assist in facilitating at least 10% of the CBOE transferable membership leases. Rule 3.27(b) defines the clearing firm floating monthly rate as the floating monthly rate that a Clearing Member designates, in connection with transferable membership leases that the Clearing Member assisted in facilitating, for leases that utilize that monthly rate. The concepts of an indicative lease rate and of a clearing firm floating month rate were previously utilized in the CBOE rule filings that set and adjusted the Temporary Member access fee. Both concepts are also codified in Rule 3.27(b) in relation to ITPs.

⁵ See, e.g., Securities Exchange Act Release No. 58200 (July 21, 2008), 73 FR 43805 (July 28, 2008) (SR-CBOE-2008-77).

⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

⁷ 15 U.S.C. 78f(b).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

of the Act,⁸ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among persons using its facilities. CBOE believes that the proposed access fees are reasonable when compared to the average indicative lease rate over the last six months and to indicative lease rate levels during the past year for the reasons described above. In addition, CBOE believes that the proposed access fees are equitable in that they apply uniformly to all Temporary Members and ITP holders.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

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

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and subparagraph (f)(2) of Rule 19b-4¹⁰ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File

Number SR-CBOE-2010-034 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2010-034. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-CBOE-2010-034 and should be submitted on or before May 4, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010-8364 Filed 4-12-10; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61847; File No. SR-NYSEAmex-2010-34]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Amending NYSE Amex Equities Rule 70 in Order To Update Functionality Relating to the Entry of D-Quotes and Pegging E-Quotes

April 6, 2010.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that on April 1, 2010, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Amex Equities Rule 70 in order to update functionality relating to the entry of d-Quotes and pegging e-Quotes. The text of the proposed rule change is available at the Exchange, on the Commission's Web site at <http://www.sec.gov>, the Commission's Public Reference Room, and <http://www.nyse.com>.

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 self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its equities rules to provide that d-Quotes and pegging e-Quotes that are entered 10 seconds or less before the scheduled close will automatically be rejected by Exchange systems. Accordingly, on a regular trading day, Exchange systems will reject d-Quotes or pegging e-Quotes entered at or after 3:59:50 p.m. On days where trading closes at 1 p.m., e.g., the day after Thanksgiving, Exchange systems will reject d-Quotes or pegging e-Quotes eligible for the close entered at or after 12:59:50 p.m.⁴

The Exchange believes that the 10-second cut-off will contribute to a more orderly closing process, by providing an opportunity for contra-side interest, including the new Closing Offset ("CO") order, to flow into the Exchange market. This proposed change is consistent with the Exchange's ongoing effort to streamline the closing process and enhance transparency at the close. In light of recent enhancements to the imbalance feed information, the Exchange believes that designating a cut-off time before the close for the entry of d-Quotes and pegging e-Quotes will contribute to these objectives.

Currently, d-Quotes and pegging e-Quotes are added to the pre-close data feed beginning at 3:55 p.m., and updated every five seconds until the close. The Exchange believes that a 10-second cut-off prior to the close for entry of d-Quotes and pegging e-Quotes will provide sufficient time for all market participants to electronically recognize and respond to this information by entering offsetting interest to mitigate market impact, by entering limit orders or the new CO order.⁵ The Exchange further believes that the 10-second cut-off will not materially impact a Floor broker's ability to represent customer interest in the closing transaction because, like other market participants, Floor brokers can enter offsetting market-on-close or limit-on-close orders or CO orders in that 10-second period. Floor brokers also continue to have the ability to represent interest orally at the close.

⁴ New York Stock Exchange LLC has filed a companion rule proposal to conform its rules to the changes proposed in this filing. See SR-NYSE-2010-31.

⁵ See Securities Exchange Act Release Nos. 61233 (Dec. 23, 2009), 74 FR 69169 (Dec. 30, 2009) (SR-NYSE-2009-111); 61244 (Dec. 28, 2009), 75 FR 4797 (Jan. 5, 2010) (SR-NYSEAmex-2009-81). The Exchange implemented these rule changes for both NYSE and NYSE Amex Equities on March 1, 2010.

However, the Exchange believes that the proposed cut-off period will have minimal impact on current trading practices of Floor brokers because the manual entry process for d-Quotes in the handheld devices creates physical constraints that naturally limit the number of d-Quotes that can be sent in the last 10 seconds. Therefore, the cut-off time should not impose a significant limitation on Floor brokers that is not already present because of the manual aspect of d-Quote entry. The proposed change is also consistent with ongoing regulatory guidance that encourages all market participants, including Floor brokers, to avoid holding back large interest until at or near the close.⁶

To effect this change, the Exchange proposes to amend NYSE Amex Equities Rules 70.25(a)(ii) and 70.26(iii) to provide that Exchange systems will reject d-Quotes or pegging e-Quotes, as applicable, that are entered 10 seconds or less before the scheduled close. The Exchange also proposes to add to NYSE Amex Equities Rule 70(h)(i) to cross reference Supplementary Material .25 and .26 of Rule 70 to reflect that those rules also impact how Floor broker agency interest interacts in the closing process. The Exchange notes that any d-Quotes or pegging e-Quotes eligible for the close that were entered before this proposed cut-off time remain eligible to participate in the close. The Exchange will notify members and member organizations, including Floor brokers, of these rule changes and the date they will be implemented by issuing a Trader Notice and/or publication of an Information Memorandum.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,⁷ which requires the rules of an exchange 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. The proposed rule change also is designed to support the principles of Section 11A(a)(1)⁸ of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets and the practicability of brokers executing investor's orders in the best market. The Exchange believes that the proposed updates to Floor broker functionality

⁶ See, e.g., NYSE Regulation Information Memo 09-29 (June 19, 2009), published at <http://www.nyse.com>.

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78k-1(a)(1).

meet such goals as it will contribute to a more orderly closing process, by providing an opportunity for contra-side interest to flow into the Exchange market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition 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

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEAmex-2010-34 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEAmex-2010-34. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEAmex-2010-34 and should be submitted on or before May 4, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon,
Deputy Secretary.

[FR Doc. 2010-8362 Filed 4-12-10; 8:45 am]

BILLING CODE 8011-01-P

DEPARTMENT OF STATE**[Public Notice 6953]**

**Bureau of Political-Military Affairs:
Directorate of Defense Trade Controls;
Notifications to the Congress of
Proposed Commercial Export Licenses**

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates indicated on the attachments pursuant to sections 36(c) and 36(d) and in compliance with section 36(f) of the Arms Export Control Act (22 U.S.C. 2776).

DATES: *Effective Date:* As shown on each of the 18 letters.

FOR FURTHER INFORMATION CONTACT: Mr. Robert S. Kovac, Managing Director, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202) 663-2861.

SUPPLEMENTARY INFORMATION: Section 36(f) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

March 19, 2010 (Transmittal No. DDTC 09-142.)

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services for the manufacture in Spain of the MK47 40mm Automatic Grenade Launcher. The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Richard R. Verma,
Assistant Secretary Legislative Affairs.

March 5, 2010 (Transmittal No. DDTC 09-153.)

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement for

the export of defense articles, including technical data, and defense services in the amount of \$50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services for the transfer of Phalanx Close-In Weapon System Block 1B Baseline 1 systems, including spare and repair parts, installation, and maintenance, for end use by the Government of the United Arab Emirates.

The United States Government is prepared to license the transfer of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Richard R. Verma,
Assistant Secretary Legislative Affairs.
March 26, 2010 (Transmittal No. DDTC 10-003.)
Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement for the export of defense articles, including technical data, and defense services in the amount of \$50,000,000 or more.

The transaction contained in the attached certification involves the transfer of defense articles, to include technical data, and defense services to support the Proton launch of the Astra 1 N Commercial Communications Satellite from the Baikonur Cosmodrome in Kazakhstan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Richard R. Verma,
Assistant Secretary Legislative Affairs.
March 19, 2010 (Transmittal No. DDTC 10-004.)
Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, as amended, I am transmitting, herewith, certification of application proposed technical assistance agreement to include the export of defense articles, to include technical data, and defense services in the amount of \$50,000,000 or more.

The transactions contained in the attached certification involves the transfer of defense articles, to include technical data, and defense services to support the Proton launch

¹¹ 17 CFR 200.30-3(a)(12).

of the SIRIUS XM-5 Commercial Communication Satellite from the Baikonur Cosmodrome in Kazakhstan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Richard R. Verma,
Assistant Secretary Legislative Affairs.

March 19, 2010 (Transmittal No. DDTC 10-006.)

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a technical assistance agreement for the export of defense articles, to include technical data, and defense services in the amount of \$50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services, to support the Proton launch of the KA-SAT Commercial Communication Satellite from the Baikonur Cosmodrome in Kazakhstan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Richard R. Verma,
Assistant Secretary Legislative Affairs.

March 26, 2010 (Transmittal No. DDTC 10-009.)

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services for the manufacture of Combat Identification System Products, Subsystems, and Ancillary Equipment for the Italian Ministry of Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though

unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Richard R. Verma,
Assistant Secretary Legislative Affairs.

March 19, 2010 (Transmittal No. DDTC 10-010.)

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Sections 36 (c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad that also exceeds \$100,000,000.

The transaction described in the attached certification involves the export of defense articles, including technical data, and defense services for the manufacture of MK73 Mod 3 Solid State Transmitters, subassemblies and associated components, and piece parts for the NATO Seasparrow Program for the United States government, NATO Consortium Member Countries, and other approved non-NATO member countries.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Richard R. Verma,
Assistant Secretary Legislative Affairs.

March 19, 2010 (Transmittal No. DDTC 10-012.)

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) and Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad in the amount of \$100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services for the continued manufacture of J79-GE-15A and -17A engines for end use by the Korean Ministry of Defense in their F-4 aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Richard R. Verma,
Assistant Secretary Legislative Affairs.

March 19, 2010 (Transmittal No. DDTC 10-013.)

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services for the continued manufacture of Advanced Rail Launchers for end use on the F-35 Lightning II aircraft for the U.S. government.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Richard R. Verma,
Assistant Secretary Legislative Affairs.

March 26, 2010 (Transmittal No. DDTC 10-015.)

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the export of defense articles, to include technical data, and defense services in the amount of \$50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, to include technical data, and defense services to Israel to support the manufacture of the Video Matrix Switch with Quad Processor (VMS-Q).

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Richard R. Verma,
Assistant Secretary Legislative Affairs.

March 26, 2010 (Transmittal No. DDTC 10-016.)

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Sections 36(c) and 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification

of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services for the continued manufacture of M791, M792, and M793 Ammunition and Components thereof for sale to the Turkish Ministry of Defense, as well as buyers in the approved sales territory.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Richard R. Verma,
Assistant Secretary Legislative Affairs.

March 19, 2010 (Transmittal No. DDTC 10-018.)

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Sections 36(c) and 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the transfer of defense articles, including technical data, and defense services for the manufacture of F404-F414, and T64 aircraft engine components to supply General Electric Aviation's production lines in the United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Richard R. Verma,
Assistant Secretary Legislative Affairs.

March 26, 2010 (Transmittal No. DDTC 10-019.)

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a technical assistance agreement for the export of defense articles, to include technical data, and defense services in the amount of \$50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, to include technical data, and defense services to develop, integrate, and

manufacture the Integrated Color Display System for modernization of the Republic of China (Taiwan) Air Force Indigenous Defense Fighter.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Richard R. Verma,
Assistant Secretary Legislative Affairs.

March 10, 2010 (Transmittal No. DDTC 10-020.)

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) and 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a manufacturing license agreement for the manufacture of significant military equipment abroad in the amount of \$100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services for the manufacture of the Long Range Chinook Helicopter Variant (CH-47J(A+)) and the modification of CH-47J(A) helicopters for the Japanese Ministry of Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Richard R. Verma,
Assistant Secretary Legislative Affairs.

March 19, 2010 (Transmittal No. DDTC 10-022.)

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the export of defense articles, to include technical data, and defense services in the amount of \$100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Japan to provide continued support for the manufacture of engine fuel control devices for the Japanese Ministry of Defense's F-15J aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military,

economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Richard R. Verma,
Assistant Secretary Legislative Affairs.

March 26, 2010 (Transmittal No. DDTC 10-023.)

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the transfer of defense articles, including technical data, and defense services for the manufacture of Small Diameter Bomb Increment I (SDB I) Weapon System in Italy for end-use by the Italian Air Force.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Richard R. Verma,
Assistant Secretary Legislative Affairs.

March 19, 2010 (Transmittal No. DDTC 10-025.)

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Sections 36(c) and 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services for continued support for the manufacture of F110-GE-129 engines powering the Japanese Ministry of Defense's F-2 aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Richard R. Verma,

Assistant Secretary Legislative Affairs.

March 26, 2010 (Transmittal No. DDTC 10–026.)

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) and Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad in the amount of \$100,000,000 or more.

The transaction contained in the attached certification involves the Export of defense articles, including technical data and defense services for continued support for the manufacture of the T55–L712 and 55–L714A engines powering the Japanese Ministry of Defense's CH–47 Helicopter.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Richard R. Verma,
Assistant Secretary Legislative Affairs.

Dated: April 1, 2010.

Robert S. Kovac,
Managing Director, Directorate of Defense Trade Controls, Department of State.

[FR Doc. 2010–8397 Filed 4–12–10; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 6602]

Advisory Committee on International Communications and Information Policy; Notice of Committee Renewal

The Department of State has renewed the Charter of the Advisory Committee on International Communications and Information Policy (ACICIP) for an additional two years.

The Committee serves the Department of State in a solely advisory capacity regarding current issues and concerns affecting international communications and information policy. ACICIP members are private sector communications and information technology specialists from U.S. telecommunications companies, trade associations, policy institutions, and academia. The Committee meets at least annually.

For further information, please call Joseph Burton, Executive Secretary, Advisory Committee on International Communications and Information Policy, Office of Communications and

Information Policy, Economic, Energy and Business Affairs Bureau, U.S. Department of State, at (202) 647–5231.

Dated: March 26, 2010.

Joseph Burton,
Designated Federal Officer, U.S. Department of State.

[FR Doc. 2010–8396 Filed 4–12–10; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Air Taxi and Commercial Operator Airport Activity Survey

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. Enplanement data collected from air taxi and commercial operators are required for the calculation of air carrier airport sponsor apportionments as specified by the Airport Improvement Program (AIP), and 49 U.S.C. part A, Air Commerce Safety, and part B, Airport Development and Noise.

DATES: Please submit comments by June 14, 2010.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: Carla.Mauney@faa.gov.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Air Taxi and Commercial Operator Airport Activity Survey.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120–0067

Form(s): Form 1800–31.

Affected Public: A total of 302 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 1.5 hours per response.

Estimated Annual Burden Hours: An estimated 453 hours annually.

Abstract: Enplanement data collected from air taxi and commercial operators are required for the calculation of air carrier airport sponsor apportionments as specified by the Airport Improvement

Program (AIP), and 49 U.S.C. part A, Air Commerce Safety, and part B, Airport Development and Noise.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

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 April 7, 2010.

Carla Mauney,
FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2010–8414 Filed 4–12–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Certification: Pilots and Flight Instructors

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. 14 CFR part 61 prescribes certification standards for pilots, flight instructors, and ground instructors. The information collected is used to determine compliance with applicant eligibility.

DATES: Please submit comments by June 14, 2010.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: Carla.Mauney@faa.gov.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Certification: Pilots and Flight Instructors.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120-0021.

Form(s): Form 8710-1.

Affected Public: A total of 143,000 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 2.15 hours per response.

Estimated Annual Burden Hours: An estimated 308,350 hours annually.

Abstract: 14 CFR part 61 prescribes certification standards for pilots, flight instructors, and ground instructors. The information collected is used to determine compliance with applicant eligibility.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES-200, 800 Independence Ave., SW., Washington, DC 20591.

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 April 7, 2010.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES-200.

[FR Doc. 2010-8416 Filed 4-12-10; 8:45 am]

BILLING CODE 4910-13-P

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. 49 U.S.C. Section 44718 states that the Secretary of Transportation shall require notice of structures that may affect navigable airspace, air commerce, or air capacity.

DATES: Please submit comments by June 14, 2010.

FOR FURTHER INFORMATION CONTACT:

Carla Mauney on (202) 267-9895, or by e-mail at: Carla.Mauney@faa.gov.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Notice of Proposed Construction or Alteration, Notice of Actual Construction or Alteration, Project Status Report.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120-0001.

Forms(s): 7460-1, 7460-2.

Affected Public: A total of 70,400 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 12 minutes per response.

Estimated Annual Burden Hours: An estimated 14,596 hours annually.

Abstract: 49 U.S.C. 44718 states that the Secretary of Transportation shall require notice of structures that may affect navigable airspace, air commerce, or air capacity. These notice requirements are contained in 14 CFR part 77.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES-200, 800 Independence Ave., SW., Washington, DC 20591.

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 April 7, 2010.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES-200.

[FR Doc. 2010-8417 Filed 4-12-10; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Bexar County, TX

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Amended notice of intent.

SUMMARY: The Federal Highway Administration (FHWA), Texas Department of Transportation (TxDOT) and Alamo Regional Mobility Authority (Alamo RMA) issued a notice of intent to advise the public that an Environmental Impact Statement (EIS) would be prepared for proposed improvements to Loop 1604 in San Antonio, Texas, within Bexar County limits to enhance mobility and improve safety from FM 1957 to IH 35 North, a distance of approximately 32.35 miles in Bexar County Texas. FHWA, TxDOT and Alamo RMA are issuing this amended notice of intent to advise the public of changes to the aforementioned EIS for proposed Loop 1604 improvements. Specifically, the southwestern limit of the proposed improvements is changing from FM 1957 to U.S. Highway 90 for a total distance of approximately 37 miles. The change to the limits of the proposed improvements is consistent with the updated San Antonio-Bexar County Metropolitan Planning Organization Mobility 2035 Plan (December 2009) and in response to comments received during the first scoping meetings held in October 2009.

FOR FURTHER INFORMATION CONTACT: Mr. Salvador Deocampo, District Engineer, District A, Federal Highway Administration, Texas Division, 300 East 8th Street, Room 826, Austin, Texas, 78701. Phone: 512-536-5950

SUPPLEMENTARY INFORMATION: FHWA in cooperation with TxDOT and the Alamo RMA issued a Notice of Intent on July 31, 2009, advising the public that they would be preparing an EIS for transportation improvements to Loop 1604 from FM 1957 to IH 35 North, a distance of approximately 32.35 miles. Since then, FHWA, TxDOT and the Alamo RMA approved the Draft Project Coordination Plan, the Draft Need and

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Notice of Proposed Construction or Alteration, Notice of Actual Construction or Alteration, Project Status Report

AGENCY: Federal Aviation Administration (FAA), DOT.

Purpose, convened two meetings with a Community Advisory Group, held a meeting with Participating and Cooperating Agencies and held a series of Public Scoping meetings. Based on public input and studies conducted to date, FHWA, TxDOT and Alamo RMA now propose to include an additional segment from FM 1957 to U.S. 90 in the EIS so that the limits of the proposed improvements would be from U.S. 90 to IH 35 North, a total distance of approximately 37 miles. The additional segment between FM 1957 and U.S. 90 is described in the San Antonio-Bexar County Metropolitan Planning Organization's Mobility 2035 Plan (adopted December 7, 2009) as added capacity improvements consisting of expanding the existing facility to a four lane expressway with four toll mainlanes and four non-toll outer lanes. The need for improvements within the additional segment relate to compromised safety, decreased mobility, and operational deficiencies attributed to substantial growth in traffic. The purpose of adding the proposed segment is to address these needs by upgrading the existing roadway to current design standards to improve safety, enhance mobility and improve operational efficiency.

Anticipated Federal permits, pending selection of alternatives and field surveys may include, but are not limited to, the following: Section 401/404 (Clean Water Act), and Section 7 (Endangered Species Act). The Draft Project Coordination Plan will be updated in accordance with Public Law 109-59, Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Title VI, section 6002, Efficient Environmental Reviews for Project Decision Making, August 10, 2005, to reflect the change in project limits. The Project Coordination Plan will continue to promote early and continuous involvement from stakeholders, agencies, and the public as well as describe the proposed project, the roles of the agencies and the public, the project need and purpose, schedule, level of detail for alternatives analysis, methodologies to be used in the environmental analysis, and the proposed process for coordination and communication.

The Revised Project Coordination Plan will be available for public review, input, and comments at public meetings, including scoping meetings and hearings held in accordance with the National Environmental Policy Act (NEPA) through the evaluation process, and upon request at the Alamo RMA's office. Pursuant to section 6002 of

SAFETEA-LU, cooperating agencies, participating agencies, and the public will be given an opportunity for input in the development of the project. The second series of public scoping meetings, conducted in an open house format, is planned to be held in April of 2010.

Issued on: April 7, 2010.

Salvador Deocampo,

District Engineer, Austin, Texas.

[FR Doc. 2010-8439 Filed 4-12-10; 8:45 am]

BILLING CODE 4910-RY-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FY 2010 Discretionary Sustainability Funding Opportunity; Transit Investments for Greenhouse Gas and Energy Reduction (TIGGER) Program and Clean Fuels Grant Program, Augmented With Discretionary Bus and Bus Facilities Program

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of availability of FTA environmental sustainability program funds: solicitation of project proposals.

SUMMARY: The Federal Transit Administration (FTA) announces the availability of discretionary funds in Fiscal Year (FY) 2010 for the Transit Investments for Greenhouse Gas and Energy Reduction (TIGGER) program funds and FY 2009 and 2010 Clean Fuels Grant program funds, augmented with FY 2010 Section 5309 Bus and Bus Facilities program funds. These discretionary program funds will be distributed in accordance with the mission of each program and in support of the U.S. Department of Transportation's (DOT) environmental sustainability efforts.

This notice includes priorities established by FTA for these discretionary funds, the criteria FTA will use to identify meritorious projects for funding, and describes how to apply for funding under each discretionary program. This announcement is available on the FTA Web site at: <http://www.fta.dot.gov>. FTA will announce final selections on the Web site and in the **Federal Register**. A synopsis of each funding opportunity will be posted in the FIND module of the government-wide electronic grants Web site at <http://www.grants.gov>.

DATES: Complete proposals for Clean Fuels/Bus and Bus Facilities discretionary grants must be submitted by June 14, 2010. All proposals must be

submitted electronically through the GRANTS.GOV APPLY function. Anyone intending to apply electronically through GRANTS.GOV should initiate the process of registering on the GRANTS.GOV site immediately to ensure completion of registration before the deadline for submission. Those who apply via GRANTS.GOV should receive two confirmation e-mails. The first will confirm that the application was received and a subsequent e-mail will be sent indicating whether the application was validated or rejected by the system.

TIGGER program proposals must be submitted by August 11, 2010. Applicants are encouraged to submit applications early in order to allow for full consideration by FTA. Instructions for applying for the TIGGER program can be found at <http://www.fta.dot.gov/tigger> and will also be available in the "FIND" module of grants.gov.

FOR FURTHER INFORMATION CONTACT:

Contact the appropriate FTA Regional Administrator (Appendix A) for proposal-specific information and issues. For general program information on the TIGGER program, contact Walter Kulyk, Office of Mobility Innovation, (202) 366-4995, e-mail: walter.kulyk@dot.gov. For program information on the Clean Fuels/Bus and Bus Facilities Program; contact Juan Morrison, Office of Program Management, (202) 366-7005, e-mail: juan.morrison@dot.gov. A TDD is available at 1-800-877-8339 (TDD/FIRS).

SUPPLEMENTARY INFORMATION:

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I. FTA Sustainability Program Overview

A. Authority

These programs are authorized under section 5308, 5309(b) (as amended by the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU)) and Division A of the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act 2010.

B. Policy Priority

Among the goals of the Obama Administration is one to improve our Nation's environment and to secure its energy future. Effective provision of public transportation is a key part of this goal. The Administration believes that we must commit ourselves to an economic future in which the strength of our economy is not tied to the unpredictability of oil markets. We must make the investments in clean energy sources that will both enhance the environment through improved air quality and curb our dependence on fossil fuels, making America energy independent by:

- *Breaking Dependence on Oil.*

Provide increased public transportation options that minimize the use of fossil fuels and invest in the development of alternative fuel vehicles.

- *Producing More Energy at Home.*

Enhance U.S. energy supplies through responsible development of domestic renewable energy, fossil fuels, advanced biofuels and nuclear energy.

- *Promoting Energy Efficiency.*

Promote investments in the transportation, electricity, industrial, building and agricultural sectors that reduce energy bills.

FTA advances these energy and environmental goals by funding projects that:

- Enhance the quality of public transportation services.

- Assist nonattainment and maintenance areas in achieving or maintaining the National Ambient Air Quality standards for ozone and carbon monoxide.

- Support emerging Clean Fuel and advanced propulsion technologies for transit buses and markets for those technologies.

- Reduce greenhouse gas emissions of public transportation systems.

By this notice, FTA announces the availability of at least \$156.2 million in FY 2009 and FY 2010 discretionary resources to help encourage transit projects that promote the usage and development of energy efficient technologies that reduce greenhouse gas

emissions and other pollutants. Projects funded as a result of this notice will further the Department's environmental sustainability efforts. To support these efforts, and to ensure FTA is able to fund a wide variety of investment types, FTA intends to provide funds from the TIGGER program and Clean Fuels Grant program, augmented with Section 5309 Bus and Bus Facilities program funds in support of capital investment that will improve energy efficiency and reduce emissions. As each program has separate eligibility and program requirements, FTA encourages applicants to carefully consider which program to apply under. FTA will provide \$75 million under the TIGGER program. This program is intended for projects of innovative and national significance with a minimum project cost of \$1 million. To complement TIGGER, FTA also will award approximately \$81.2 million under the Clean Fuels Grant program. FTA also intends to further our environmental sustainability goals by allowing applicants not eligible under the Clean Fuels Grant program to apply for projects which promote the use of clean fuels and fund those projects with additional Bus and Bus Facilities program funds.

II. Sustainability Program Information

A. TIGGER Program

The Transportation, Housing and Urban Development, and Related Agencies Appropriations Act 2010 (Pub. L. 111-68), appropriated \$75 million for grants to public transit agencies for capital investments that will reduce the energy consumption or greenhouse gas emissions of their public transportation systems, referred to as the Transit Investments for Greenhouse Gas and Energy Reduction (TIGGER) program. \$100 million was previously provided for TIGGER in the American Recovery and Reinvestment Act of 2009 (ARRA) and awarded by FTA.

Based on lessons learned in the application and review process from the ARRA-funded TIGGER program, for which proposals exceeding \$2 billion were submitted, FTA is changing some of the application procedures for the FY 2010-funded TIGGER program to simplify the process. Additionally, given the availability of other FTA discretionary programs in FY 2010, such as the Bus and Bus Facilities program and the Clean Fuels Grant program, FTA will rate more favorably innovative technologies of national significance, such as electric drive and other forward-looking technologies, not normally funded out of other FTA programs.

This notice announces the availability of the grant program funding, application requirements, and deadlines for submitting proposals for funding.

1. Program Purpose

There are two eligible purposes for TIGGER grants: (1) For capital investments that will assist in reducing the energy consumption of a transit system; or (2) for capital investments that will reduce greenhouse gas emissions of a public transportation system. Project proposals may be submitted under either or both categories; however only one project may be submitted under a single proposal. FTA has established a range of funding that will be considered for approval. Each submitted project must request a minimum of \$1,000,000 and must not exceed a maximum of \$25,000,000. Applications for projects less than \$1,000,000 may be applied for if they are part of a consolidated proposal submitted by the State Department of Transportation (State DOT) that, in total, meets or exceeds the \$1,000,000 threshold. FTA may decide to provide only partial funding for certain proposals to maximize the impact of this program. FTA encourages applicants with projects that are not technologically innovative, or which do not meet these funding thresholds, to apply under the Bus and Bus Facilities or Clean Fuels programs, which have simpler application criteria.

2. Eligible Applicants

Only public transportation agencies or State DOTs may apply. Unlike the ARRA-funded TIGGER program, FTA will not accept consolidated proposals from public transportation agencies. A public transportation agency may only apply for one project for a single transit agency in one proposal. However, public transportation agencies may submit multiple proposals (applications). A State DOT may submit a consolidated proposal for multiple projects from one or more transit agencies in order to meet the \$1,000,000 threshold. Consolidated proposals must contain individual project level information, as described in Section 5. Application Content, for each project included in the consolidated proposal. Grant awards will be made for a particular project directly to public transportation agencies or to a State Department of Transportation on behalf of a public transportation agency.

3. Eligible Projects

Eligible expenses must meet the following criteria: (1) The expense must be an eligible capital expense as defined

under 49 U.S.C. 5302(a)(1); and (2) the project will assist in the reduction of the energy consumption of a public transportation system and/or the reduction of greenhouse gas emissions of a public transportation system.

4. Cost Sharing or Matching

The expected Federal share for TIGGER grants is 90 percent, although applicants may request a different Federal share. A proposed Federal share can be less than 90 percent, or up to 100 percent. However, applicants requesting a lower Federal share may be given a higher rating in the evaluation process, all else being equal.

5. Application Content

a. Proposal Submission Process

Project proposals must follow the submission guidelines that will be provided shortly at <http://www.fta.dot.gov/tigger>. A synopsis of this announcement will be posted in the "FIND" module of the GRANTS.GOV. Mail and fax submissions will not be accepted except for supplemental information that cannot be sent electronically.

b. Proposal Content

Proposals from public transit agencies may contain only one project. Unlike the ARRA-funded TIGGER program, FTA will not accept consolidated proposals with projects from multiple public transit agencies, or multiple projects from one public transit agency. Agencies may submit multiple proposals (applications), but each proposal must be clearly define a separate project. See Appendix B for an outline of project proposal requirements.

Proposals from State DOTs may contain multiple projects from one or more transit agencies in order to meet the \$1,000,000 threshold. Consolidated proposals must contain individual project level information, as described below, for each project included in the consolidated proposal.

Project Summary—The applicant may be requested to enter summary information about the proposed project into a project summary sheet or electronic application tool. Guidelines for application procedures, further instructions, and application tools will be located on FTA's Web site at www.fta.dot.gov/tigger. Instructions for completing and submitting the sheet will be provided at the Web site.

(1) Applicant Information

This addresses basic identifying information, including:

i. Applicant name;

ii. Contact information (including contact name, address, e-mail address, phone and fax number);

iii. Whether the applicant's area is attainment, non-attainment, or maintenance for ozone or CO;

iv. Description of services provided by the agency, including areas served;

v. Congressional district(s) served by the proposed project;

vi. If the project proposal includes vehicles, provide existing fleet information, such as a current rail or bus fleet management plan, if not already on file with the FTA Regional Office; and

vii. A description of the technical, legal and financial capacity of the project sponsor.

(2) Project Information

Every proposal must:

i. Include a project management plan to be utilized to implement the proposed project;

ii. Address whether the project is to be evaluated under energy reduction or greenhouse gas reduction criteria, or both criteria;

iii. Include the project scope, including descriptions of the proposed capital investment as well as the existing system, subsystem, facility, vehicle, or component that the investment will replace or be applied to. The project scope determines where measurement of energy reductions or greenhouse gas emissions reductions will take place and must be directly related to the actual capital investment. It should be determined in a manner that permits measurement before and after the investment to determine either the energy savings or greenhouse gas reductions, or both;

iv. Include a line-item budget for the project and its total cost. For scalable projects, a scaling plan describing the minimum amount necessary for a feasible project and the energy or greenhouse gas reduction impacts of a reduced funding level;

v. State the expected useful life of the investment based on accepted FTA and industry practices;

vi. Provide a project time-line outlining steps from project development through completion, including significant milestones such as date of contract awards and dates of project implementation; and

vii. Include the proposed location of the project. For facilities and other infrastructure this means the city or county where the infrastructure will be located. For transit vehicles it means the cities or counties where transit services are likely to be provided.

(3) Project Measurement Information

i. Proposals must provide a narrative describing how the greenhouse gas and/

or energy saving estimates were calculated. Proposals also must identify the process the agency will use to determine the actual energy savings and/or greenhouse gas emission reductions realized once the investment is implemented. FTA will post on its Web site (<http://www.fta.dot.gov/tigger>) the information or other application tools that may be used to develop these calculations.

ii. Project Measurement Criteria for Energy Reduction Projects: The proposal must include:

iii. Project's Current Annual Energy Use

iv. Project's Estimated Annual Energy Use

v. Project's Estimated Annual Energy Savings

vi. Project's Total Estimated Energy Savings Over Its Useful Life

vii. Project's Total Energy Savings as a Percentage of the Agency's Total Annual Energy Use. This can be reported as less than one percent or the proposal must include:

(a) Total Annual Energy Consumption of the Public Transportation Agency

(b) The Project's Total Energy Savings as a percentage of the Total Annual Energy Consumption of the Public Transportation Agency

(4) Project Measurement Criteria for Greenhouse Gas Emission Reduction Projects: Proposals must include:

i. Project's Current Annual Greenhouse Gas Emissions

ii. Project's Estimated Annual Greenhouse Gas Emissions

iii. Project's Estimated Annual Greenhouse Gas Savings

iv. Project's Total Estimated Greenhouse Gas Savings over the Project's Useful Life

(5) Proposed deviations from FTA Circular 5010

FTA's capital program includes the introduction of new technology, through innovative and improved products, into public transportation as an eligible expense. FTA intends to apply 49 U.S.C. 53 requirements and FTA Circular 5010.1.D Grant Management Requirements issued on November 1, 2008 to this program. This Circular may be found at: http://www.fta.dot.gov/laws/circulars/leg_reg_8640.html. The applicant should identify any waivers to these requirements it anticipates it may need that would affect its ability to introduce new technology. However, FTA is disinclined to grant any Buy America waivers.

(6) A project proposal should address each of the evaluation criteria separately, except for geographic diversity which need not be addressed by the applicant.

c. Funding Restrictions

Only proposals from eligible recipients for eligible activities will be considered for funding (see Section II of this Notice).

6. Evaluation Criteria

Proposals will be evaluated for their ability to reduce energy consumption and/or greenhouse gas emissions of the transit agency. An applicant will be evaluated under both criteria if it provides the necessary project measurement information.

a. Evaluation Criteria for Energy Consumption Reduction Projects

FTA will evaluate proposals on total energy consumption savings projected to result from the project, and projected energy savings of the project as a percentage of the total energy usage of the public transit agency. Refer to Appendix B for definitions.

b. Evaluation Criterion for Greenhouse Gas Emission Reduction Projects

FTA will evaluate proposals based on the total amount of greenhouse gas reductions projected to result from the project.

c. Evaluation Criteria for All Projects

In addition, FTA will evaluate all proposals on the following criteria:

(1) *Project Innovation*

The project identifies a unique, significant, or innovative approach to reducing energy consumption or greenhouse gas emissions.

FTA encourages qualified projects that will demonstrate innovative technologies and other approaches to reducing energy consumption or greenhouse gas emissions such as electric drive technologies. FTA will give some priority consideration to these projects if all other project evaluation criteria are comparable.

Examples of innovation include:

- i. On-Board Vehicle Energy Management (energy storage, regenerative braking, fuel cells, turbines, engine auto start/stop, etc.)
- ii. Electrification of Accessories (air conditioning, air compressor, power steering, etc.)
- iii. Bus Design (lightweight materials, component packaging, maintainability, etc.)
- iv. Rail Transit Energy Management (energy storage, regenerative braking, solar propulsion engine systems, power load-leveling, etc.)
- v. Locomotive Design (energy storage, regenerative braking, fuel cells, turbines, engine auto start/stop, lightweight material, etc.)

vi. Other innovative approaches to reduce energy consumption or greenhouse gas emissions.

(2) *National Applicability*. The national applicability of the project as an example of energy savings or greenhouse gas reductions, including whether the project could be replicated by other transit agencies regionally or nationally and is consistent with FTA livability and environmental sustainability goals should be demonstrated.

(3) *Project Readiness*. FTA will evaluate the proposed timeframe of the project for timeliness and reasonableness.

(4) *Project Management*. The applicant demonstrates the capacity to carry out the project.

i. The applicant is in a fundable status for the FTA grant program.

ii. The applicant's project team demonstrates the technical capacity to carry out the project, including the project approach or project management plan.

iii. The applicant has the ability to collect information and demonstrate the results of the project for at least one year following project implementation

(5) *Return on Investment*. This factor addresses the energy savings and/or greenhouse gas reduction relative to the total project cost, including the proposed Federal and local shares.

(6) *Geographic Diversity*. To provide the ability to evaluate technologies in a wide variety of conditions, FTA may select projects to ensure there is sufficient geographic diversity.

d. Review and Selection Process

Proposals first will be screened by FTA program staff. During the process, FTA may seek clarifications or corrections to some proposals to ensure adequate information is available to evaluate the proposal. After evaluating proposals based on the established technical criteria, FTA will publish the list of all selected projects and funding levels in the **Federal Register**.

7. Award Administration Information

a. Award

Once proposals have been reviewed and projects have been selected, successful applicants will apply for and FTA will award grant funding through FTA's TEAM grant management system. These grants will be administered and managed by FTA regional offices in accordance with the applicable Federal requirements of 49 U.S.C. chapter 53.

Depending on award amount, FTA may require a scope and project budget reduction before a grant is submitted in TEAM.

b. Administrative and National Policy Requirements

(1) Grant Requirements

If selected, project sponsors will apply for a grant through TEAM and adhere to the customary FTA grant requirements of 49 U.S.C. chapter 53, including those identified in FTA Circular 5010.1D and the FTA Master Agreement, unless otherwise specified in the grant agreement. Technical assistance regarding these requirements is available from the corresponding FTA regional office.

Applicants must sign and submit current Certifications and Assurances before receiving a grant. If the applicant has already submitted the annual Certifications and Assurances in TEAM, they do not need to be resubmitted. The Applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal administrative requirements in carrying out any project supported by the FTA grant. The Applicant acknowledges that it is under a continuing obligation to comply with the terms and conditions of the grant agreement issued for its project with FTA. The Applicant understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and may affect the implementation of the project. The Applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise.

(2) Planning

Applicants are encouraged to notify the appropriate State DOT and Metropolitan Planning Organization (MPO) in areas likely to be served by the project funds made available under this program. Incorporation of funded projects in the long-range plans and transportation improvement programs of States and metropolitan areas is required of all funded projects. FTA cannot obligate grant funds unless the project is contained in a Federally approved State Transportation Improvement Plan (STIP).

Similarly, all environmental requirements must be complete before FTA can obligate and award a grant in TEAM.

c. Reporting Requirements

FTA reporting requirements include standard reporting requirements identified in FTA Circular 5010.1D, and the Master Grant Agreement. In addition, the *TIGGER program has additional reporting requirements*. A recipient of TIGGER funds must report on an annual basis:

(1) Actual annual energy consumed within the project scope attributable to the investment for energy consumption reduction projects;

(2) Actual greenhouse gas emissions within the project scope attributable to the investment for greenhouse gas reduction projects; and

(3) Actual annual reductions or increases in operating costs attributable to the investment for all projects.

B. Clean Fuels/Bus and Bus Facilities Program

The Clean Fuels Grant program was first established as the Clean Fuels Formula Grant program in Section 3008 of the Transportation Equity Act for the 21st Century, Public Law 105–178, June 9, 1998 (now codified at 49 U.S.C. Sec. 5308). The program was developed to assist non-attainment or maintenance areas in achieving or maintaining the National Ambient Air Quality Standards for ozone and carbon monoxide (CO). Additionally, the program supported emerging clean fuel and advanced propulsion technologies for transit buses and markets for those technologies. FY 2009 unallocated funding and the FY 2010 Transportation Appropriations Act provides \$81 million dollars in discretionary Clean Fuels Grant program resources. Additionally, FTA is expanding the eligible applicant pool and may fund projects that meet the Clean Fuels Grant program objectives in attainment areas using a portion of FY 2010 discretionary Bus and Bus Facilities program resources that are available. **Please Note:** Subsequent to this notice, FTA will also publish a Notice of Funding Availability that announces the availability of additional Bus and Bus Facilities program funds that will assist grantees to improve the state of good repair of buses and bus facilities.

1. Program Purpose

The Clean Fuels/Bus and Bus Facilities program has a two-fold purpose. First, the Clean Fuels Grant program was developed to assist nonattainment and maintenance areas in achieving or maintaining the National Ambient Air Quality Standards for ozone and CO. The second program purpose is to support emerging clean fuel and advanced propulsion technologies for transit buses and markets for those technologies.

2. Eligible Applicants

Eligible applicants under the FY 2010 Clean Fuels Grant program are:

a. Designated recipients in maintenance or non-attainment areas for ozone or CO, which are entities

designated to receive Federal urbanized formula funds under 49 U.S.C. 5307.

b. FTA will also accept applications from direct recipients, tribes for rural areas, and State Departments of Transportation in attainment areas. Note: Projects selected in attainment areas will be funded using Bus and Bus Facilities program funds.

3. Eligible Projects

Section 5308 grants authority to the Secretary to make grants under this section to assist recipients to finance eligible projects such as the following: (1) Purchasing or leasing clean fuel buses, including buses that employ a lightweight composite primary structure and vans for use in revenue service. The purchase or lease of non-revenue vehicles is not an eligible project; (2) Constructing or leasing clean fuel bus facilities or electrical recharging facilities and related equipment; (3) Projects relating to clean fuel, biodiesel, hybrid electric, or zero emissions technology buses that exhibit equivalent or superior emissions reductions to existing clean fuel or hybrid electric technologies.

Funds made available under this program cannot be used to fund operating expenses or preventive maintenance. Funds made available under this program cannot be used to reimburse projects that have incurred prior eligible expenses without a Letter of No Prejudice (LONP) issued by FTA for the project before the costs are incurred.

4. Cost Sharing or Matching

c. Clean Fuels

For projects awarded Clean Fuels funding, costs will be shared as follows:

(1) Vehicles—90 percent FTA/10 percent local contribution for the *net incremental cost of the clean fuels* component. For administrative simplicity, FTA allows recipients to compute the Federal share at 83 percent for eligible vehicle purchases. The 83 percent share is a blended figure representing 80 percent of the vehicle and 90 percent of the vehicle-related equipment to be acquired in compliance with the Clean Air Act.

(2) Facilities—The 83 percent Federal share does *not* apply to facilities, for which the costs are more variable. The eligibility of facility-related cost elements at the 90 percent share will be reviewed for eligibility of the higher Federal share on a case-by-case basis as part of the grant application process.

(3) The FY 2010 Appropriations Act allows a 90 percent Federal share for the total cost of a biodiesel bus.

(4) The FY 2010 Appropriations Act allows a 90 percent Federal share for the net capital cost of factory installed hybrid electric propulsion systems and any equipment related to such a system. For administrative simplicity, FTA allows recipients to compute the Federal share at 83 percent for eligible vehicle purchases.

(5) FTA will not approve deferred local share.

d. Bus and Bus Facilities

For projects awarded Bus and Bus Facilities funding, costs will be shared as follows:

(1) 80 percent FTA/20 percent local contribution for the net capital project cost, unless the grant recipient requests a lower percentage.

(2) The Federal share may exceed 80 percent for certain projects related to the Americans with Disabilities Act (ADA) and the Clean Air Act (CAA) as follows: ADA—The Federal share is 90 percent for the cost of vehicle-related equipment or facilities attributable to compliance with the ADA of 1990 (42 U.S.C. 12101 *et seq.*); CAA—The Federal share is 90 percent for the cost of vehicle related equipment or facilities (including clean-fuel or alternative-fuel vehicle related equipment or facilities) attributable to compliance with the CAA (42 U.S.C. 7401 *et seq.*). For administrative simplicity, FTA allows recipients to compute the Federal share at 83 percent for eligible ADA and CAA vehicle purchases.

(3) The FY 2010 Appropriations Act allows a 90 percent Federal share for the total cost of a biodiesel bus.

(4) The FY 2010 Appropriations Act also allows a 90 percent Federal share for the net capital cost of factory installed or retrofitted hybrid electric propulsion systems and any equipment related to such a system. For administrative simplicity, FTA allows recipients to compute the Federal share at 83 percent for eligible vehicle purchases.

(5) FTA will not approve deferred local share.

5. Application Content

a. Proposal Submission Process

(1) Project proposals must be submitted electronically through <http://www.grants.gov> and a synopsis of this announcement will be available in the “FIND” module. Mail and fax submissions will not be accepted except for supplemental information that cannot be sent electronically.

(2) Applicants can only apply for funds currently available for allocation. However, an applicant may propose a

project that would expend money over multiple years. The project, however, should be ready to implement and should be completed in a reasonable period of time. In sum, the period of performance of the award is separate from the year that funds are awarded.

b. Proposal Content

(1) Applicant Information

This addresses basic identifying information, including:

- i. Applicant's name,
- ii. Contact information (including contact name, address, e-mail address, phone and fax number),
- iii. Whether the applicant's area is attainment, non-attainment, or maintenance for ozone or CO,
- iv. Description of services provided by the agency, including areas served,
- v. If the project proposal includes vehicles, include existing fleet information, such as a current bus fleet management plan if not already on file with the FTA regional office, and
- vi. A description of your technical, legal, and financial capacity to implement the proposed project.

(2) Project Information

Every proposal must:

- i. Describe the project to be funded and include with the proposal any necessary supporting documentation. Example: Information on the age of the current fleet, MPO concurrence letters, ridership information.
- ii. Address each of the evaluation criteria separately.
- iii. Congressional district(s) served by the proposed project.
- iv. Provide a line-item budget for the project and its total cost.
- v. Provide the Federal amount requested for each purpose for which funds are sought.
- vi. Document matching funds, including amount and source of the match.
- vii. Provide project time-line, including significant milestones such as date or contract for purchase of vehicle(s), actual or expected delivery date of vehicles and contract award and completion of facility improvements.

c. Funding Restrictions

Only proposals from eligible recipients for eligible activities will be considered for funding. Due to funding limitations, applicants that are selected for funding may receive less than the amount requested.

6. Evaluation Criteria for Clean Fuels Grant Program

a. Project Evaluation Criteria

Projects will be evaluated according to the following criteria:

- (1) Demonstrated Need
 - i. Project represents a one-time or periodic need that cannot reasonably be funded from formula allocations or State and/or local revenues.
 - ii. Project or applicant did not receive significant funding in an earmark.
 - iii. The project will have a positive impact on air quality.
 - iv. The project is consistent with the applicant's bus fleet management plan.
 - v. The project is a transportation control measure in an approved State Implementation Plan (if applicable).
- (2) Planning and prioritization at local/regional level.
 - i. Project is consistent with the transit priorities identified in the long range plan and/or contingency/illustrative projects. The project could not be included in the financially constrained Transportation Improvement Plan (TIP)/STIP due to lack of funding (if selected, project must be in federally approved STIP before grant award).
 - ii. Local support is demonstrated by availability of local match for this and/or related projects and letters of support.
 - iii. In an area with more than one transit operator, the application demonstrates coordination with and support of other transit operators, or other related projects within the applicant's MPO or the geographic region within which the proposed project will operate.
 - (3) The project is ready to implement.
 - i. Any required environmental work has been initiated for construction projects requiring an Environmental Assessment (EA).
 - ii. Implementation plans are ready, including initial design of facilities projects.
 - iii. TIP/STIP can be amended (evidenced by MPO/State endorsement).
 - iv. Project can be obligated and begin implementation quickly, if selected.
 - (4) The applicant demonstrates the benefits of the proposed project in reducing transportation related pollutants.
 - (5) The proposed project supports emerging clean fuels technologies or advanced technologies for transit buses.
 - (6) The applicants demonstrate the technical, legal, and financial capacity

to carry out the project. This criterion refers to implementation of the particular project proposed.

- i. The applicant has the technical capacity to administer the project.
- ii. The acquisition is consistent with the bus fleet management plan.
- iii. There are no outstanding legal, technical, or financial issues with the grantee that would make this a high-risk project.
- iv. Source of local match is identified and is available for prompt project implementation if selected (no deferred local share will be allowed).

(7) Geographic Diversity. To provide the ability to evaluate technologies in a wide variety of conditions, FTA may select projects to ensure there is sufficient geographic diversity.

III. Technical Assistance

FTA will post answers to commonly asked questions about the TIGGER program as well as provide information to assist in calculations at <http://www.fta.dot.gov/tigger>. Commonly asked questions about the FY 2010 Clean Fuels Grant program can be found at http://www.fta.dot.gov/funding/grants/grants_financing_3560.html. Technical assistance regarding these requirements is available from each FTA regional office listed in Appendix A. The regional offices will contact those applicants selected for funding regarding grants and reporting requirements and will provide assistance in preparing the documentation necessary for the grant award.

Contact the appropriate FTA Regional or Metropolitan Office for application-specific information and issues. For general TIGGER program information, contact Walter Kulyk, Office of Mobility Innovation, (202) 366-4995, e-mail: walter.kulyk@dot.gov. For program information on the Clean Fuels/Bus and Bus Facilities Program; contact Juan Morrison, Office of Program Management, (202) 366-7005, e-mail: juan.morrison@dot.gov. A TDD is available at 1-800-877-8339 (TDD/FIRS).

Issued in Washington, DC, this 8th day of April 2010.

Peter Rogoff,
Administrator.

Appendix A

FTA Regional and Metropolitan Offices

Richard H. Doyle, Regional Administrator, Region 1—Boston, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142-1093, Tel. 617-494-2055.

States served: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Brigid Hynes-Cherin, Regional Administrator, Region 2—New York, One Bowling Green, Room 429, New York, NY 10004-1415, Tel. 212-668-2170.

States served: New Jersey, New York.

New York Metropolitan Office, Region 2—New York, One Bowling Green, Room 428, New York, NY 10004-1415, Tel. 212-668-2202.

Letitia Thompson, Regional Administrator, Region 3—Philadelphia, 1760 Market Street, Suite 500, Philadelphia, PA 19103-4124, Tel. 215-656-7100.

States served: Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and District of Columbia.

Philadelphia Metropolitan Office, Region 3—Philadelphia, 1760 Market Street, Suite 500, Philadelphia, PA 19103-4124, Tel. 215-656-7070.

Washington, DC Metropolitan Office, 1990 K Street, NW., Room 510, Washington, DC 20006, Tel. 202-219-3562.

Yvette Taylor, Regional Administrator, Region 4—Atlanta, 230 Peachtree Street, NW., Suite 800, Atlanta, GA 30303, Tel. 404-865-5600.

States served: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and Virgin Islands.

Marisol Simon, Regional Administrator, Region 5—Chicago, 200 West Adams Street, Suite 320, Chicago, IL 60606, Tel. 312-353-2789.

States served: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

Chicago Metropolitan Office, Region 5—Chicago, 200 West Adams Street, Suite 320, Chicago, IL 60606, Tel. 312-353-2789.

Robert C. Patrick, Regional Administrator, Region 6—Ft. Worth, 819 Taylor Street, Room 8A36, Ft. Worth, TX 76102, Tel. 817-978-0550.

States served: Arkansas, Louisiana, Oklahoma, New Mexico, and Texas.

Mokhtee Ahmad, Regional Administrator, Region 7—Kansas City, MO, 901 Locust Street, Room 404, Kansas City, MO 64106, Tel. 816-329-3920.

States served: Iowa, Kansas, Missouri, and Nebraska.

Terry Rosapep, Regional Administrator, Region 8—Denver, 12300 West Dakota Ave., Suite 310, Lakewood, CO 80228-2583, Tel. 720-963-3300.

States served: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

Leslie T. Rogers, Regional Administrator, Region 9—San Francisco, 201 Mission Street, Room 1650, San Francisco, CA 94105-1926, Tel. 415-744-3133.

States served: American Samoa, Arizona, California, Guam, Hawaii, Nevada, and the Northern Mariana Islands.

Los Angeles Metropolitan Office, Region 9—Los Angeles, 888 S. Figueroa Street, Suite 1850, Los Angeles, CA 90017-1850, Tel. 213-202-3952.

Rick Krochalis, Regional Administrator, Region 10—Seattle, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA 98174-1002, Tel. 206-220-7954.

States served: Alaska, Idaho, Oregon, and Washington.

Appendix B

TIGGER Program Glossary of Terms

Energy Use of the Public Transportation System is the sum of the lower (net) heating value of fuels purchased directly by the public transportation system plus electricity purchased directly by the public transportation system. It includes energy used to perform both revenue and non revenue operations directly operated by the agency, but not energy used by purchased services. It includes fuels used by an agency to generate energy, but not energy generated by an agency. As an example, an applicant would count the lower heating value of the diesel fuel used to operate a diesel generator by an agency but not the electricity produced by the generator. Energy produced on-site using solar or wind power is also not counted as part of consumption.

Expected Useful Life is the expected lifetime of project property, or the acceptable period of use in service, based on standard industry practices such as those defined in FTA Circular 9300.1B. If a useful life is claimed that differs from standard industry practices, or for which no standard practice exists, the assumed useful life of a project should be justified using appropriate citations or well-documented assumptions and reasoning.

Greenhouse Gases are gases that trap heat in the atmosphere expressed in Carbon Dioxide (CO₂)-equivalent mass. The principal greenhouse gases that enter the atmosphere because of human activities are: Carbon

Dioxide (CO₂); Methane (CH₄); Nitrous Oxide (N₂O); and Fluorinated Gases (Hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride)

Greenhouse Gas Emissions of the Public Transportation Agency are greenhouse gas emissions from public transportation systems vehicles or facilities, otherwise known as direct emissions. It does not include indirect emissions (e.g., from third-party power plants) or displaced emissions (e.g., emissions from manufacturing transit equipment, waste disposal, emissions released by upstream processes prior to purchase of the fuel or electricity by the transit agency, etc.).

Project is the proposed capital investment as well as the existing system, subsystem, facility, vehicle, or component that the investment will replace or be applied to. The project scope determines where measurement of energy reductions or emissions reductions will take place and must be directly related to the actual capital investment.

Total Project Energy Savings is the estimated annual project energy savings multiplied by the expected useful life of the investment.

Total Project Greenhouse Gas Emission Reductions is the estimated annual project greenhouse gas emission reductions multiplied by the expected useful life of the investment.

Appendix C

TIGGER Project Proposal Outline

Each project proposal must contain the following information. Additional application instructions and tools will be located on FTA's TIGGER Program Web site: <http://www.fta.dot.gov/tigger>.

a. Project Summary Sheet—The applicant may be requested to enter summary information about the project into a project summary sheet that will be posted on FTA's Web site at <http://www.fta.dot.gov/tigger>. Instructions for completing and submitting the sheet will be provided at the Web site.

b. Applicant information: For each transit agency included in the proposal, the information should include:

- (1) Applicant name
- (2) Contact information
- (3) Whether the applicant's area is attainment, non-attainment, or maintenance for ozone or CO
- (4) Description of services provided by the agency and areas served
- (5) If proposal includes vehicles, include existing fleet information, such as a current rail or bus fleet management plan, if not already on file with the FTA Regional Office, and
- (6) A description of their technical, legal, financial, and program management capacity to implement the proposed project.

c. Project Information: The information should include:

(1) Whether the project is to be evaluated under energy reduction, greenhouse gas reduction criteria, or both.

(2) A description of the scope of the project.

(3) Provide a line item budget for the project and its total cost and for scalable projects include the minimum amount necessary to implement the project if FTA were not to fund the total cost.

(4) Identify the expected useful life of the investment.

(5) Provide brief project time-line outlining steps from project development through completion, including significant milestones such as date of contract awards and dates of project implementation (e.g. when vehicles will begin revenue service).

(6) Provide the proposed location of the project, for facilities and other infrastructure provide the city or county where the investment will be located as applicable; for vehicles provide the cities or counties where services are likely to be provided.

(7) Congressional district(s) served by the proposed project.

d. Project Measurement Criteria for Energy Reduction projects: Proposals should identify the process the agency will use to determine the actual energy savings once the investment is implemented. For projects proposed to reduce energy consumption the proposal should include:

(1) Project's Current Annual Energy Use

(2) Project's Estimated Annual Energy Use

(3) Project's Estimated Annual Energy Savings

(4) Project's Total Estimated Energy Savings Over its Useful Life

e. Project's Total Energy Savings as a Percentage of the Agency's Total Energy Use. This can be reported as less than one percent or the proposal must include:

(1) Total Energy Consumption of the Public Transportation Agency

(2) The Project's Total Energy Savings as a percentage of the Total Energy Consumption of the Public Transportation Agency

f. Project Measurement Criteria for Greenhouse Gas Emission Reduction projects: Proposals should identify the process the agency will use to determine the

greenhouse gas emission reductions once the investment is implemented. For projects proposed to reduce greenhouse gas emissions the proposal should include:

(1) Project's Current Annual Greenhouse Gas Emissions

(2) Project's Estimated Annual Greenhouse Gas Emissions

(3) Project's Estimated Annual Greenhouse Gas Savings

(4) Project's Total Estimated Greenhouse Gas Savings over the Project's Useful Life

g. Any proposed deviations from FTA requirements

h. Address each of the evaluation criteria separately.

(1) Project Innovation

(2) National Applicability

(3) Project Readiness

(4) Project Management

(5) Return on Investment

BILLING CODE P

APPENDIX D

FEDERAL TRANSIT ADMINISTRATION - PROGRAM MATRIX

Program	Transit Investments for Greenhouse Gas and Energy Reduction (TIGGER)	Clean Fuels Grant Program	Bus and Bus Facilities Program
Program Purpose	Provide funding for capital investments that assist in reducing the energy consumption of a transit system or for capital investments that will reduce greenhouse gas emissions of a public transportation system.	Assist nonattainment and maintenance areas in achieving or maintaining the National Ambient Air Quality Standards for ozone and CO and to support emerging clean fuel and advanced propulsion technologies for transit buses and markets for those technologies.	As a part of FTA's sustainability efforts, the program is consistent with the Clean Fuels Grant program, although funds may be used in attainment areas.
Amount Available	\$75 million	\$81.2 million	Undetermined
Eligible Applicants	Eligible applicants are public transportation agencies or State Departments of Transportation.	Eligible applicants are designated recipients, which are entities designated to receive Federal urbanized formula funds under 49 U.S.C. 5307. Applicants must be in areas that are maintenance or non-attainment for ozone or CO.	As a part of FTA's sustainability efforts, eligible applicants are tribes in rural areas, State Departments of Transportation and direct recipients in attainment areas.
Eligible Activities	(1) An eligible capital expense as defined under 49 USC 5302(a)(1); and (2) The project will assist in the reduction of the energy consumption of a public transportation system and/or the reduction of greenhouse gas emissions of a public transportation system.	1) Purchasing or leasing clean fuel buses, including buses that employ a lightweight composite primary structure and vans for use in revenue service. The purchase or lease of non-revenue vehicles is not an eligible project. (2) Constructing or leasing clean fuel bus facilities or electrical recharging facilities and related equipment. (3) Projects relating to clean fuel, biodiesel, hybrid electric, or zero emissions technology buses that exhibit equivalent or superior emissions reductions to existing clean fuel or hybrid electric technologies.	As part of FTA's sustainability efforts, eligible activities are those consistent with the Clean Fuels Grant program.
Minimum and Maximum Award	\$1 million minimum/\$25 million maximum	Not Applicable	

APPENDIX D

Program	Transit Investments for Greenhouse Gas and Energy Reduction (TIGGER)	Clean Fuels Grant Program	Bus and Bus Facilities Program
Cost Sharing or Matching	The expected Federal share for TIGGER grants is 90 percent, although applicants may request up to 100 percent. Note: Applicants requesting a lower Federal share may be given a higher score in the evaluation process, all else being equal.	- Vehicles - 90 percent FTA/10 percent local contribution for the net incremental cost of the clean fuels component. For administrative simplicity, FTA allows recipients to compute the Federal share at 83 percent for eligible vehicle purchases. The 83 percent share is a blended figure representing 80 percent of the vehicle and 90 percent of the vehicle-related equipment to be acquired in compliance with the Clean Air Act. - Facilities - The 83 percent Federal share does not apply to facilities, for which the costs are more variable. The eligibility of facility-related cost elements at the 90 percent share will be reviewed on a case-by-case basis as part of the grant application process. - The FY 2010 Appropriations Act allows a 90 percent Federal share for the total cost of a biodiesel bus. - The FY 2010 Appropriations Act also allows a 90 percent Federal share for the net capital cost of factory installed hybrid electric propulsion systems and any equipment related to such a system. For administrative simplicity, FTA allows recipients to compute the Federal share at 83 percent for eligible vehicle purchases. - FTA will not approve deferred local share.	80 percent FTA/20 percent local contribution for the net capital project cost, unless the grant recipient requests a lower percentage. - The Federal share may exceed 80 percent for certain projects related to the Americans with Disabilities Act (ADA) and the Clean Air Act (CAA) as follows: ADA - The Federal share is 90 percent for the cost of vehicle-related equipment or facilities attributable to compliance with the ADA of 1990 and CAA - The Federal share is 90 percent for the cost of vehicle related equipment or facilities (including clean-fuel or alternative-fuel vehicle related equipment or facilities) attributable to compliance with the CAA. FTA allows recipients to compute the Federal share at 83 percent for eligible vehicle purchases. For administrative simplicity, FTA allows recipients to compute the Federal share at 83 percent for eligible ADA and CAA vehicle purchases. - The FY 2010 Appropriations Act allows a 90 percent Federal share for the total cost of a biodiesel bus. - The FY 2010 Appropriations Act also allows a 90 percent Federal share for the net capital cost of factory installed or retrofitted hybrid electric propulsion systems and any equipment related to such a system. For administrative simplicity, FTA allows recipients to compute the Federal share
Application Procedures	Go to: www.fta.dot.gov/tigger and www.grants.gov	Go to: www.grants.gov (note: the Clean Fuels Grant and Bus and Bus Facilities programs will be listed under one announcement.)	
Application Deadline	120 days from the date of this notice	60 days from the date of this notice	

[FR Doc. 2010-8398 Filed 4-9-10; 11:15 am]

BILLING CODE C

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety
Administration

[Docket No. NHTSA-2010-0042; Notice 1]

Graco Children's Products Inc.,
Receipt of Petition for Decision of
Inconsequential Noncompliance

Graco Children's Products Inc. (Graco), has determined that certain warning labels attached to detachable accessory pillows that it sold with certain MyRide™ 65 line car seats produced between April, 2009, and October, 2009, failed to meet the flammability requirements of Federal Motor Vehicle Safety Standards (FMVSS) No. 213.¹ Graco estimates that about 90,000 car seats may be affected. Graco has filed an appropriate report pursuant to 49 CFR part 573 *Defect and Noncompliance Responsibility and Reports*.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Graco has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Graco's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are all models of MyRide™ 65 convertible car seats manufactured between April, 2009, and October, 2009, in the Company's Mexico facility. The Company estimates that approximately 90,000 car seats may be affected, and of this total, 50,000 are potentially in use by its customers (consumers) and 40,000 are currently with retailers.²

¹ Graco describes the noncompliance as one with FMVSS No. 302. However, FMVSS No. 302 does not in itself apply to motor vehicle equipment. Paragraph S4 of FMVSS No. 302 is invoked by reference in FMVSS No. 213, therefore, this noncompliance is a noncompliance with FMVSS No. 213 not FMVSS No. 302.

² Graco's petition, which was filed under 49 CFR part 556, requests an agency decision to exempt Graco as manufacturer from the notification and recall responsibilities of 49 CFR part 573 for all 90,000 of the affected child seats. However, the agency cannot relieve Graco's distributors of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant child seats under their control after Graco recognized that the subject noncompliance existed. Those child seats must be brought into conformance, exported, or destroyed.

Graco describes the MyRide™ 65 car seat as being manufactured with a detachable accessory pillow, and this pillow includes a warning label (the "pillow label") regarding appropriate use of the pillow for children of a certain age range. The pillow label warns consumers not to use the pillow when the MyRide™ 65 seat is being used by children weighing more than 40 lbs (18.1 kg). The pillow, which is removable, is attached to the MyRide™ 65 seat by a hook and loop fastener material, one side of which is sewn onto a "tail" of the pillow and the other onto the top of the seat above the child's head.

Paragraph S5.7 of FMVSS No. 213 requires in pertinent part:

S5.7 Flammability. Each material used in a child restraint system shall conform to the requirements of S4 of FMVSS No. 302 (571.302). In the case of a built-in child restraint system, the requirements of S4 of FMVSS No. 302 shall be met in both the "in-use" and "stowed" positions.

Based on its internal investigation, Graco believes that the noncompliance is that a pillow label sewn onto the detachable head pillow of certain MyRide™ 65 car seats does not comply with paragraph S5.7 of FMVSS No. 213. After discovering that a recent lot of pillow labels delivered in late October 2009 to the Company's Mexico facility had not been properly treated for flame resistance, Graco's plant management began an investigation. They immediately started reviewing all pillow label lots previously delivered to its Mexico facility since April 2009, the production start date for the MyRide™ line car seats, to determine the extent of the noncompliance among its lots of pillow labels.

Graco found that its noncompliant pillow labels were manufactured by a sub-supplier to Graco's normal pillow label supplier. Graco has determined that the sub-supplier did not follow Graco's production specifications, and as a result, failed to meet the requirements of FMVSS No. 213. Graco also concluded that the sub-supplier was solely responsible for providing the noncompliant pillow labels.

Graco also found that all other labels and materials for its MyRide™ 65 car seats were provided by Graco's regular supplier itself and not the sub-supplier. In addition to its investigation, the Company's plant management also examined and verified through laboratory testing, that all other material components used in the MyRide™ 65 car seats comply with the standards of FMVSS No. 213. Graco added that new plant management at its Mexico plant has implemented more robust quality

controls to prevent such problems from happening in the future and that Graco has received no complaints, reports or any other information about adverse impacts from this noncompliance from consumers or any other outside source.

Since the discovery of the noncompliance, Graco indicated that it has taken steps to ensure that every MyRide™ 65 seat subsequently released for shipment has been manufactured with labels compliant with all applicable safety standards, including FMVSS No. 213. In addition, Graco stopped all shipments of the MyRide™ 65 car seats in its possession when the noncompliance was discovered and replaced the detachable accessory pillows with pillows manufactured with a pillow label compliant with the FMVSS No. 213 prior to delivery.

Graco believes that the noncompliance of the pillow label to meet the requirements of FMVSS No. 213 is inconsequential to overall motor vehicle safety for the following reasons:

When reviewing the accessory pillow at issue, including its size, location, function and overall design, the risk of injury resulting from the noncompliant Label on the detachable accessory pillow is inconsequential to the overall safety of the MyRide seat. Specifically, the Label is a physically small component of the child restraint system located in an area not likely to be exposed to open flame. In fact, the potential for the Label serving as an ignition point for a larger conflagration is near zero. This circumstance, along with the compliant status of all other fabric and label components of the MyRide seat, render the Label's noncompliance inconsequential to motor vehicle safety.

As noted above, the Label is a rectangular shaped tag measuring approximately 3 inches by 1¼ inches. The area of the Label is insignificant with respect to the over two yards of fabric that is used to make the pad and the "soft goods" for the MyRide seat. Proportionally, the percentage of material is less than ¼% of the total surface area of the seat. Moreover, all other fabric, including other warning labels for the MyRide seat, are flame resistant. The small size of affected material renders the likelihood of ignition of this one Label highly untenable.

In addition * * * the Label is also located in an area that makes it highly unlikely to be exposed to an open flame without the passenger compartment of the car being already engulfed in flame * * * When put in its proper place * * * the Label is surrounded by flame resistant material and in a location interior to the overall seat design * * *

Moreover * * * the owner's manual and instructions for the MyRide seat express state that the pillow is not to be used with any child over 18.1 kg (40 lbs) placed into the MyRide seat. Accordingly, a significant number of MyRide seats are not used with

the pillow, thereby further reducing an already low risk of flammability.

* * * the MyRide * * * child restraint is not designed to be easily removed from a motor vehicle once installed * * * the MyRide seat is tethered into the seat or is installed for use with the motor vehicle's type II lap and shoulder belt. Therefore, the only risk of exposure to an ignition source would be while installed in a motor vehicle where pinpoint open flame in the upper portion of the child restraint system on one particular side is highly unlikely.

Graco has considered the potential for variety of potential ignition sources that may be exposed to the tag. The Company believes that the likelihood of the Label coming accidentally in contact with any type of ignition device is extremely low. Graco's analysis also included potential ignition from cigarettes or other smoking materials * * *

Graco also mentioned that real world reports support the Company's belief that the noncompliant pillow labels are not a risk to safety. Graco said it has received no reports or complaints of a fire involving the MyRide™ 65 seat or any of its components. Graco added, "The insignificant opportunity of a fire hazard to a child from ignition of this small tag, located in the interior portion of the child seat contained inside a motor vehicle supports Graco's assertion regarding the inconsequential nature of this noncompliance."

In summation Graco restated its belief that based on the size of the pillow label, its location, compliance of all other labels and fabric with FMVSS No. 213, and the nearly impossible opportunities for direct ignition of the pillow label only, that the described noncompliance of the pillow label to meet the requirements of FMVSS No. 213 is inconsequential to motor vehicle safety. Thus, Graco requests that NHTSA grant its petition to exempt it from providing notification of noncompliance as required by 49 U.S.C. 30118 and remedying the noncompliance as required by 49 U.S.C. 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. By mail addressed to: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

b. By hand delivery to U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

c. Electronically: by logging onto the Federal Docket Management System (FDMS) Web site at <http://www.regulations.gov/>. Follow the online instructions for submitting comments. Comments may also be faxed to 1-202-493-2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to http://www.regulations.gov, including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at http://www.regulations.gov by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000 (65 FR 19477-78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: May 10, 2010.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8.

Issued on: April 7, 2010.

Claude H. Harris,
Director, Office of Vehicle Safety Compliance.
[FR Doc. 2010-8310 Filed 4-12-10; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8734

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8734, Support Schedule for Advance Ruling Period.

DATES: Written comments should be received on or before June 14, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Elaine Christophe, (202) 622-3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at Elaine.H.Christophe@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Support Schedule for Advance Ruling Period.

OMB Number: 1545-1836.

Form Number: 8734.

Abstract: Form 8734 is used by charities to furnish financial information that Exempt Organization Determinations of IRS can use to classify a charity as a public charity.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 16,000.

Estimated Time per Respondent: 34 hours, 19 minutes.

Estimated Total Annual Burden Hours: 549,120.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 5, 2010.

R. Joe Durbala,

IRS Tax Supervisory Analyst.

[FR Doc. 2010-8333 Filed 4-12-10; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8879-B

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8879-B, IRS *e-file* Signature Authorization for Form 1065-B.

DATES: Written comments should be received on or before June 14, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington DC 20224, or through the Internet, at Elaine.H.Christophe@irs.gov.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the form and instructions should be directed to Elaine Christophe, (202) 622-3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at Elaine.H.Christophe@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: IRS *e-file* Signature Authorization for Form 1065-B.

OMB Number: 1545-2043.

Form Number: 8879-B.

Abstract: A general partner or a limited liability company member manager (LLC member manager) and an electronic return originator (ERO) use Form 8879-B when the general partner or LLC member manager wants to use a personal identification number (PIN) to electronically sign an electing large partnership's electronic income tax return, and, if applicable, consent to an electronic funds withdrawal.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 60.

Estimated Time per Respondent: 4 hours 17 minutes.

Estimated Total Annual Burden Hours: 258.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All

comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 5, 2010.

R. Joseph Durbala,

IRS Tax Supervisory Analyst.

[FR Doc. 2010-8334 Filed 4-12-10; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, Oklahoma, and Texas)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, May 11, 2010.

FOR FURTHER INFORMATION CONTACT: Patricia Robb at 1-888-912-1227 or 414-231-2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 5 Taxpayer Advocacy Panel will be held Tuesday, May 11, 2010, at 11 a.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Patricia Robb. For more information please contact Ms. Robb at 1-888-912-1227 or 414-231-2360, or write TAP

Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203-2221, or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include various IRS issues.

Dated: April 6, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010-8329 Filed 4-12-10; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, May 18, 2010.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1-888-912-1227 or 718-488-2085.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, May 18, 2010, at 10 a.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Audrey Y. Jenkins. For more information please contact Ms. Jenkins at 1-888-912-1227 or 718-488-2085, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or contact us at the Web site: <http://www.improveirs.org>.

The agenda will include various IRS issues.

Dated: April 6, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010-8330 Filed 4-12-10; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance Issue Committee.

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Corrected notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be Thursday, May 6, 2010 and Friday, May 7, 2010.

FOR FURTHER INFORMATION CONTACT: Donna Powers at 1-888-912-1227 or 954-423-7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance Issue Committee will be held Thursday, May 7, 2010 from 8 a.m. to 5 p.m. and Friday, May 7, 2010 from 8 a.m. to 1 p.m. Eastern Time in Atlanta, GA. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Donna Powers. For more information, please contact Ms. Powers at 1-888-912-1227 or 954-423-7977, write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or contact us at the Web site: <http://www.improveirs.org>.

The agenda will include various IRS issues.

Dated: April 6, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010-8331 Filed 4-12-10; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Project Committee.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned

Income Tax Credit Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be Wednesday, May 26, 2010.

FOR FURTHER INFORMATION CONTACT:

Marianne Ayala at 1-888-912-1227 or 954-423-7978.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Project Committee will be held Wednesday, May 26, 2010, at 1 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marianne Ayala. For more information please contact Ms. Ayala at 1-888-912-1227 or 954-423-7978, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or contact us at the Web site: <http://www.improveirs.org>.

The agenda will include various IRS issues.

Dated: April 6, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010-8332 Filed 4-12-10; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications/MLI Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications/MLI Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, May 13, 2010.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1-888-912-1227 or 718-488-3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section

10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications/MLI Project Committee will be held Thursday, May 13, 2010, at 1 p.m., Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marisa Knispel. For more information, please contact Ms. Knispel at 1-888-912-1227 or 718-488-3557, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include various IRS issues.

Dated: April 6, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010-8336 Filed 4-12-10; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Arizona, Colorado, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 6 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, May 6, 2010, Friday, May 7, 2010 and Saturday, May 8, 2010.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1-888-912-1227 or 206-220-6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Taxpayer Advocacy Panel will be held Thursday, May 6, 2010 from 1 p.m. to 4:30 p.m., Friday, May 7, 2010 from 8 a.m. to 4:30 p.m., and Saturday, May 8, 2010 from 8 a.m. to 11:30 a.m. Pacific Time in Portland, OR. The public is invited to make oral comments or

submit written statements for consideration. Notification of intent to participate must be made with Janice Spinks. For more information, please contact Ms. Spinks at 1-888-912-1227 or 206-220-6096, or write TAP Office, 915 2nd Avenue, MS W-406, Seattle, WA 98174 or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include various IRS issues.

Dated: April 6, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010-8326 Filed 4-12-10; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the States of Alaska, California, Hawaii, and Nevada)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 7 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, May 19, 2010.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1-888-912-1227 or 206-220-6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 7 Taxpayer Advocacy Panel will be held Wednesday, May 19, 2010, at 2 p.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Janice Spinks. For more information please contact Ms. Spinks at 1-888-912-1227 or 206-220-6098, or write TAP Office, 915 2nd Avenue, MS W-406, Seattle, WA 98174 or post comments to the web site: <http://www.improveirs.org>.

The agenda will include various IRS issues.

Dated: April 6, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010-8337 Filed 4-12-10; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, Tennessee, and Wisconsin)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, May 18, 2010.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley at 1-888-912-1227 or 414-231-2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 4 Taxpayer Advocacy Panel will be held Tuesday, May 18, 2010, at 1 p.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ellen Smiley. For more information please contact Ms. Smiley at 1-888-912-1227 or 414-231-2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203-2221, or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include various IRS issues.

Dated: April 6, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010-8338 Filed 4-12-10; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas, and the Territory of Puerto Rico)**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, May 20, 2010 and Friday, May 21, 2009.

FOR FURTHER INFORMATION CONTACT: Donna Powers at 1-888-912-1227 or 954-423-7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Thursday, May 20, 2009, 8 a.m. to 5 p.m. and Friday, May 21, 2009, 8 a.m. to 12 p.m. Central Time in New Orleans, LA. The public is invited to make oral comments or submit written statements for consideration. Notification of intent to participate must be made with Donna Powers. For more information please contact Ms. Powers at 1-888-912-1227 or 954-423-7977, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include various IRS issues.

Dated: April 6, 2010.

Shawn F. Collins,
Director, Taxpayer Advocacy Panel.

[FR Doc. 2010-8339 Filed 4-12-10; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia)**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, May 19, 2010.

FOR FURTHER INFORMATION CONTACT: Marianne Ayala at 1-888-912-1227 or 954-423-7978.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Wednesday, May 19, 2010, at 2:30 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marianne Ayala. For more information please contact Mrs. Ayala at 1-888-912-1227 or 954-423-7978, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include various IRS issues.

Dated: April 6, 2010.

Shawn F. Collins,
Director, Taxpayer Advocacy Panel.

[FR Doc. 2010-8340 Filed 4-12-10; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Open Meeting of Taxpayer Advocacy Panel Notice Improvement Issue Committee**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Notice Improvement Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, May 25, 2010 and Wednesday, May 26, 2010.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1-888-912-1227 or 718-488-2085.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Notice Improvement Issue Committee will be held Tuesday, May 25, 2010, from 8 a.m. to 5 p.m. and Wednesday, May 26, 2010 from 8 a.m. to 11 p.m. Eastern Time in Detroit, MI. The public is invited to make oral comments or submit written statements for consideration. Notification of intent to participate must be made with Audrey Y. Jenkins. For more information, please contact Ms. Jenkins at 1-888-912-1227 or 718-488-2085, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include various IRS issues.

Dated: April 6, 2010.

Shawn F. Collins,
Director, Taxpayer Advocacy Panel.

[FR Doc. 2010-8341 Filed 4-12-10; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Open Meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Project Committee**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, May 27, 2010.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1-888-912-1227 or 206-220-6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Project Committee will be held Thursday, May 27, 2010, at 9 a.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent

to participate must be made with Janice Spinks. For more information please contact Ms. Spinks at 1-888-912-1227 or 206-220-6098, or write TAP Office, 915 2nd Avenue, MS W-406, Seattle, WA 98174 or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include various IRS issues.

Dated: April 6, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010-8342 Filed 4-12-10; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, May 25, 2010.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley at 1-888-912-1227 or 414-231-2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Committee will be held Tuesday, May 25, 2010, at 1 p.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ellen Smiley. For more information please contact Ms. Smiley at 1-888-912-1227 or 414-231-2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203-2221, or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include various IRS issues.

Dated: April 6, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010-8343 Filed 4-12-10; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, May 25, 2010.

FOR FURTHER INFORMATION CONTACT: Susan Gilbert at 1-888-912-1227 or (515) 564-6638.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Tuesday, May 25, 2010, at 3 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Susan Gilbert. For more information please contact Ms. Gilbert at 1-888-912-1227 or (515) 564-6638 or write: TAP Office, 210 Walnut Street, Stop 5115, Des Moines, IA 50309 or contact us at the Web site: <http://www.improveirs.org>.

The agenda will include various IRS issues.

Dated: April 6, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010-8344 Filed 4-12-10; 8:45 am]

BILLING CODE 4830-01-P



Federal Register

**Tuesday,
April 13, 2010**

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

**Endangered and Threatened Wildlife and
Plants; Determination of Endangered
Status for 48 Species on Kauai and
Designation of Critical Habitat; Final Rule**

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R1-ES-2008-0046]

[MO 92210-0-0008]

RIN 1018-AV48

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for 48 Species on Kauai and Designation of Critical Habitat**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered status for 48 species on the island of Kauai in the Hawaiian Islands under the Endangered Species Act of 1973, as amended (Act). We also designate 26,582 acres (ac) (10,757 hectares (ha)) of critical habitat for 47 of these species. The critical habitat is located in Kauai County, Hawaii. Critical habitat designation was determined to be not prudent for one species, *Pritchardia hardyi* (a palm), which is threatened by over collection and vandalism.

DATES: This rule becomes effective on May 13, 2010.

ADDRESSES: This final rule and economic impact analysis are available on the Internet at <http://www.regulations.gov>. Comments and materials received, as well as supporting documentation used in preparing this final are available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Box 50088, Honolulu, HI 96850; telephone 808-792-9400; facsimile 808-792-9581.

FOR FURTHER INFORMATION CONTACT: Loyal Mehrhoff, Field Supervisor, Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION: This document consists of: (1) a final rule to list 48 species as endangered; and (2) a final critical habitat designation for 47 species.

Previous Federal Action

Thirty-one of the Kauai species in this final rule were previously candidate species. Candidate species are those

taxa for which the Service has sufficient information on their biological status and threats to list as endangered or threatened under the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*), but for which the development of a listing regulation has been precluded to date by other higher priority listing activities.

The candidates addressed in this final listing rule include the plants *Astelia waialealae* (painiu), *Canavalia napaliensis* (awikiwiki), *Chamaesyce eleanoriae* (akoko), *Chamaesyce remyi* var. *kauaiensis* (akoko), *Chamaesyce remyi* var. *remyi* (akoko), *Charpentiera densiflora* (papala), *Cyanea eleleensis* (haha), *Cyanea kuhihewa* (also haha), *Cyrtandra oenobarba* (hiiwale), *Dubautia imbricata* subspecies (ssp), *imbricata* (naenae), *Dubautia plantaginea* ssp. *magnifolia* (also naenae), *Dubautia waialealae* (naenae), *Geranium kauaiense* (nohoanu), *Keysseria erici* (no common name (ncn)), *Keysseria helenae* (ncn), *Labordia helleri* (kamakahala), *Labordia pumila* (also kamakahala), *Lysimachia daphnoides* (lehua makanoe), *Melicope degeneri* (alani), *Melicope paniculata* (also alani), *Melicope puberula* (alani), *Myrsine mezii* (kolea), *Pittosporum napaliense* (hoawa), *Platydesma rostrata* (pilo kea lau li i), *Pritchardia hardyi* (loululu), *Psychotria grandiflora* (kopiko), *Psychotria hobdyi* (kopiko), *Schiedea attenuata* (ncn), and *Stenogyne kealiae* (ncn); the bird, akikiki (*Oreomystis bairdi*); and the picture-wing fly, *Drosophila attigua* (now *D. sharpi*, see explanation under "Description of the 48 Species" below).

The candidate status of all of these species was most recently assessed and reaffirmed in the December 10, 2008, Notice of Review of Native Species that are Candidates or Proposed for Listing as Threatened or Endangered (CNOR) (73 FR 75176, December 10, 2008).

On May 4, 2004, the Center for Biological Diversity petitioned the Secretary of the Interior to list 225 species of plants and animals, including the 31 candidate species listed above, as endangered or threatened under the provisions of the Act. Since then, we have published our annual findings on the May 4, 2004, petition (including our findings on the 31 candidate species listed above) in the CNORs dated May 11, 2005 (70 FR 24870), September 12, 2006 (71 FR 53756), December 6, 2007 (72 FR 69033), and December 10, 2008 (73 FR 75176).

On October 11, 2007, we received a petition from Dr. Eric VanderWerf and the American Bird Conservancy to list the akikiki and the akekee (*Loxops caeruleirostris*) as endangered or

threatened species. According to the petitioners, the akikiki and akekee warrant listing under the Act because they have small populations; occur in small geographic ranges; are undergoing rapid population and range declines; and face numerous imminent and significant threats including, but not limited to, habitat loss and degradation by alien plants and nonnative ungulates, diseases spread by alien mosquitoes, predation by alien mammals, and catastrophic events such as hurricanes (VanderWerf and American Bird Conservancy 2007). The petitioners also cite the inadequacy of regulatory mechanisms as a threat, noting that as members of the subfamily Drepanidinae (Hawaiian honeycreepers), the akikiki and akekee are not protected under the Migratory Bird Treaty Act (16 U.S.C. 703–712; see 71 FR 50205, August 24, 2006). The akikiki was already a candidate species (59 FR 58982, November 15, 1994). The proposed rule (73 FR 62592, October 21, 2008) and this final designation constitute our response to the October 11, 2007, petition.

In addition to the 31 candidate species and the akekee, we are listing and designating critical habitat for the following 16 species of plants endemic to Kauai: *Cyanea kolekoleensis*, *Cyanea dolichopoda*, *Cyrtandra paliku*, *Diellia mannii*, *Doryopteris angelica*, *Dryopteris crinalis* var. *podosorus*, *Dubautia kalalauensis*, *Dubautia kenwoodii*, *Lysimachia iniki*, *Lysimachia pendens*, *Lysimachia scopulensis*, *Lysimachia venosa*, *Myrsine knudsenii*, *Phyllostegia renovans*, *Tetraplasandra bisattenuata*, and *Tetraplasandra flynnii*. These 16 Kauai plant species have been identified by the multiagency (Federal, State, and private) Plant Extinction Prevention (PEP) program as being among the rarest of the rare Hawaiian plant species, and in need of immediate conservation. The goal of this program is to prevent the extinction of native plant species with fewer than 50 individuals remaining in the wild on the islands of Kauai, Oahu, Maui, Molokai, Lanai, and Hawaii by establishing a network of multi-island plant propagation sites and storage facilities, and conducting emergency monitoring and genetic sampling of all PEP species (Hawaii Division of Forestry and Wildlife (DOFAW) 2007; Service 2007). The Service has provided significant funding to this program since 2002, through section 6 (Cooperation with the States) of the Act. We believe these 16 plant species warrant listing under the Act for the reasons discussed below ("Description of the 48 Species" and "Summary of Factors Affecting the

Species"). Since these species occur within the same 6 ecosystems and share common threats with the other 32 species, we have included them here in an effort to provide them with Federal protection in an expeditious manner.

On October 21, 2008, we published a proposed rule to list these 48 species as endangered throughout their ranges, and to designate critical habitat for 47 of these species (73 FR 62592). The comment period for that proposal opened on October 21, 2008, and closed on December 22, 2008.

Background

An Ecosystem-based Approach

On the island of Kauai, as on most of the Hawaiian Islands, native species that occur in the same habitat types (ecosystems) depend on many of the same biological features and on the successful functioning of that ecosystem to survive. We have therefore organized the species addressed in this final rule by common ecosystem. Although the listing determination for each species is analyzed separately, we have organized the specific analysis for each species within the context of the broader ecosystem in which it occurs to avoid

redundancy. In addition, native species that share ecosystems often face a suite of common threat factors that require similar management actions to reduce or eliminate those threats. Effective management of these threat factors often requires implementation of conservation actions at the ecosystem scale to enhance or restore critical ecological processes and provide for long-term viability of those species in their native environment. Thus, by taking this approach, we hope to not only organize this final rule effectively, but also to more effectively focus conservation management efforts on the common threats that occur across these ecosystems, restore ecosystem function for the recovery of each species, and provide conservation benefits for associated native species, thereby potentially precluding the need to list other species under the Act that occur in these shared ecosystems.

We are listing each of the 48 species endemic to the island of Kauai addressed in this rule as an endangered species. These 48 species (45 plants, 2 birds, and 1 picture-wing fly) are found in 6 ecosystem types: lowland mesic, lowland wet, montane mesic, montane

wet, dry cliff, and wet cliff (Table 1). Although most of these species are restricted to a single ecosystem, some are found in multiple ecosystems. For each species, we identified and evaluated those factors that threaten the species and that may be common to all of the species at the ecosystem level. For example, the degradation of habitat by feral ungulates is considered a threat to each species within each ecosystem. As a result, this threat factor is considered to be a multiple ecosystem-level threat, as each individual species within each ecosystem faces a threat that is essentially identical in terms of the nature of the impact, its severity, its imminence, and its scope. We further identified and evaluated any threat factors that may be unique to certain species, and do not apply to all species under consideration within the same ecosystem. For example, the threat of avian malaria is unique to the two birds in this final rule, but is not applicable to any of the other species in this final rule. We have identified such threat factors, which apply only to certain species within the ecosystems addressed here as species-specific threats.

TABLE 1.—THE 48 KAUAI SPECIES AND THE ECOSYSTEMS UPON WHICH THEY DEPEND

Ecosystem	Species
Lowland Mesic	Plants: <i>Canavalia napaliensis</i> , <i>Chamaesyce eleanoriae</i> , <i>Chamaesyce remyi</i> var. <i>remyi</i> , <i>Charpentiera densiflora</i> , <i>Doryopteris angelica</i> , <i>Dubautia kenwoodii</i> , <i>Labordia helleri</i> , <i>Pittosporum napaliense</i> , <i>Platydesma rostrata</i> , <i>Psychotria hobdyi</i> , <i>Tetraplasandra bisattenuata</i>
Lowland Wet	Plants: <i>Chamaesyce remyi</i> var. <i>kauaiensis</i> , <i>Chamaesyce remyi</i> var. <i>remyi</i> , <i>Charpentiera densiflora</i> , <i>Cyanea eleeleensis</i> , <i>Cyanea kolekoleensis</i> , <i>Cyanea kuhliewa</i> , <i>Cyrtandra oenobarba</i> , <i>Dubautia imbricata</i> ssp. <i>imbricata</i> , <i>Labordia helleri</i> , <i>Melicope paniculata</i> , <i>Melicope puberula</i> , <i>Phyllostegia renovans</i> , <i>Platydesma rostrata</i> , <i>Pritchardia hardyi</i> , <i>Stenogyne kealiae</i> , <i>Tetraplasandra bisattenuata</i> , <i>Tetraplasandra flynnii</i>
Montane Mesic	Plants: <i>Chamaesyce remyi</i> var. <i>remyi</i> , <i>Diellia mannii</i> , <i>Labordia helleri</i> , <i>Myrsine knudsenii</i> , <i>Myrsine mezii</i> , <i>Platydesma rostrata</i> , <i>Psychotria grandiflora</i> , <i>Stenogyne kealiae</i> , <i>Tetraplasandra flynnii</i> Animals: Akekee, Akikiki, <i>Drosophila sharpi</i>
Montane Wet	Plants: <i>Astelia waialealae</i> , <i>Chamaesyce remyi</i> var. <i>remyi</i> , <i>Dryopteris crinalis</i> var. <i>podosorus</i> , <i>Dubautia kalalauensis</i> , <i>Dubautia waialealae</i> , <i>Geranium kauaiense</i> , <i>Keysseria erici</i> , <i>Keysseria helenae</i> , <i>Labordia helleri</i> , <i>Labordia pumila</i> , <i>Lysimachia daphnoides</i> , <i>Melicope degeneri</i> , <i>Melicope puberula</i> , <i>Myrsine mezii</i> , <i>Phyllostegia renovans</i> , <i>Platydesma rostrata</i> , <i>Psychotria grandiflora</i> , <i>Tetraplasandra flynnii</i> Animals: Akekee, Akikiki, <i>Drosophila sharpi</i>
Dry Cliff	Plants: <i>Chamaesyce eleanoriae</i> , <i>Lysimachia scopulensis</i> , <i>Schiedea attenuata</i> , <i>Stenogyne kealiae</i>
Wet Cliff	Plants: <i>Chamaesyce remyi</i> var. <i>kauaiensis</i> , <i>Chamaesyce remyi</i> var. <i>remyi</i> , <i>Cyanea dolichopoda</i> , <i>Cyrtandra oenobarba</i> , <i>Cyrtandra paliku</i> , <i>Dubautia plantaginea</i> ssp. <i>magnifolia</i> , <i>Lysimachia iniki</i> , <i>Lysimachia pendens</i> , <i>Lysimachia venosa</i> , <i>Platydesma rostrata</i> , <i>Pritchardia hardyi</i>

Under the Act, we are required to designate critical habitat to the maximum extent prudent and determinable concurrently with the publication of a final determination that a species is endangered or threatened. In this rule, we are designating critical habitat for 47 of the 48 Kauai species.

We have determined that the designation of critical habitat is not prudent for one species of native palm tree due to the increased threat of collection that may result from such designation. The designation of critical habitat for the other 47 Kauai species is organized by common ecosystem.

Although critical habitat is identified for each species individually, we have found that the conservation of each depends, at least in part, on the successful functioning of the commonly shared ecosystem. Each critical habitat unit identified in this final rule therefore contains the physical and

biological features essential to the conservation of each species and those areas that are essential for the conservation of each associated species.

Where the unit is not occupied by a particular species, we believe it is essential for the conservation of that species because it provides the physical and biological features necessary for the expansion of populations in the wild. All of the areas designated constitute critical habitat for multiple species, based upon the species' shared habitat requirements. The identification of critical habitat also takes into account any species-specific physical and biological features necessary for the conservation of that species as appropriate. For example, the presence of specific host plants for larval development is essential for the conservation of the picture-wing fly *Drosophila sharpi*, but is not a requirement shared by all species within the same ecosystem.

This approach represents a departure from our previous approaches to designating critical habitat for endangered and threatened species in Hawaii, which focused on discrete areas occupied by the species at the time of listing. Because Hawaii has 330 species listed under the Act, the previous approach to critical habitat designations resulted in an overlapping patchwork of critical habitat areas that could be confusing to the public to interpret. More importantly, we have learned that many native Hawaiian plants and animals currently occupy areas of marginal habitat because the threats are reduced in those areas, but these species can thrive when reintroduced into historical habitats when threats are being effectively managed. For this reason, we believe it is important to designate unoccupied habitat in those cases where it is essential to the recovery of the species and a designation limited to its present range would be inadequate to ensure the conservation of the species (50 CFR 424.12 (e)).

We believe the approach adopted in this final rule will make critical habitat in Hawaii a more useful conservation tool for land managers. Focusing on the management and restoration of habitat at the ecosystem scale and on ecosystem processes that these species require will result in more effective conservation than a designation based solely on the locations of the last few known individuals. In addition, we believe this approach will aid recovery given the uncertainties of climate change and other processes that may impact highly localized habitat conditions and features essential to the conservation of the

species in the future. Critical habitat areas for multiple species may also better provide for the recovery of these species by guiding our conservation efforts as well as those of our partners, and by providing better information to the public and other entities about important conservation areas.

The Island of Kauai

The island of Kauai is the northernmost and oldest of the eight major Hawaiian Islands (Foote *et al.* 1972, p. 3). It was formed about 6 million years ago by a single shield volcano and is 553 square miles (sq mi) (1,430 sq kilometers (km)) in area. The island is characterized by deeply incised canyons and steep ridges (Department of Geography 1998, p. 151). The large caldera, once the largest in the Hawaiian Islands, now extends about 10 mi (16 km) in diameter and comprises the elevated tableland of the Alakai Swamp (Department of Geography 1998, p. 151). To the west of the Alakai Swamp is the deeply incised Waimea Canyon, extending 10 mi (16 km) in length and up to 1 mi (1.6 km) in width. Later volcanic activity on the southeastern flank of the volcano formed the smaller Haupu caldera. Subsequent erosion and collapse of its flank formed Haupu Ridge (Macdonald *et al.* 1983, p. 457).

The amount of rainfall on the Hawaiian Islands depends greatly on topography, and the orographic (mountain-caused) effect is revealed by the wide range in the pattern of annual rainfall, from 10 inches (in) to 450 in (25 centimeters (cm)) to 1,145 cm (Giambelluca and Schroeder 1998, p. 59). Variations in the landscape can create microclimates, with large changes in rainfall and wind patterns over very short distances (Wagner *et al.* 1999, p. 43). Mount Waialeale, Kauai's second highest point at 5,148 feet (ft) (1,569 meters (m)) in elevation (Walker 1999, p. 21) is one of the wettest spots on earth, with annual rainfall measured at more than 450 in (1,145 cm) (Department of Geography 1998, p. 151). One of the island's most famous features is the Na Pali Coast, where stream and wave action have cut deep valleys and eroded the land to form precipitous cliffs as high as 3,000 ft (914 m) (Joesting 1984, p. 14).

The current soil classification system for the Hawaiian Islands distinguishes soil types based on their measurable physical and chemical properties, and environmental factors that influenced their formation. These characteristics include fertility, climate zone, degree of weathering, composition and arrangement of horizons (soil layers),

and the soil's developmental history. Eleven of the 12 described soil orders have been reported in Hawaii (Gavenda *et al.* 1998, p. 96). Hawaii's basaltic rocks decompose to clay and various oxides and hydroxides when exposed to the weather in high rainfall areas. Silica and other elements are leached out, leaving the iron oxides, which are conspicuously red in color and very evident in the eroded cliffs of Waimea Canyon. These red soils support plant life, and have low fertility and nutrient content (Walker 1999, p. 32). The soils in drier areas lack significant organic material and are characterized by deposits, called caliche, of soluble salts near the soil surface. Caliche may form concretions (solid mass or coalescence) around plant roots and stems (Walker 1999, p. 32).

Because of its age and relative isolation, levels of floristic diversity and endemism are higher on Kauai than on any other island in the Hawaiian archipelago. However, the vegetation of Kauai has undergone extreme alterations because of past and present land use. Land with rich soils was altered by the early Hawaiians and, more recently, converted to agricultural use (Gagne and Cuddihy 1999, p. 45) or pasture. Intentional and inadvertent introduction of alien plant and animal species has also contributed to the reduction in range of the native vegetation on the island of Kauai. (Throughout this rule, the terms "alien," "feral," "nonnative," and "introduced" all refer to species that are not native to the Hawaiian Islands.) Most of the taxa included in this rule persist on steep slopes, precipitous cliffs, valley headwalls, and other regions where unsuitable topography has prevented urbanization and agricultural development, or where inaccessibility has limited encroachment by nonnative plant and animal species.

Kauai Ecosystems

The six Kauai ecosystems that support the species addressed in this final rule are described in the following sections..

Lowland Mesic

The lowland mesic ecosystem includes a variety of grasslands, shrublands, and forests, generally below 3,000 ft (914 m) elevation, that receive between 50 and 75 in (127 and 191 cm) of annual rainfall, or in otherwise mesic substrate conditions (The Nature Conservancy (TNC) 2006b). In the Hawaiian Islands, this ecosystem is found on Hawaii, Maui, Molokai, Lanai, Oahu, and Kauai, on both windward and leeward sides of the islands. On Kauai, this ecosystem is typically found

on the western slopes of the island (Gagne and Cuddihy 1999, p. 75; TNC 2006b). Biological diversity is high in this system (TNC 2006b), and 11 of the 48 species included in this final rule are reported from this ecosystem (Hawaii Biodiversity and Mapping Program (HBMP) 2007; The Nature Conservancy of Hawaii (TNCH) 2007).

Lowland Wet

The lowland wet ecological system is generally found below 3,000 ft (914 m) elevation on the windward sides of the main Hawaiian Islands, except Kahoolawe and Niihau (Gagne and Cuddihy 1999, p. 85; TNC 2006c). These areas include a variety of wet grasslands, shrublands, and forests that receive greater than 75 in (191 cm) of annual precipitation, or are found in otherwise wet substrate conditions (TNC 2006c). On Kauai, this system is best developed in wet valleys and slopes adjacent to the summit plateau of Waialeale and Alakai (TNC 2006c). According to TNC, biological diversity is high in this system (TNC 2006c), and 17 of the 48 species included in this final rule are reported from this ecosystem (HBMP 2007; TNCH 2007).

Montane Mesic

A variety of natural communities (e.g., grasslands, shrublands, and forests) are found in the montane mesic ecological system. This system is found between 3,000 and 6,600 ft (914 and 2,012 m) elevation in areas receiving 50 to 75 in (127 to 191 cm) of precipitation yearly (TNC 2006e). The montane mesic system is found on the islands of Hawaii, Maui, Molokai, and Kauai. On Kauai, this system is best developed on the west-facing slopes. The upper elevation for the montane mesic system on Kauai is constrained by the maximum elevation on the island (5,243 ft (1,598 m)). Biological diversity is ranked as moderate in the montane mesic system, according to TNC (TNC 2006e), and 12 of the 48 species included in this final rule are reported from this ecosystem (HBMP 2007; TNCH 2007).

Montane Wet

The montane wet ecological system is composed of natural communities (grasslands, shrublands, forests, bogs) found at elevations between 3,000 and 6,600 ft (914 and 2,012 m) and in areas where annual precipitation is greater than 75 in (191 cm) (TNC 2006f). The upper elevation for the montane wet system on Kauai is constrained by the maximum elevation on the island (5,243 ft (1,598 m)). This system is found on all of the main Hawaiian Islands except

Niihau and Kahoolawe (TNC 2006f). On Kauai it is best developed in the summit plateau of Waialeale and Alakai. In this system, biological diversity is moderate to high (TNC 2006f), and 21 of the 48 species included in this final rule are reported from this ecosystem (HBMP 2007; TNCH 2007).

Dry Cliff

The dry cliff ecological system is composed of vegetation communities occupying steep slopes (greater than 65 degrees) in areas that receive less than 75 in (191 cm) of rainfall annually, or in otherwise dry substrate conditions (TNC 2006a). This system is found on all of the main Hawaiian Islands except Niihau, and on the island of Kauai is best developed in the leeward canyons. A variety of grasslands and shrublands occur within this system (TNC 2006a). Biological diversity is low to moderate in this system (TNC 2006a), and 4 of the 48 species included in this final rule are reported from this ecosystem (HBMP 2007; TNCH 2007).

Wet Cliff

The wet cliff ecological system is generally composed of grasslands and shrublands on near-vertical slopes (greater than 65 degrees) in areas that receive more than 75 in (191 cm) of annual precipitation, or that are in otherwise wet substrate conditions (TNC 2006d). This system is found on the islands of Hawaii, Maui, Molokai, Lanai, Oahu, and Kauai. On Kauai, this system is typically found on the windward cliffs adjacent to Waialeale (TNC 2006d). Biological diversity is low to moderate in this system (TNC 2006d), and 11 of the 48 species included in this final rule are reported from this ecosystem (HBMP 2007; TNCH 2007).

Description of the 48 Species

Here we provide a brief description of each of the 48 species, presented in alphabetical order by genus; plants are presented first, followed by animals.

Plants

Astelia waialealae (painiu), an herb in the Asteliaceae family, occurs in bogs and on bog hummocks (low mounds or ridges of vegetation) dominated by *Metrosideros polymorpha* (ohia) in the montane wet ecosystem at elevations between 4,000 and 5,000 ft (1,220 and 1,525 m) (Wagner *et al.* 1999, p. 1461; TNCH 2007). *Astelia waialealae* was known historically from five locations in the Alakai Swamp region of Kauai (Wagner *et al.* 1999, p. 1461; HBMP 2007). Between October and December 1994, botanists from the National Tropical Botanical Garden (NTBG) and

the U.S. Fish and Wildlife Service (Service) undertook a systematic survey of bogs on the island of Kauai, revisiting all of the historically known locations of *A. waialealae*, as well as 16 additional bogs. At that time, *A. waialealae* was confirmed to exist in three bogs. One bog, known as Sincok Bog 1, contained 3 *Astelia* clumps with 3 individuals in one, 5 in another, and possibly 10 in the third, for a total of 18 individuals.

Sincok Bog 2 contained two clumps, with one individual in each, and Waikoali Bog, or Circle Bog, contained two clumps with one individual in each (Perlman and Wood 1995, pp. 9–11). In 1996 and 1997, both Sincok Bog 1 and Sincok Bog 2 were fenced, followed by Circle bog in 1998. Regular monitoring of these bogs commenced, and with protection from the fences, there was an increase in numbers of clumps and individuals of *A. waialealae* found in all three bogs. By 2001, the numbers of clumps (and individuals) reached their peaks of 5 clumps (9 individuals) for Circle bog, 6 clumps (36 individuals) for Sincok Bog 1, and 2 clumps (7 individuals) for Sincok Bog 2. By 2003, numbers of individuals began dropping dramatically, with visible signs of poor health for those remaining (USFWS Kauai monitoring database 2008). Some individuals were removed at that point for preservation in local propagation facilities. Currently, there are 16 individuals, possibly representing 6 genetically distinct plants (Service 2005a; Wood 2006, pp. 8–9; USFWS Kauai monitoring database 2008; Wood 2008).

Canavalia napaliensis (awikiwiki), a climbing plant in the pea family (Fabaceae), occurs in open sites, on talus slopes, and on gulch bottoms in mesic forest in the lowland mesic ecosystem, at elevations between 20 and 1,900 ft (6 and 579 m) (Wagner and Herbst 1999, p. 654; TNCH 2007). *Canavalia napaliensis* was historically known from 12 locations along the northwestern coast of the island of Kauai, extending westward from Haena to Makaha ridge (HBMP 2007). Currently, this species is restricted to a small section of the Na Pali coast from Haena to Kalalau Valley (S. Perlman, pers. comm. 2000; HBMP 2007), in 5 populations totaling approximately 106 to 206 individuals (HBMP 2007). The populations are located in Hoolulu Valley (50 to 100 individuals); Waiahuaka Valley (1 individual); Pohakuao (5 individuals); Kalalau Valley (50 to 100 individuals); and Limahuli Valley (1 individual) (Wagner and Herbst 1999, p. 654; HBMP 2007). *Chamaesyce eleanoriae* (akoko), a small shrub in the spurge family

(Euphorbiaceae), is restricted to steep, north-facing, narrow ridge crests, outcrops, and steep rocky slopes and upper portions of basalt cliffs in the dry cliff and lowland mesic ecosystems (Lorence and Wagner 1996, p. 68; K. Wood, NTBG 2007a; TNCH 2007). Documented habitats include *Metrosideros-Diospyros* (ohia-lama) mesic forest, *Metrosideros* cliff shrubland, *Metrosideros* mesic shrubland, and *Eragrostis variabilis* (kawelu) coastal dry cliffs, at elevations between 885 and 3,499 ft (270 and 1,036 m) (HBMP 2007). *Chamaesyce eleanorae* was historically known from 10 populations totaling fewer than 500 individuals (K. Wood 2007a; Lorence and Wagner 1996, pp. 68–70). Currently, three populations are known: one at the Kalalau Valley rim between 2,950 and 3,200 ft (900 and 975 m), below and between the two Kalalau lookouts; one at Alealau above Kalalau at 3,100 ft (945 m) elevation; and one at Pohakuao, an isolated hanging valley northeast of Kalalau, at elevations from 886 to 2,592 ft (270 to 790 m). As of the last monitoring visit in 2001, these 3 populations combined totaled fewer than 50 individuals (NTBG 2007).

Chamaesyce remyi var. *kauaiensis* (akoko), a shrub in the spurge family (Euphorbiaceae), is found in the lowland wet and wet cliff ecosystems in *Metrosideros polymorpha* wet forest at elevations between 1,900 and 2,297 ft (579 and 700 m) (Koutnik 1999, pp. 613–614; HBMP 2007; TNCH 2007). Little is known about the historical range of this species; however, two collections made on private lands at Kaholuamano and near Hanapepe Falls in 1916 and 1926, respectively, indicate that its range likely extended south and west from its currently known locations on the island of Kauai (HBMP 2007). Currently, *C. remyi* var. *kauaiensis* is found in Lumahai Valley, Wainiha, Wailua River, the “Blue Hole” at the head of Wailua River in the Lihue-Koloa forest reserve, and at Iliiliula (K. Wood, pers. comm. 2005a; HBMP 2007). Based on surveys conducted from 2000 through 2004, the number of individuals at Lumahai Valley dropped from 50 to only “occasional.” The number of individuals at Wailua River dropped from 500 to 200; the number of individuals at the Wainiha population increased from 200 to as many as 700; about 200 are found at “Blue Hole”; and a population of 20 individuals was found in Iliiliula (K. Wood, pers. comm. 2005a; HBMP 2007). The total number of individuals is at least 920 and possibly over 1,000 in the 5 populations.

Chamaesyce remyi var. *remyi* (akoko) is a vine-like shrub in the spurge family (Euphorbiaceae) found in the lowland mesic, lowland wet, wet cliff, montane mesic, and montane wet ecosystems in mesic to wet *Metrosideros polymorpha-Dicranopteris linearis* (ohia-uluhe) forest, at elevations between 1,200 and 4,100 ft (366 and 1,250 m) (Wood 1998; Koutnik 1999, pp. 613–614; HBMP 2007; TNCH 2007). This species is historically known from widely distributed populations on the island of Kauai (HBMP 2007). Currently *C. remyi* var. *remyi* is found in 10 populations totaling a little more than 350 individuals at Pohakupili, Makaleha, Malamamaiki, Limahuli, Lumahai, Limahuli-Hanakapiai, Kalalau-Honopu, Koaie canyon, Wahiawa drainage, and Puu Kolo (Wood 1998; K. Wood, pers. comm. 2005a; HBMP 2007).

Charpentiera densiflora (papala) is a tree in the amaranth family (Amaranthaceae) which occurs primarily in the lowland mesic ecosystem, with one record from the lowland wet ecosystem (Wagner *et al.* 1999, p. 190; HBMP 2007; TNCH 2007). This species is found in moist, closed areas, and grows along drainages and in gulches in valleys, primarily in *Diospyros-Metrosideros* (lama-ohia) mixed mesic forest, at elevations between 400 and 2,200 ft (122 and 671 m) (HBMP 2007). Historically, *C. densiflora* was found along the Kalalau trail in the Hoolulu Valley, with limited distribution in three valleys (including Hanakapiai and Hanakoa) along the Na Pali Coast of Kauai (Sohmer 1972, p. 294). Currently, 7 populations are known, totaling approximately 400 individuals, in Hanakapiai, Kalalau, Limahuli, Hoolulu, and Waihuakua valleys, and in Pohakuao, a hanging valley between Kalalau and Hanakoa (HBMP 2007).

Cyanea dolichopoda (haha) is a shrub in the bellflower family (Campanulaceae). It is found in *Metrosideros polymorpha* lowland wet shrubland on a cliff face at approximately 2,300 ft (700 m) elevation within the wet cliff ecosystem (Lammers and Lorence 1993, p. 432; TNCH 2007). The species was first discovered in 1990 in the “Blue Hole” area below Mt. Waialeale, and the plant was last seen in 1992 (Lammers and Lorence 1993, pp. 431–432). However, additional individuals are very likely to be found in the extremely steep habitat with additional surveys (S. Perlman 2007).

Cyanea eleleensis (haha) is a shrub in the bellflower family (Campanulaceae) and is reported from the lowland wet ecosystem (Lammers 1992, p. 129; TNCH 2007). It was found

growing in a shaded gulch in wet forest, surrounded by steep, precipitous cliffs of Pali Elele, at an elevation of 699 ft (213 m) (HBMP 2007; Lammers 1992, p. 129). This species was discovered in Wainiha Valley on the island of Kauai in 1977, in one population noted as “fewer than 10” individuals (Lammers 1992, p. 129; K. Wood, pers. comm. 2000; HBMP 2007). Collections for genetic storage and ex situ (off site) propagation were not made at the time of the 1977 discovery. Since its discovery in 1977, subsequent surveys for this species have not been conducted in the original (type) location. Although individuals of this species were not observed in surveys conducted in August 2001 and June 2002 in areas adjacent to the original location, much of the suitable habitat (*Metrosideros* lowland wet forest) for this species on Kauai has not been surveyed. If surveys are conducted, additional individuals are likely to be found (S. Perlman and K. Wood, pers. comm. 2007).

Cyanea kolekoleensis (haha), a shrub in the bellflower family (Campanulaceae), occurs in wet *Metrosideros polymorpha* forest in the lowland wet ecosystem at elevations of 2,125 to 2,500 ft (650 to 765 m) (Lammers 1992, p. 130; HBMP 2007; TNCH 2007). First discovered in 1987 in the Wahiawa drainage, the last known *C. kolekoleensis* was observed in 1992. Seeds were in storage and propagation for this species was attempted, but none survived (M. Clark, NTBG 2007; Lyon Arboretum 2007). However, there are many areas within the ecosystem type in the Wahiawa drainage that have not been surveyed for this species, from Mt. Kahili to Kapalaoa and the Hanapepe Valley rim, and species experts are confident that additional individuals will be found (S. Perlman 2007).

Cyanea kuhihewa (haha), a shrub in the bellflower family (Campanulaceae), is reported from *Metrosideros polymorpha-Dicranopteris linearis* wet forest at an elevation of 1,680 ft (512 m) in the lowland wet ecosystem (Lammers 1996, pp. 238–240; HBMP 2007; TNCH 2007). In a 1994 survey for *C. kuhihewa*, seven individuals were observed, most of which were damaged by a nonnative insect, the two-spotted leafhopper (*Sophonia rufofacia*) (NTBG Provenance Report 1994). In 2001, only one individual plant remained, which was observed dead in 2003 (Wood *et al.* 2002, p. 3; S. Perlman, pers. comm. 2003a). Prior to that time, seeds and tissue were collected for genetic storage and propagation; however, this species is no longer in storage or propagation (Wood *et al.* 2002, p. 3; Bender 2006, p. 1; N. Sugii, Lyon Arboretum, pers.

comm. 2006; V. Pence, Cincinnati Zoo and Botanical Garden, pers. comm. 2007; D. Burney, NTBG, pers. comm. 2009). Much of the suitable habitat (*Metrosideros* lowland wet forest) for this species on Kauai has not been surveyed.

Cyrtandra oenobarba (haiwale) is a subshrub (a low-growing woody shrub or perennial with a woody base) in the African violet family (Gesneriaceae) that occurs in the lowland wet and wet cliff ecosystems (Wagner *et al.* 1999, pp. 770–771; TNCH 2007). *Cyrtandra oenobarba* is found on wet slopes, mossy areas, or in rock crevices near waterfalls in *Metrosideros polymorpha*-*Dicranopteris linearis* wet cliffs, forest, and shrubland, at elevations between 1,320 and 2,800 ft (402 and 853 m) (Wood 1998, p. 3; HBMP 2007). Historically, wide-ranging collections were made of *C. oenobarba* on the island of Kauai, from the eastern side at Kekoiki ridge, the northern coast at Haena, the south-central area at Olokele and Hanapepe, and from the south at Haupu (NTBG Provenance Report 1993; HBMP 2007). Currently, populations of *C. oenobarba* in the Halelea Forest Reserve include east Mamalahoa (10 individuals), north Namolokama (15 to 200 individuals), and Hanalei Valley (scattered) on State land, and upper Lumahai Valley (50 individuals) and Wainiha (100 individuals) on private land (HBMP 2007). Populations of *C. oenobarba* in the Lihue-Koloa Forest Reserve include Wailua River (40 to 50 individuals) on State land, and Ililiula drainage (occasional) and Wahiawa drainage (50 individuals) on private land (HBMP 2007). The 8 populations total 270 to as many as 450 individuals (NTBG Provenance Report 1993; HBMP 2007; Wood 1998, p. 3).

Cyrtandra paliku (haiwale) is a subshrub in the African violet family (Gesneriaceae) that occurs on seeping basalt rock faces of north-facing cliffs dominated by *Metrosideros polymorpha* and *Dicranopteris linearis* in the wet cliff ecosystem, at elevations between 2,200 and 2,800 ft (670 to 850 m). *Cyrtandra paliku* was first discovered in 1993 on the cliffs below Kekoiki, in the Makaleha Mountains of Kauai, where approximately 70 individuals were found (Wagner *et al.* 2001, pp. 150–151; HBMP 2007; TNCH 2007). The species maintained a population of approximately 70 individuals from 1993 through 1999; however, there are currently only 10 known individuals (S. Perlman 2006).

Diellia mannii is a fern in the asplenium family (Aspleniaceae). It is found on a northwest-facing slope just above a gulch bottom in what was likely

Acacia koa (koa)–*Metrosideros polymorpha* dominated montane mesic forest in the past, but which is now a forest dominated by the nonnative *Corynocarpus laevigatus* (karakanut) in the montane mesic ecosystem, at an elevation of 3,450 ft (1,050 m) (Agurauja and Wood 2003, p. 155; HBMP 2007; TNCH 2007). *Diellia mannii* was historically known from one location in the Halemanu area of what is now Kokee State Park, in the northwestern region of Kauai. The species was thought to be extinct since the early 1900s, until 2002 when a single individual was rediscovered (Agurauja and Wood 2003, pp. 154–155; Palmer 2003, p. 120). Currently, the species is known only from this one individual in the southeastern branch of Nawaimaka Stream in the Halemanu Mountains of Kokee State Park (HBMP 2007).

Doryopteris angelica is a fern in the pteris family (Pteridaceae) found in *Acacia koa*–*Metrosideros polymorpha* lowland mesic forest in the lowland mesic ecosystem at elevations between roughly 1,900 and 3,000 ft (579 and 914 m) (HBMP 2007; TNCH 2007). Three populations of fewer than 20 individuals were discovered in 1994, and currently the species is known from approximately 29 to 54 individuals in 5 populations at Awaawapuhi (2 to 3 individuals), Mahanaloa (3 to 6 individuals), Makaha (10 to 20 individuals), Kuia (10 to 20 individuals), and Paaiki (4 to 5 individuals) (NTBG 1998; Wagner [W.H.] *et al.* 1999b, p. 147; Wood 1999, 2000, 2007a; S. Perlman 2006; HBMP 2007).

Dryopteris crinalis var. *podosorus*, a fern in the dryopteris family (Dryopteridaceae), is known from steep to vertical riparian basalt walls within dark seeping drainages in *Metrosideros polymorpha* montane wet forest within the montane wet ecosystem, from 4,000 to 5,100 ft (1,200 to 1,550 m) in elevation (TNCH 2007; Wood 2007a). Historically, this variety was known from the Kokee area, Kawaikoi, and Waialeale (Palmer 2003, p. 139). Currently, 3 populations totaling 32 to 47 individuals are known. The Mohihi population is made up of 10 to 20 individuals, from 15 to 20 individuals comprise the south Kilohana population, and the Waialeale population is known from 7 individuals (Wood 2007a).

Dubautia imbricata ssp. *imbricata* (naenae), a shrub in the sunflower family (Asteraceae), currently occurs in the lowland wet ecosystem, although there are historical records from the montane wet ecosystem as well (Carr

1999, p. 298; TNCH 2007). Occurrence records show that *D. imbricata* ssp. *imbricata* has typically been found in wet *Metrosideros polymorpha* forest and *Metrosideros*, *Oreobolus* (sedge), *Rhynchospora* (kuolohia) bogs at elevations between approximately 2,165 and 3,640 ft (660 and 1,110 m) (HBMP 2007). Historically and currently, *D. imbricata* ssp. *imbricata* is known only from the Wahiawa Mountains of Kauai (St. John and Carr 1981, pp. 198, 201; Carr 1999, p. 298; HBMP 2007). There are approximately 200 individuals at Wahiawa drainage, approximately 1,000 individuals on both sides of the ridge between Hanapepe and Iole, and an estimate of several hundred individuals at Ililiula (K. Wood, pers. comm. 2005a; HBMP 2007). These 3 populations total approximately 1,400 individuals (K. Wood, pers. comm. 2005a; HBMP 2007).

Dubautia kalalauensis (naenae), a shrub or tree in the sunflower family (Asteraceae), is found in the montane wet ecosystem in *Metrosideros polymorpha* wet forest at elevations between 4,000 and 4,050 ft (1,205 and 1,235 m) (Baldwin and Carr 2005, p. 261; TNCH 2007). Historically, this species, as a part of the species *Dubautia laxa*, was known from several locations below the rim of Kalalau Valley in Kokee State Park in the northwestern region of Kauai. Currently, *D. kalalauensis* is found in only one location along the rim of Kalalau Valley near Puu o Kila Lookout and totals 26 individuals (Baldwin and Carr 2005, p. 261).

Dubautia kenwoodii (naenae), a shrub in the sunflower family (Asteraceae), is found in diverse lowland mesic forest in the lowland mesic ecosystem at an elevation of 2,625 ft (800 m) (HBMP 2007; TNCH 2007; Wood 2007b). First described in 1998 as a new species, *D. kenwoodii* is known from one individual found below the western rim of Kalalau Valley, in the northwestern region of Kauai (Carr 1998). This individual was not observed after Hurricane Iniki, and may possibly be extirpated; however, more individuals may be found in future surveys (D. Burney, NTBG, pers. comm. 2009).

Dubautia plantaginea ssp. *magnifolia* (naenae) is a shrub or small tree in the sunflower family (Asteraceae) found in the wet cliff ecosystem (Carr 1999, p. 304; HBMP 2007; TNCH 2007). Typical habitat for this species includes wet cliff and wet forest and shrubland at elevations between 1,542 and 2,395 ft (470 and 730 m) (HBMP 2007). Historically, *D. plantaginea* ssp. *magnifolia* was known from two populations less than 2 mi (3.2 km)

apart in bog habitat in the Alakai Wilderness Preserve and the Na Pali-Kona Forest Reserve on Kauai (HBMP 2007). In 1992, the year that Hurricane Iniki struck Kauai, the only known population at “Blue Hole” at the headwaters of the Wailua River of “a couple hundred” individuals was greatly reduced. Currently, there are approximately 100 individuals (S. Perlman, pers. comm. 2003b).

Dubautia waialealae (naenae) is a dome or tussock-shaped shrub in the sunflower family (Asteraceae) that occurs in bogs in the montane wet ecosystem at elevations between 3,980 and 5,249 ft (1,213 and 1,600 m) (Carr 1999, p. 308; HBMP 2007; TNCH 2007). The type collection was made on the summit of Waialeale in 1909 (Rock 1910, p. 304), but little is known of other historical locations of *D. waialealae* on Kauai. Currently, there is one large population centered on the rain-gauge summit of Waialeale, with many subpopulations radiating about 0.6 mi (1 km) to the north and south. These subpopulations were observed in groups of 7 to 400 individuals (Wood 2006, pp. 25–29), with a total population of 3,000 individuals (Wood 2006, p. 9). In 1994, a single individual of *D. waialealae* was reported at North Bog, 8.5 mi (14 km) away from the population at Waialeale; however, in 2006, it was reported that this individual had died (K. Wood 1994a; M. Brueggemann, pers. comm. 2006b; HBMP 2007).

Geranium kauaiense (nohoanu) is a decumbent (reclining) subshrub in the geranium family (Geraniaceae) (Wagner *et al.* 1999, p. 733). It occurs in the montane wet ecosystem in *Metrosideros-Rhynchospora* bogs and bog margins at elevations between 4,000 and 4,080 ft (1,219 and 1,463 m) (Wagner *et al.* 1999, p. 733; HBMP 2007; TNCH 2007). Historically, *G. kauaiense* was known from montane bogs on the island of Kauai, ranging from North Bog to as far south as the summit of Waialeale (HBMP 2007). Currently, there are 3 subpopulations within a very small range (within 0.5 mi, 0.8 km) in the Halehaha Bogs of the Alakai Wilderness Preserve totaling approximately 140 individuals, and 3 individuals at the Waialeale Summit Bog (K. Wood 1994b; S. Perlman, pers. comm. 1999b; Wood 2006, p. 10; HBMP 2007; Wood 2008).

Keysseria erici is a herb in the sunflower family (Asteraceae) that occurs in *Metrosideros* mixed bogs in the montane wet ecosystem, at elevations between 4,000 and 5,120 ft (1,219 and 1,561 m) (Mill 1999, pp. 329–330; HBMP 2007; TNCH 2007).

Little is known of the historical occurrences of *K. erici*. The type was collected by Forbes (1918, p. 306) from the “Alakai swamp, Waimea drainage basin” on Kauai. Currently, this species is found in three to four populations totaling several thousand individuals (HBMP 2007). The populations occur at Namolokama, Hanakapiai-Wainiha ridge, In-between Bog, and at the Kilohana bogs (including Rain Gauge Bog, T Bog, and Platanthera Bog) (HBMP 2007).

Keysseria helenae is an herb in the sunflower family (Asteraceae) and is found in *Metrosideros polymorpha* or mixed sedge and grass bogs at elevations between 3,900 and 5,120 ft (1,189 and 1,561 m) in the montane wet ecosystem (Mill 1999, p. 330; HBMP 2007; TNCH 2007). Little is known of the historical occurrences of *K. helenae*. The type was collected from the “swamp near Kaholuamano” by Forbes (1918, p. 306). Currently, this species is found at Kauluwehi Bog in the Alakai Wilderness Preserve, at Waialeale, and on Kahili-Kawaikini Ridge, totaling approximately 300 individuals (K. Wood, pers. comm. 2003b; HBMP 2007).

Labordia helleri (kamakahala) is a shrub, sometimes climbing, in the logania family (Loganiaceae) (Wagner *et al.* 1999, pp. 856–857). It occurs in *Metrosideros-Acacia-Dicranopteris* mesic to wet forest, at elevations between 1,200 and 3,900 ft (366 and 1,189 m), in the lowland mesic, lowland wet, montane mesic, and montane wet ecosystems (HBMP 2007; TNCH 2007). Historically, *L. helleri* was wide-ranging on Kauai. Collections were made as far south as the Haupu Mountains, through central Kauai to the northwestern coast (HBMP 2007). Currently, there are 10 populations totaling 350 to 550 individuals. The largest population extends from the Na Pali Kona Forest Reserve into Kuia Natural Area Reserve (NAR), and contains 300 to 500 individuals at Honopu, Awaawapuhi, Kuia drainage, and Kalalau-Milolii ridge. Other much smaller populations occur at upper Mahanaloa (10 individuals), Limahuli (recorded as “occasional” in HBMP database), Waioli (1 individual), Kaunuohua ridge (1 individual), Kohua ridge (1 individual), Koaie stream (10 individuals), Kawaiiki (3 individuals), southeast Puu Kolo (recorded as “localized” in HBMP database), and Puu Kolo-Kahuamoia (1 individual) (HBMP 2007).

Labordia pumila (kamakahala), a shrub in the logania family (Loganiaceae), occurs in the montane wet ecosystem at elevations between 3,478 and 5,100 ft (1,060 to 1,555 m) in *Metrosideros polymorpha* mixed sedge

and grass bogs (Wagner *et al.* 1999, p. 860; HBMP 2007; TNCH 2007). Little is known of the historical locations of *L. pumila* on Kauai. The type specimen was collected by Wawra (1869, 1870) at the summit of Waialeale. Currently, *L. pumila* is found in three populations on the Alakai plateau. The largest population along the Wainiha rim totals 500 individuals (HBMP 2007). There are also about 300 to 400 individuals at the summit of Waialeale, and occasional individuals at Namolokama (Wood 2006, p. 10). The total number of known individuals from all 3 populations is 800 to 900; however, one estimate suggests that the overall population in the summit areas may be as high as 5,000 to 6,000 individuals (Wood 2006, p. 10).

Lysimachia daphnoides (lehua makanoe), a member of the myrsine family (Myrsinaceae), is found in *Metrosideros polymorpha* mixed bogs on hummocks, at elevations between 3,960 and 4,440 ft (1,207 and 1,353 m) in the montane wet ecosystem (Marr and Bohm 1997, p. 265; Wagner *et al.* 1999, p. 1,080; HBMP 2007; TNCH 2007). Historically, *L. daphnoides* was known from the more southerly mountains of Kauai, including the Wahiawa drainage and ridges, in what is now the Lihue-Koloa Forest Reserve (HBMP 2007). Currently, this species is found in the Alakai Wilderness Preserve and the Na Pali Kona Forest Reserve, in 3 populations totaling 200 to 300 individuals (HBMP 2007; Service 2005a). The population along the Alakai swamp trail (including Charlie’s Bog, Kilohana, south Kilohana, and northwest Kilohana) totals 190 to 280 individuals; the second population includes Sincok Bog 1 and Kauluwehi (21 individuals); and the third population occurs at Waiakoali-Mohihi and Mohihi drainage (7 individuals) (HBMP 2007).

Lysimachia iniki is a woody shrub in the myrsine family (Myrsinaceae) that occurs on wet, mossy, or rocky cliffs in the wet cliff ecosystem at 2,400 ft (720 m) (Marr and Bohm 1997, pp. 270–271; TNCH 2007). This species was first described in 1997 from material collected in the “Blue Hole” at the headwaters of the Wailua River on Kauai. At the time it was discovered it was known from 26 individuals, and currently at least 40 individuals are known (Marr and Bohm 1997, pp. 270–271; S. Perlman 2006, 2007).

Lysimachia pendens is a many-branched shrub in the myrsine family (Myrsinaceae) and is reported from wet, mossy, or rocky cliffs in the wet cliff ecosystem at 2,400 ft (720 m) (Marr and Bohm 1997, p. 275; TNCH 2007). This

species was discovered in the “Blue Hole” area of Kauai in 1987 from several small populations totaling approximately 100 individuals (Marr and Bohm 1997, p. 275; DOFAW 2005 [Comprehensive Conservation Wildlife Strategy]). Many plants were destroyed by two major landslides that apparently occurred between 1997 and 2003, based on information taken from field survey reports. Currently, the species is known from only eight individuals (S. Perlman 2003, 2006, and 2007).

Lysimachia scopulensis, a shrub in the myrsine family (Myrsinaceae), is found on cliffs in lowland diverse mesic forest pockets at elevations between 2,950 and 3,200 ft (900 and 975 m) within the dry cliff ecosystem (Wood 2007d; TNCH 2007). First discovered in 1991 in Kalalau Valley, this species is currently known from two populations. The Kalalau population is comprised of approximately 15 individuals and the Puu Kii population is comprised of 10 to 15 individuals, for a total of 25 to 30 individuals (Marr and Bohm 1997, pp. 283–284; Wood 2007d).

Lysimachia venosa, a shrub in the myrsine family (Myrsinaceae), occurs in *Metrosideros polymorpha* dominated wet forest areas in the wet cliff ecosystem, at elevations between 3,000 and 5,700 ft (915 and 1,740 m) (Marr and Bohm 1997, p. 284; Wood 2006, p. 11; TNCH 2007). *Lysimachia venosa* was known historically from two collections in the early 1900s from the Waialeale summit region of Kauai (Marr and Bohm 1997, p. 284; Wagner *et al.* 1999, p. 1,085; HBMP 2007). In 1991, a broken branch of this species was collected from the headwaters of the Wailua River that had fallen from the cliffs above, possibly from the summit area of Waialeale (Wood 2006, p. 11; Marr and Bohm 1997, p. 284). While no plants were found during surveys of the summit area in 2006, there is still additional habitat to be surveyed, and species experts believe *L. venosa* still exists (S. Perlman 2007; Wood 2006, p. 11).

Melicope degeneri (alani) is a small shrub or tree in the rue family (Rutaceae) that occurs in the montane wet ecosystem in *Metrosideros-Cheirodendron-Dicranopteris* wet forest between the elevations of 3,000 and 3,800 ft (914 and 1,158 m) (Stone *et al.* 1999, p. 1186; HBMP 2007; TNCH 2007). *Melicope degeneri* was thought to be extinct until it was rediscovered in Pohakuao, just beyond the northwest corner of the Hono o Na Pali NAR, in 1993 (Wood 2000, p. 6), and subsequently observed in upper Hanakoa in 1995 and along Koaie Stream in 1999 (NTBG Accession Data

1999). The Pohakuao individual has not been relocated since its discovery (Wood 2000, p. 5). Ten trees were originally documented during the discovery of the Hanakoa population in 1995 (Wood 2000, p. 4; Wood 2007 pp. 4–6). Since 1995, 2 of the trees have died and 3 additional individuals were located, for a current total of 11 individuals at Hanakoa (S. Perlman 2007c; N. Tangalin 2007a). One small mature individual of *M. degeneri* was found growing in Koaie Canyon’s upper drainage in 1999, and was last observed there in September of 2006 (K. Wood, pers. comm. 2007b). A new population of 9 individuals was found in Wainiha Valley, bringing the total known number of *M. degeneri* to 22, or possibly 23, known individuals (Wood 2008).

Melicope paniculata (alani) is a tree in the rue family (Rutaceae) (Stone *et al.* 1999, p. 1,199). It occurs in the lowland wet ecosystem in forests dominated by *Metrosideros polymorpha*, at elevations between 1,200 and 2,680 ft (365 and 815 m) (Stone *et al.* 1999, p. 1,199; HBMP 2007; TNCH 2007). This species was historically reported from central Kauai (HBMP 2007; Stone *et al.* 1999, p. 1,199). Currently, *M. paniculata* is known from 6 sites, with 5 individuals in upper Limahuli Valley, 3 individuals along the north fork of the Wailua River, 1 to 5 individuals along Koaie Stream, and 3 individuals on the ridge between Hulua and Kapalaoa. The population in Lumahai Valley is estimated to be approximately 100 to 200 individuals; however Bender (2006, p. 7) estimated that there may be a total of 500 individuals (Wood 1998, p. 4; Stone *et al.* 1999, p. 1,199; Wagner and Herbst 2003, p. 45; HBMP 2007).

Melicope puberula (alani) is a shrub or small tree in the rue family (Rutaceae) that occurs in the lowland wet and montane wet ecosystems in wet forest and bogs at elevations ranging between 2,080 and 4,100 ft (634 and 1,250 m) (Stone *et al.* 1999, p. 1,202; HBMP 2007; TNCH 2007). Historically, *M. puberula* was known from the Alakai Swamp on the island of Kauai (St. John 1944b, p. 266). Currently, this species is known from the south rim of Kalalau east to the Alakai-Kilohana plateau area, and north into Hono o Na Pali NAR (HBMP 2007). The Hawaii Biodiversity and Mapping Program delineated these three areas as one population (referred to as the Kalalau-Wainiha population) (HBMP 2007). In 1993, a single individual was observed near Hinaelele Falls in the southern portion of the Wainiha Mountain Range (HBMP 2007). The largest population occurs in the Alakai-Kilohana Plateau area with approximately 600 individuals. About

100 individuals are found within the Kalalau area, and approximately 200 individuals occur within the Hono o Na Pali NAR, for a total of approximately 900 individuals (HBMP 2007).

Myrsine knudsenii (kolea) is a small tree in the myrsine family (Myrsinaceae). Historically, the species may have been found in lowland mesic and lowland wet ecosystems, but currently it is only known from *Acacia koa-Metrosideros polymorpha-Dicranopteris linearis* mesic forest at elevations between 3,200 and 3,900 ft (975 and 1,200 m) in the montane mesic ecosystem (Wagner *et al.* 1999, p. 941; Wood *et al.* 2002, p. 15; HBMP 2007; TNCH 2007). Historically, *M. knudsenii* was found in Hanapepe Valley in south-central Kauai; Kawaiula Trail in western Kauai; and Awaawapuhi, Kumuwela, Honopu, and Nualolo in the Kokee region of the island of Kauai (Wagner *et al.* 1999, p. 941). Currently, the species is known from 3 populations totaling approximately 30 individuals at Honopu, Awaawapuhi, and Nualolo (S. Perlman 2007; Wood *et al.* 2001, p. 10; Wood *et al.* 2002, p. 15; HBMP 2007; Wood 4907 (BISH)).

Myrsine mezii (kolea), a small tree in the myrsine family (Myrsinaceae), is found in *Acacia-Metrosideros* forest in the montane mesic and montane wet ecosystems at elevations between 3,380 and 3,480 ft (1,030 and 1,060 m) (Wagner *et al.* 1999, p. 943; HBMP 2007; NTBG Accession Data 9888, 2002; TNCH 2007). *Myrsine mezii* is known from only two locations totaling five individuals, in the Koaie Canyon area of western Kauai (N. Tangalin 2007b). Four trees comprise one population at Nawaimaka, and the second known occurrence at Kawaiiki is composed of a single tree in poor condition (N. Tangalin 2007b). The population size has not changed in the last 10 years, and historical locations and numbers are unknown.

Phyllostegia renovans, a subshrub in the mint family (Lamiaceae), occurs at elevations from 2,700 to 3,700 ft (225 to 1,125 m) in *Metrosideros polymorpha* wet forest in the lowland wet and montane wet ecosystems (HBMP 2007; TNCH 2007). First discovered in 1989 in the headwaters of the Wainiha River, this species is currently known from 6 populations: approximately 30 surviving individuals reintroduced into Limahuli Valley after the last wild individual from that area died, 23 individuals at Wainiha, 10 individuals at Kalalau Valley, 1 individual in Lumahai Valley, 1 individual at Kapalaoa, and 1 individual at the headwaters of Kamooloa Stream (K. Wood 1994, p. 4; Wagner 1999, p. 275;

HBMP 2007, D. Burney, NTBG, pers. comm. 2009).

Pittosporum napaliense (hoawa) is a small tree in the pittosporum family (Pittosporaceae) typically found in *Pandanus* and lowland mesic forest in the lowland mesic ecosystem, at elevations between 400 and 2,100 ft (122 and 640 m) (Wagner *et al.* 1999, pp. 1045–1047; HBMP 2007; TNCH 2007). Historically, *P. napaliense* was known from northwestern Kauai (Wagner *et al.* 1999, p. 1047; HBMP 2007). Currently, this species is known from 3 populations; two of which are located within the Hono o Na Pali NAR in Waiahuakua (50 individuals) and Hoolulu valleys (100 individuals), with the third population (10 to 50 individuals) located in upper Kalalau Valley in the Na Pali Coast State Park (HBMP 2007).

Platydesma rostrata (pilo kea lau lii) is a shrub in the rue family (Rutaceae). It occurs in the lowland mesic, lowland wet, wet cliff, montane mesic, and montane wet ecosystems, in forest dominated by *Acacia koa* and *Metrosideros polymorpha*, at elevations between 2,500 and 4,000 ft (760 and 1,220 m) (Stone *et al.* 1999, p. 1210; HBMP 2007; TNCH 2007). *Platydesma rostrata* was historically known from Makaha and Milolii ridge in the Na Pali Kona Forest Reserve, and Kaunuohua ridge and Nualolo trail in Kokee State Park, on the island of Kauai (HBMP 2007). Currently, this species is found in the Na Pali Kona Forest Reserve on the Awaawapuhi and Honopu trails; in Halelea Forest Reserve at Lumahai; in Hono o Na Pali NAR at Pihea; in Kunia NAR on the Nualolo Trail; in Mahanaloa and Kuia valleys; and in the Lihue-Koloa Forest Reserve at Pohakupele, Hulua, Kapalaoa, and Iliiliula Valley (HBMP 2007). These small populations total approximately 100 individuals (HBMP 2007).

Pritchardia hardyi (loulou) is a tree in the palm family (Arecaceae) that occurs in the lowland wet and wet cliff ecosystems (Read and Hodel 1999, p. 1370; TNCH 2007). It is found in *Metrosideros-Dicranopteris* wet forest and shrubland and on windswept windward ridges and headwater drainages, at elevations between 1,800 and 3,400 ft (548 and 1036 m) (Read and Hodel 1999, p. 1370; HBMP 2007). Historically, *P. hardyi* was known from a single population totaling about 200 individuals in an area on the southeast (windward) side of Kauai (HBMP 2007). An additional population totaling about 100 individuals was found north of that area (NTBG Provenance Report 040094), bringing the total number of known

individuals of *P. hardyi* to approximately 300.

Psychotria grandiflora (kopiko) is a small tree or shrub in the coffee family (Rubiaceae) that occurs in the montane mesic and montane wet ecosystems (K. Wood 2007a; TNCH 2007). It is found in *Acacia-Metrosideros* mesic to wet forest between the elevations of 3,400 and 4,100 ft (1,128 and 1,250 m) (HBMP 2007). Historically, this species was known from collections at Waimea, Kokee, and Kalalau, all from the northwestern area of Kauai (Fosberg 1964, p. 258). Currently, 10 small populations of *P. grandiflora* are found only within Kokee State Park, and are estimated to total between 16 and 30 individuals (Arnold 2007, pp. 1–3; HBMP 2007; S. Perlman 2007d; N. Tangalin 2007c).

Psychotria hobdyi (kopiko) is a tree in the coffee family (Rubiaceae) that occurs in lowland *Acacia koa-Metrosideros polymorpha* mesic forest in the lowland mesic ecosystem at elevations between 1,700 and 2,700 ft (520 and 825 m) (Wagner *et al.* 1999, pp. 1166–1168; HBMP 2007; TNCH 2007). The first collection of *P. hobdyi* was made in Mahanaloa Valley on Kauai in 1970 (St. John 1975, p. 59). Currently, this species is known from 10 populations totaling approximately 120 individuals in the following locations: 1 population of 2 individuals in Kawaiula Valley; 1 population of approximately 5 individuals at the junction of Mahanaloa Valley and Kuia Valley; 3 populations totaling approximately 47 individuals in Mahanaloa Valley; 2 populations of 17 to 22 individuals in Paaiki Valley; 2 populations of approximately 39 individuals in Poopooiki Valley; and 1 population in upper Kalalau Valley of approximately 10 individuals (HBMP 2007).

Schiedea attenuata, a shrub in the pink family (Caryophyllaceae), occurs on cliffs at elevations between 2,297 and 2,625 ft (700 and 900 m) in the dry cliff ecosystem (Wagner *et al.* 1994, pp. 187–190; TNCH 2007). *Schiedea attenuata* was discovered in 1991 by K. Wood during a rappel on the cliffs in an area of precipitous slopes above the Kalalau Valley on Kauai. Approximately 20 individuals were last observed there in 1994 (M. Bruegmann 1994b; Wagner *et al.* 1994, p. 187; Wagner *et al.* 2005, pp. 45–47).

Stenogyne kealiae is a trailing or scandent vine in the mint family (Lamiaceae) (Wagner and Weller 1991, p. 51). It occurs in the dry cliff, lowland wet, and montane mesic ecosystems, in *Metrosideros polymorpha* forest, *M. polymorpha-Acacia koa* forest, and *M. polymorpha-Dicranopteris linearis*

shrubland, at elevations between 3,550 and 4,100 ft (1,082 and 1,250 m) (Wagner and Weller 1991, p. 51; TNCH 2007). One population (Wainiha), however, is reported between 2,231 and 2,707 ft (680 and 825 m) elevation (HBMP 2007). Historically, this species occurred at Pohakupili near Kealia in the Kealia Forest Reserve on the island of Kauai. Currently, this species occurs at Honopu, Kalalau, Malamalamaiki, Pohakupili, and Wainiha. The 5 populations of *S. kealiae* total approximately 100 to 200 individuals (HBMP 2007).

Tetraplasandra bisattenuata (ohe ohe) is a tree in the ginseng family (Araliaceae), which occurs in lowland mesic to wet forest and shrubland in the lowland mesic and lowland wet ecosystems at elevations between 1,800 and 2,000 ft (550 and 610 m) (TNCH 2007; Wood 2007f, pp. 1–5). This species is known only from the Haupu and Kahili regions of Kauai. Currently, 35 individuals are found at Mt. Haupu and 2 individuals are at Mt. Kahili (Wood 2007f, p. 1).

Tetraplasandra flynnii (ohe ohe) is a tree in the ginseng family (Araliaceae) found in *Metrosideros polymorpha* (ohia) montane mesic to wet forest in the lowland wet, montane mesic, and montane wet ecosystems, at elevations between 2,600 and 4,000 ft (793 and 1,225 m) (Lowry and Wood 2000, p. 42; HBMP 2007; TNCH 2007). Three individuals of *T. flynnii* were first discovered in 1988 near Kahuamaa Flat in Kokee State Park, and two more individuals were found in the late 1990s at Kapalaoa-Kamooloa (Lowry and Wood 2000, pp. 40 and 43; HBMP 2007; D. Burney, pers. comm. 2009).

Animals

Akikiki

The Kauai creeper or akikiki (*Oreomystis bairdi*), is a small Hawaiian honeycreeper found only on the island of Kauai, currently in the montane mesic and montane wet ecosystems (TNCH 2007; E. VanderWerf, pers. comm. 2009). The Hawaiian honeycreepers are in the subfamily Drepanidinae of the finch family, Fringillidae (AOU 1998, p. 676). The akikiki is most common in forests dominated by *Metrosideros polymorpha* with a diverse subcanopy (Scott *et al.* 1986, p. 139). Based on surveys conducted from 1968 through 1973, its distribution was thought to encompass 21,750 ac (88 sq km) at elevations between 1,968 and 5,248 ft (600 and 1,600 m), but a survey in 2000 indicated its distribution had decreased to 8,896 ac (36 sq km) (Scott *et al.* 1986, p. 141;

Tweed *et al.* 2005, pp. 3–4). The akikiki generally forages on trunks, branches, and twigs of live and dead trees, and occasionally forages in subcanopy shrubs. It feeds primarily on insects, insect larvae, and spiders gleaned and extracted from bark, lichens, and moss (Foster *et al.* 2000, p. 4). Nests are made of moss, small pieces of bark, bits of lichen, and fine plant fibers (Eddinger 1972, p. 673; Foster *et al.* 2000, p. 7; VanderWerf and Roberts, 2008, pp. 195–199). The akikiki was considered common from high to low elevation in native forests in the late 1800s (Perkins 1903, p. 54), and was described as locally abundant on and near the Alakai Plateau in the early 1960s (Richardson and Bowles 1964, p. 29). From 1968 to 1973, the species was estimated to number $6,832 \pm 966$ birds (Sincock *et al.* 1983, p. 53). In 1981, data from the Hawaii Forest Bird Survey indicated there were approximately $1,650 \pm 450$ akikiki in a 9.7 sq mi (25 sq km) area of the southeastern Alakai, in the vicinity of Sincock's Bog (Scott *et al.* 1986, p. 141). The current population of the akikiki is estimated to be $1,312 \pm 530$ birds, based on surveys conducted in April and May 2007 (DOFAW and U.S. Geological Survey (USGS), unpubl. data, 2007). The abundance of the akikiki has thus declined by approximately 80 percent in the last 40 years, and its distribution has been reduced to less than half of its former extent.

Akekee

The Kauai akepa or akekee (*Loxops caeruleirostris*), is a small forest bird found only on the island of Kauai. Like the akikiki, the akekee is also a Hawaiian honeycreeper in the subfamily Drepanidinae of the Fringillidae family (AOU 1998, p. 677). The akekee occurs in the montane mesic and montane wet ecosystems in forests dominated by *Metrosideros polymorpha*, *Acacia koa*, *Cheirodendron trigynum*, and *C. platyphyllum* (Lepson and Pratt 1997, p. 4; TNCH 2007). The akekee uses its bill to open flower and leaf buds while foraging for arthropod prey (insects, insect larvae, spiders), and is a specialist on the ohia tree (*M. polymorpha*) (Lepson and Pratt 1997, p. 4). Nests are made of moss and lichen, with the nest lining made of fine grasses and soft bark strips (Eddinger 1972, p. 97; Berger 1981, p. 140; Lepson and Freed 1997, pp. 11–12). Until recently, the population of akekee appeared to be relatively stable, even while other endemic Kauai birds demonstrated sharp declines (Lepson and Pratt 1997, p. 14). The akekee was described as “quite plentiful” (Bryan and Seale 1901,

p. 136) and common “over a large part of the high plateau” in the late 1800s (Perkins 1903, p. 417), and probably occurred throughout upper elevation forested regions of the island (Perkins 1903, p. 417). Richardson and Bowles (1964, p. 30) reported that it was fairly common in higher elevation forests. Conant *et al.* (1998, p. 16) reported that the akekee was common in the area around Sincock's Bog in 1975 and observed it daily. The first quantitative information on population size and distribution was based on extensive surveys conducted from 1968 to 1973, which yielded an island-wide population estimate of $5,066 \pm 840$ birds, with most individuals found in the Alakai Plateau area, west to Kokee, and on Makaleha Mountain and in Wainiha Valley (Sincock *et al.* 1983, p. 53). This was followed by population estimates of $7,839 \pm 704$ birds in 2000, and $5,669 \pm 1,003$ birds in 2005 (Hawaii Division of Forest and Wildlife and USGS, unpubl. data 2007). The most recent surveys, conducted in April and May 2007, show the current population of akekee to be $3,536 \pm 1,030$ birds (Hawaii Division of Forest and Wildlife and USGS, unpubl. data 2007), indicating that the population has dropped to less than half its former size within the last 7 years. The geographic range occupied by the akekee was approximately 34 sq mi (88 sq km) in 1970 (Scott *et al.* 1986, p. 155), which was reported not to have changed in 2000 (Foster *et al.* 2004, p. 721). However the 2007 surveys failed to find the species in many areas where it had previously been observed, indicating that there has likely been a range contraction, although the extent of that contraction is not yet known.

Drosophila sharpi

In our October 21, 2008, proposed rule, we proposed to list *Drosophila attigua* as endangered in accordance with the taxonomic treatment of Hardy and Kaneshiro (1969, p. 41). Following publication of our proposal, one of our peer reviewers, Karl Magnacca, Trinity College, Dublin Ireland, informed us of a recent taxonomic revision in which *D. attigua* was found to be identical to, and was synonymized with, *D. sharpi*, a species described and published by Grimshaw in 1901 (Grimshaw 1901, p. 65; Magnacca and O'Grady 2008, p. 55). For this reason, the synonymy of *D. attigua* with *D. sharpi* is currently accepted by the scientific community and by the Service, and is used throughout this rule.

Drosophila sharpi, a large species of Hawaiian picture-wing fly, occurs in wet forest in the montane mesic and

montane wet ecosystems at elevations generally between 3,000 and 3,936 ft (914 and 1,200 m), although the species was historically found as low as 2,460 ft (750 m). Like most picture-wing flies, the adult flies are believed to be generalist microbivores (microbe eaters) and feed upon a variety of decomposing plant material. The host plants for *D. sharpi* are unknown, but Montgomery (1975, p. 99) has determined that its sibling species, *D. primaeva*, lays its eggs within the decomposing bark of native *Cheirodendron* sp. (olapa) and *Tetraplasandra* sp. trees (both in the family Araliaceae), where the hatching larvae complete development before dropping to the soil to pupate (Kaneshiro and Kaneshiro 1995, p. 14). For this reason, the host plants for *D. sharpi* are believed to be species of native *Cheirodendron* and *Tetraplasandra*.

Drosophila sharpi was first collected by Perkins in 1895 at “Koholuamano,” a location that is unknown today but is believed to be on the Alakai plateau (Grimshaw 1901, p. 65). *Drosophila sharpi* was historically known from two populations on the island of Kauai: one population south of the Alakai massif at Mt. Kahili where 19 males and 13 females were observed (Hardy and Kaneshiro 1969, p. 41; Kaneshiro and Kaneshiro 1995, p. 13; HBMP 2007), and a second population on the western end of the Alakai Swamp in the Na Pali Kona Forest Reserve at Pihea (K. Kaneshiro, pers. comm. 2007). We have no information regarding any observations of this species at Mt. Kahili since 1969. The species was also collected at two other locations: at Mohihi Stream located within the Alakai Wilderness Preserve in 1963, and at the Kokee Stream within Kokee State Park in 1991 (Kaneshiro and Kaneshiro 1995, p. 14). Observations of *D. sharpi* at the Pihea site have been somewhat sporadic, as the species has been observed there only three times, once each in 1986, 1987, and most recently in 1991, despite numerous surveys (HBMP 2007; K. Kaneshiro, pers. comm. 2007; K. Magnacca, Trinity College, pers. comm. 2007).

Summary of Comments and Recommendations

On October 21, 2008, we published a proposed rule to list these 48 Kauai species as endangered throughout their ranges, and to designate critical habitat for 47 of these species (73 FR 62592). The comment period for that proposal opened on October 21, 2008, and closed on December 22, 2008. During the comment period, we received 21 comment letters. We did not receive any

requests for public hearings. Nine comments were from peer reviewers, four were from State of Hawaii agencies, two were from Federal agencies, and six were from nongovernmental organizations or individuals. Due to the nature of the proposed rule, we received combined comments from the public on both the listing action and the critical habitat; we have therefore addressed these issues in a single comment section.

Eight of the comment letters supported the listing and designation of critical habitat for the Kauai species. Of the other 13 comments, 12 provided information or declined to oppose or support the listings and critical habitat designation, and 1 opposed the listing of the picture-wing fly. One commenter requested that we exclude 2,795 ac (1,131 ha) (representing portions of 6 different critical habitat units) based on the benefits of ongoing conservation activities on private land. We reviewed all comments received for substantive issues and new information regarding the proposed listing and critical habitat designation for the Kauai species. We have fully considered all substantive comments in this final rule.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from 24 knowledgeable individuals with scientific expertise on the 48 Kauai species and their habitats, including familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received responses from nine peer reviewers; eight comments generally supported our methodology and conclusions; five comments supported the listing and designation of critical habitat for the Kauai species; three comments provided new information on one or more of the 48 species; and one comment did not support the listing and designation of critical habitat for the picture-wing fly. We summarize the peer reviewers' comments below, and we took them into consideration in developing this final rule.

We have categorized the peer review comments and our responses by: (1) Those that are general in nature; (2) those related to threats and the proposed listing of the species, and (3) those related to the proposed designation of critical habitat.

General Peer Reviewer Comments

(1) *Comment:* One peer reviewer suggested that we publish diacritical

marks for the Hawaiian language in the published rule.

Our response: In this final rule we omitted diacritical marks because we cannot ensure that they will be printed properly. We recognize the importance of using the marks to accurately portray the pronunciation and meaning of Hawaiian words and regret not being able to use them. In a previous proposed rule (66 FR 30372, June 6, 2001) we attempted to use Hawaiian language diacritical marks, but there were numerous conversion errors and the marks were not printed correctly. In our published correction to that proposal (66 FR 46428, September 5, 2001) we stated that we would either ensure that the marks are used correctly or eliminate their use altogether. Current printing constraints have forced us to choose the latter option.

(2) *Comment:* One peer reviewer commented that the **Federal Register** was a bit obscure for the general public and that the U.S. Fish and Wildlife Service should publish notices of upcoming **Federal Register** documents in the local newspapers.

Our response: The publication of our rules and notices related to listing and critical habitat in the **Federal Register** is required by section 4(b)(5)(A)(i) of the Act and the Administrative Procedure Act (5 U.S.C. Subchapter II); however section 4(b)(5)(D) of the Act requires that we publish a summary of the proposed regulation in a newspaper of general circulation in each area of the United States in which the species is believed to occur. Our practice is to publish this newspaper notice within 20 days of publication of the proposed rule. This allows for publication of the newspaper notice before the 45-day time limit for requesting public hearings has expired and provides ample time for readers to provide comment. In accordance with this practice, we published notices of this proposed regulation in the following local newspapers: *Honolulu Advertiser* (Oahu) (October 27, 2008), *Garden Island* (Kauai) (October 31, 2008), and *Star Bulletin* (Oahu) (November 5, 2008).

(3) *Comment:* One peer reviewer was uncertain whether "tribal lands" as referred to in the "Government-to-Government Relationship with Tribes" section of the proposed rule were the same as native Hawaiian lands.

Our response: The President's Memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments, and the Department of Interior's Manual at 512 DM 2, set forth our responsibility to communicate

meaningfully with federally recognized Native American tribes on a government-to-government basis and identify potential effects on trust resources of federally recognized tribes. Federally recognized tribe means an Indian or Alaska Native tribe or community that is acknowledged as an Indian tribe under the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a. In the list published annually by the Secretary, there are no federally recognized tribes in the State of Hawaii (73 FR 18553, April 4, 2008). Therefore, while we value information on the effects of this rule on the interests of Native Hawaiians, Native Hawaiian lands are not tribal lands for purposes of the requirements of the President's Memorandum or the Department Manual.

Peer Review Comments on Threats and Listing the Kauai Species

(4) *Comment:* One peer reviewer stated that if Factor A (the present or threatened destruction, modification, or curtailment of habitat or range) is identified as a primary threat attributable to pigs, goats, or deer in Table 2, which summarizes the primary threats identified for each of the 48 Kauai species, predation by ungulates under Factor C (disease or predation) should also be identified as a primary threat attributable to those animals.

Our response: We have persuasive evidence that feral ungulates substantially modify or destroy habitat; however, we can only occasionally infer that they consume parts of or entire plants or animals based on indications of their presence. A study conducted in the 1980s on the feeding habits of feral pigs on Maui found that their rooting was related to foraging for earthworms. In that study, rooting depths averaged 8 in (20 cm), greatly disrupting the leaf litter and topsoil layers, which contributed to erosion and changes in ground topography (Diong 1982, pp. 150, 164–165). While foraging for earthworms, feral pigs may uproot and dislodge plants, contributing to habitat degradation of understory vegetation (Factor A), but they may not feed directly on plants that are disturbed by their activity. Where we have direct confirmation or evidence of predation by feral ungulates on a particular species, it has been identified as a threat under Factor C in Table 2.

Peer Reviewer Comments-Akekee and Akikiki

(5) *Comment:* One reviewer commented that the use of puaiohi (*Myadestes palmeri*) as a surrogate

species is somewhat inappropriate, and that the Maui creeper (*Paroreomyza montana*), the Hawaii akepa (*Loxops occineus coccineus*), or both would represent better surrogate species.

Our response: We believe the puaiohi, an endangered bird that inhabits the same areas on Kauai as the akikiki and akekee, is an appropriate surrogate species for akikiki and akekee when considering threats of predation by rats and owls (see below). The puaiohi nests primarily on cliff faces and utilizes habitat along stream margins more so than the akikiki and akekee. However, the puaiohi is exposed to predation pressures from introduced mammalian and avian predators in a manner similar to that expected for akikiki and akekee, since they occur in the same habitat areas on Kauai. Although we do not have direct evidence of rat predation on the akekee or akikiki from nest studies, we believe it is reasonable to assume that birds nesting in the same area as the puaiohi would likely be exposed to similar impacts from rat predation.

(6) **Comment:** One commenter noted that both bird species would benefit from ungulate removal throughout their habitat, which would reduce threats presented by the spread of invasive plants and avian disease transmitted by mosquitoes.

Our response: Feral ungulates (pigs, goats, black-tailed deer) on Kauai present a significant threat to the six ecosystems addressed in our proposed rule and their associated native species, including the akikiki and akekee. The presence of nonnative feral ungulates is considered to be a primary factor in the alteration and degradation of native vegetation and habitats throughout the Hawaiian Islands. Each of our recovery plans for species that occur in ecosystems similar to the six identified in this final rule recommend ungulate control, fencing, or both as a priority tasks necessary to conserve native Hawaiian plant and animal species.

(7) **Comment:** One reviewer commented that although rats and cats are important predators for some Hawaiian bird species, there is no data to suggest that either are major threats to the akikiki or akekee.

Our response: Rats and cats have been identified as significant predator threats to other Hawaiian forest bird species (also see our response to comment 28). Although we do not have direct evidence of rat and cat predation on the akikiki and akekee, we believe these predators are a potential threat to both birds on Kauai for the reasons stated in our October 2008 proposal. We have modified our discussion of rat and cat predation threats on the akikiki and

akekee in this final rule. The biology of the akikiki has been little studied and predation on adults and nests has not been documented, but several introduced mammals known to be major predators on Hawaiian forest birds are present in the Alakai swamp on Kauai, where akikiki occur (Tweed *et al.* 2006, p. 759). Black rats (*Rattus rattus*), Polynesian rats (*R. exulans*), Norway rats (*R. norvegicus*), feral cats (*Felis catus*), the native short-eared owl (pueo, *Asio flammeus sandwichensis*), and the introduced barn owl (*Tyto alba*), are known to prey on forest passerines (Snetsinger *et al.* 1994, p. 47). Long-term protection of many Hawaiian birds, including the akikiki and akekee, likely will require large-scale management actions to control nonnative predators, including rats and feral cats.

(8) **Comment:** One peer reviewer commented that the nonnative yellow-jacket wasp (*Vespula pensylvanica*) is a threat to the akikiki and akekee, as it presents significant competition for arthropod food (e.g., insects, insect larvae, and spiders).

Our response: The nonnative yellow-jacket wasp may impact the akikiki and akekee through competition for the same native insect food resources, although we have no direct evidence in this regard. Both the akikiki and akekee feed primarily on insects, insect larvae, and spiders (Lepson and Pratt 1997, p. 4; Foster *et al.* 2000, p. 4). Each yellow-jacket wasp colony in Hawaii can produce over a half-million foragers that consume tens of millions of arthropods, including native insects, larvae, and spiders (Gambino and Loope 1992, p. 19). Controlling or eliminating negative effects associated with resource competition with yellow-jacket wasps is identified as a recovery action in our *Revised Recovery Plan for Hawaiian Forest Birds* (USFWS 2006, p. 4–4, 4–85). The akikiki is one of the bird species included in this recovery plan, although it was only a candidate for listing at the time the plan was written. Although the akekee is not specifically covered by the plan, the recovery actions identified in the *Revised Recovery Plan for Hawaiian Forest Birds* should benefit all native forest bird species in the Hawaiian Islands since all of these birds face similar threats, regardless of whether they were listed at the time the recovery plan was published. The control of yellow-jacket wasps is one of those broad recovery actions that will benefit native forest bird species beyond those specifically addressed in the recovery plan.

(9) **Comment:** One peer reviewer commented that stream margins, rather than pig wallows, may support higher

levels of *Culex* mosquitoes, which are a disease vector for avian pox and malaria.

Our response: In Hawaii, the mechanisms of avian disease transmission include movements of mosquitoes infected with avian disease from lower to higher elevations, as well as mosquitoes breeding in pig wallows and along stream margins at higher elevations. Mosquitoes that breed in forest bird habitats may become infected by biting infected birds, continuing the disease transmission cycle. The relative contribution of mosquitoes breeding in pig wallows versus along stream margins with regard to mosquito vector prevalence on Kauai is unknown. Investigating this uncertainty and developing effective management actions will be identified as a priority task during the recovery planning process.

Peer Reviewer Comments-Drosophila sharpi (*D. attigua* in the proposal)

(10) **Comment:** One peer reviewer commented that the proposed rule does not present independent data or assumptions with which to evaluate risks to *Drosophila sharpi*, nor credible scientific evidence that the species is or is not endangered.

Our response: We disagree. Since 1963, a multidisciplinary team of biologists has been researching *Drosophila* as part of the University of Hawaii-affiliated Hawaiian *Drosophila* Project. Over 500 scientific papers have been published as a result of this program, and over 500 species of *Drosophila* have been taxonomically described. The information we relied on to prepare this rule included peer reviewed publications, unpublished literature, and other communications from research and field studies covering a period of over 40 years of Hawaiian *Drosophila* research. This final rule is also based on new information that was obtained in response to the publication of the proposed rule. Systematic surveys for the picture-wing fly species and host plants would assist with understanding population trends and status. However, as required by section 4(b)(1)(A) of the Act, we have relied on the best scientific and commercial data available on habitat threats and trends in distribution for the species in making our determination in this final rule.

(11) **Comment:** One peer reviewer stated that surrogate species for *Drosophila sharpi* were not made explicit.

Our response: We have clarified in this final rule that our conclusions regarding adult feeding habits, egg laying and larval host plant preferences,

and direct threats are drawn from similar, related species including the 12 Hawaiian picture-wing flies listed in 2006 as endangered or threatened (71 FR 26835, May 9, 2006).

(12) *Comment*: One peer reviewer commented that biocontrol agents are inappropriately implied to be threats to *Drosophila sharpi*, that there is even evidence to the contrary, and that the listing of *D. sharpi* would delay permitting for new biocontrol agents.

Our response: In the *Application of the Adverse Modification Standard* section of the proposed rule, we stated that importing nonnative species for research, agriculture, and aquaculture, and releasing biological control agents, may adversely affect critical habitat. Under Factor C (Disease or Predation), we also stated that parasites have been purposefully imported and released in Hawaii since 1865 for biological control of pests. Between 1890 and 2004, 387 nonnative species were introduced, sometimes with the specific intent of reducing populations of native Hawaiian insects (Funasaki *et al.* 1988, pp. 109–110, 143; Lai 1988, pp. 180, 186; Staples and Cowie 2001, pp. 41, 54–57). Nonnative arthropods present a serious threat to Hawaii's native *Drosophila*, both through direct predation or parasitism as well as competition for food and space (Howarth and Medeiros 1989, pp. 82–83; Howarth and Ramsay 1991, pp. 80–83; Kaneshiro and Kaneshiro 1995, pp. 41–45; Staples and Cowie 2001, pp. 41, 54–57). We are aware that compliance with regulations that apply to the introduction of biological control agents may seem complicated to some because of combined Federal and State jurisdiction. However, absent a high level of assurance that only safe and effective biological control agents are introduced, nontarget impacts and host switching could occur (Simberloff and Stiling 1996, pp. 185, 190). We acknowledge the importance of biocontrol as a way to control some nonnative species in Hawaii, particularly nonnative invasive plants that threaten rare native plants through competition for space, light, water, and nutrients, and by degrading and destroying native habitat. We are committed to working closely with the State and other Federal agencies to ensure that potential biocontrol measures are implemented in a manner consistent with the conservation needs of these species.

Peer Review Comments on Critical Habitat Designation

(13) *Comment*: One peer reviewer commented that Table CDLVI (Table of

Protected Species within Each Critical Habitat Unit for Kauai) was confusing, and that the table caption should explain the differences between the columns.

Our response: We agree. We have clarified the table's column headings as requested.

(14) *Comment*: One peer reviewer commented that the designation of critical habitat does not preclude management of ungulates for hunting in those areas.

Our response: We agree. Critical habitat designation does not create a wilderness area, preserve, or wildlife refuge. It does not require nor preclude activities associated with conservation management such as ungulate control and fencing. Game bird and mammal hunting is a recreational and cultural activity in Hawaii that is regulated by the Hawaii Department of Land and Natural Resources on State and private lands (Hawaii Department of Land and Natural Resources 2002). Critical habitat does not give the Federal government authority to control or otherwise manage feral animals on non-Federal land. These land management options continue to be landowner decisions, and absent Federal involvement, are not affected by the designation of critical habitat. However, the designation of critical habitat does impose a responsibility on Federal agencies to consult with us under section 7 of the Act on actions they carry out, fund, or authorize that might destroy or adversely modify critical habitat. This requirement applies to funding provided by the Service to the State through the Federal Aid in Wildlife Restoration Program (Pittman-Robertson Program). It is well-known that game mammals affect listed plant and animal species in Hawaii. We believe it is important to develop and implement management programs that provide for the recovery of listed species and acknowledge the importance of continued ungulate hunting in game management areas. We welcome opportunities to work closely with the State and other partners to ensure that game management programs are implemented in a manner consistent with both of these needs.

(15) *Comment*: One peer reviewer commented that Lowland Wet section 6 may be within the montane, rather than the lowland, ecosystem.

Our response: We followed TNC's Ecoregional Assessment of the Hawaiian High Islands (2006) and ecosystem maps (TNCH 2007) to define ecosystem boundaries in this rule. Following that approach, the proposed Lowland Wet section 6 falls within the lowland wet

ecosystem. This ecosystem type occurs below 3,000 ft (1,000 m); contains wet grassland, shrubland, and forest; receives greater than 75 in (191 cm) annual precipitation; and has wet substrate conditions.

Peer Reviewer Comments-Plants

(16) *Comment*: One peer reviewer commented that Hanakoa Valley should be included in Lowland Mesic section 3, since *Charpentiera densiflora* occurs along the Kalalau trail in that area.

Our response: Although individual *Charpentiera densiflora* plants may occur in the Hanakoa Valley, the reviewer did not present scientific data that we could evaluate to determine whether this area includes the physical and biological features essential to the conservation of the species. Based on our field observations, trail areas are typically disturbed by recreational activity and dominated by nonnative plants.

(17) *Comment*: One reviewer stated that species' previous range is not sufficiently understood, and that historical and paleoecological information indicates that many rare plant species on Kauai had much larger ranges, often in a wide array of habitats. This reviewer acknowledged that the areas proposed as critical habitat were good choices, and recommended that the Service focus funding and protection efforts on the proposed areas rather than proposing additional areas as critical habitat.

Our response: More research is needed to better understand the species' historical range. In our proposed rule, we presented the criteria used to identify critical habitat boundaries (73 FR 62622, October 21, 2008), which were based on the best scientific and commercial data available, including current and historical species' location information. Surveying historical habitat and adjacent, potentially suitable habitat will be a high priority during the recovery implementation process for these species. We acknowledge that critical habitat designated at a particular point in time may not include all of the areas that may later be determined to be necessary for the recovery of the species, as new information becomes available. For this reason, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not promote the recovery of the species.

Peer Reviewer Comments-Akekee and Akikiki

(18) *Comment*: New survey data for the akikiki and akekee is currently being analyzed by the U.S. Geological Survey-

Biological Resources Discipline (USGS-BRD).

Our response: We are aware that recent survey data has been analyzed by the USGS-BRD and is undergoing agency review for publication (Camp *et al.* in press). Information from Camp *et al.* (in press) that was provided during the public comment period indicated that montane mesic habitat proposed as critical habitat for the akekee, several plants, and *Drosophila sharpi* is also occupied by the akikiki and contains the physical and biological features essential to its conservation that may require special management considerations or protection. Based on this new information, we have added 2,976 ac (1,204 ha) of additional montane mesic habitat as critical habitat for the akikiki (*Oreomystis bairdi* Unit 1-Montane Mesic, Unit 2-Montane Mesic, and Unit 3-Montane Mesic). Since this area was already being proposed as critical habitat for other species in the montane mesic ecosystem, adding the akikiki does not change the configuration or amount of critical habitat designated in these units.

(19) *Comment:* Appropriate habitat for the akikiki and akekee (outside of previously surveyed areas) should be surveyed for occurrences.

Our response: There is a broader distribution for akekee than akikiki, and there have been some detections of individual akekee beyond the boundaries of the critical habitat proposed in October 2008 (Camp *et al.* in press, p. 136). However, Camp *et al.* did not present scientific data with which we could evaluate whether these additional areas include the physical and biological features essential to the conservation of the species and are in need of special management. In our *Revised Recovery Plan for Hawaiian Forest Birds* (USFWS 2006, pp. 4–7, 4–118), we state that surveys of potentially suitable habitat for the akikiki and akekee are a priority recovery action for these forest birds. In accordance with section 4(b)(2) of the Act, we may also revise designated critical habitat based on new information, if appropriate.

(20) *Comment:* The proposed critical habitat may not be sufficient for the long-term survival of the species, especially given the impact of global climate change.

Our response: The impact of climate change on the distribution of the akikiki and akekee is a potential concern, but the specific effects of climate change are difficult to predict with confidence. Benning *et al.* (2002, pp. 14248–14249) analyzed the possible contraction of habitat for Hawaii's forest birds, using Hawaii, Maui, and Kauai as models.

Based on their study, they predict that over the next 100 years, the high elevation forest areas that currently serve as a refuge for the birds from mosquito-borne malaria may decrease in size by as much as 85 percent. The authors predict that preventing avian malaria will become the main conservation focus for Hawaiian forest birds, including the akikiki and akekee. Atkinson *et al.* (2009, pp. 58–59) states that without question, the one factor that prevented widespread and rapid extinction of virtually all of Hawaii's endemic and highly susceptible honeycreepers after the introduction of avian malaria and pox was the presence of significant altitudinal gradients on Kauai, Maui, and Hawaii, where susceptible native birds could maintain high populations in relatively disease-free refugia. They also concluded that following a projected 2 degree Celsius (°C) temperature rise resulting from global warming, the Alakai Wilderness Preserve on Kauai would experience an 85 percent loss of forested habitat where transmission is currently highly seasonal to conditions where transmission could occur throughout the year. As new information becomes available, we may revise the critical habitat designation to address climate change if we determine that additional areas are essential to the conservation of the akikiki and akekee.

(21) *Comment:* The units should be expanded so as to be contiguous.

Our response: At this time, we believe that the areas designated as critical habitat in this final rule are sufficient to provide for the conservation of the akikiki and akekee. We did not include all historical habitat or all areas adjacent to occupied habitat. The peer reviewer did not present scientific data, which would be needed to evaluate whether these additional areas are occupied and contain the physical and biological features essential to the conservation of the species or whether the areas need special management considerations or protection, or if unoccupied, are essential to the conservation of the species. We could not conclude from the available data whether or not the previously occupied areas currently support, or even could support in the future, the physical and biological features essential for the conservation of the species.

(22) *Comment:* Additional studies are needed regarding breeding, survival, and habitat needs of the akikiki and akekee.

Our response: We agree. These studies are identified as priority recovery actions for forest birds in the *Revised Recovery Plan for Hawaiian Forest Birds*

(USFWS 2006, pp. 4–96, 4–118), although for the purposes of designating critical habitat we have to rely on the best scientific data available in accordance with section 4(b)(2) of the Act.

(23) *Comment:* Two commenters suggested that critical habitat include all areas where the akikiki and akekee are known to occur, which would extend into areas delineated for the recovery of these species, and that critical habitat for the akikiki should include the montane mesic ecosystem as well as the montane wet ecosystem, although the literature indicates that the akikiki presently is more restricted in distribution than the akekee.

Our response: See our responses to comments 18 and 19 above.

(24) *Comment:* One peer reviewer was concerned that the area of designated critical habitat might not be large enough to provide an adequate mosquito buffer to the habitat areas currently occupied by the akikiki and akekee should disease be determined to be the primary factor in population decline. One peer reviewer stated that it may be useful to expand critical habitat for akekee to minimize the number of smaller isolated habitat patches, thus providing larger tracts of contiguous native forest that are optimal for species persistence and less likely to provide corridors for intrusion of avian disease-carrying mosquitoes and invasion by nonnative plants. The commenter suggested we expand critical habitat Unit 2 so that it abuts Units 1 and 5, expand Unit 5 so that it abuts Unit 4, and expand Unit 3 so that it abuts Unit 4.

Our response: Larger tracts of contiguous forest habitat may slow upslope movements of disease-carrying mosquitoes into areas occupied by akikiki and akekee by reducing the nonforest-forest boundary along which mosquitoes travel or are transported by prevailing winds. Contiguous forest conditions potentially reduce the availability of a transmission vector for avian disease (Reiter and LaPointe 2007, pp. 865–867). On Kauai, the mechanisms for avian disease transmission appear to differ in some respects from transmission on other high Hawaiian Islands. Avian disease transmission vectors on Kauai likely include windblown movements of mosquitoes from lower into higher elevations, as well as mosquitoes that breed in pig wallows and along stream margins (Baker 1975, pp. 75–76; LaPointe 2008, pp. 605–607). Since the avian disease mechanisms are not completely understood on Kauai, the benefits that would result from

expanding critical habitat to establish larger buffer areas to reduce avian disease transmission are uncertain. Investigating this uncertainty will be a priority during the recovery implementation process (USFWS 2006, pp. 4–62, 4–68–82).

Peer Reviewer Comments-Drosophila sharpi (*D. attigua* in the proposal)

(25) *Comment*: One peer reviewer commented that Lowland Wet section 6, south of the Alakai massif, should be designated as critical habitat for the Hawaiian picture wing fly, since the type specimens for *Drosophila sharpi* were collected at Mt. Kahili.

Our response: Information from our files indicates that historically *Drosophila sharpi* was known from two areas on Kauai, and was first collected at Kahili, east of the Alakai massif. Although new information provided by one peer reviewer indicates the 1968 type collections were made at Mt. Kahili, south of the Alakai massif, we have no information with which we can evaluate whether these additional areas contain the physical and biological features essential to the conservation of *D. sharpi* that require special management considerations or protection. Although these areas may contain species of *Cheirodendron* and *Tetraplasandra*, the purported larval host plants, we were unable to conclude from the available data whether the previously occupied areas south of the Alakai massif support or could support the physical and biological features essential to the conservation of *D. sharpi*. Surveying historical habitat sites and adjacent potentially suitable habitat for extant populations of *D. sharpi* and its host plants will be a high priority during the recovery planning process. We may consider revising the critical habitat designation at that time if new information becomes available indicating that these areas are essential to the recovery of this species.

(26) *Comment*: One peer reviewer stated that if the Hawaiian picture-wing fly, *Drosophila sharpi*, uses *Cheirodendron* spp. (olapa) as a food source, the abundance and distribution of this plant should be noted, and that *Cheirodendron* spp. has not been specifically identified as a host plant for *D. sharpi*.

Our response: In the proposed rule we stated that the adult flies are generalist microbivores (microbe eaters) and feed upon a variety of decomposing plant material. Although the larval host plants for *D. sharpi* are not specifically known, they are most likely to be *Cheirodendron* and *Tetraplasandra* species, based on host plant preferences

for *Drosophila primaeva*, a sibling species to *D. sharpi* (Montgomery 1975, p. 99; Kaneshiro and Kaneshiro 1995, p. 14). *Cheirodendron* spp., and to a lesser extent *Tetraplasandra* spp., are known to be widespread components of the native *Metrosideros* (ohia) forest, especially the lowland wet, montane mesic, and montane wet communities (Anderson *et al.* 1992, pp. 308–309; Gagne and Cuddihy, 1999, pp. 88, 90, 91, 98, 102–107), where *D. sharpi* occurs. Our analysis of criteria used to identify critical habitat boundaries included island-wide GIS coverage (e.g., Gap Analysis Program (GAP) vegetation data (2005)), which reflects the spatial distribution of native plants such as *Cheirodendron* and *Tetraplasandra*. We are unaware of any scientific or commercial data on the abundance and distribution of these plant species on Kauai, but agree that further research is needed to determine the specific larval host species of *Drosophila sharpi*.

Public Comments-Akekee and Akikiki

(27) *Comment*: Two commenters suggested that a distinction be made between the threat of predation on the akikiki and akekee by the native owl, pueo, and the introduced barn owl.

Our response: While the threat of predation on Hawaiian forest birds by the pueo and the introduced barn owl has been documented by several authors (Snetsinger *et al.* 1994, p. 47; Snetsinger *et al.* 2005, pp. 79–80; Mounce 2008, pp. 19–21), there are no direct observations or studies specifically related to the akikiki or the akekee. Snetsinger *et al.* (1994, p. 4) reported a higher incidence of bird remains in pueo pellets than in barn owl pellets, but suggested that this may be attributed to prey availability rather than prey preference. On Kauai, Snetsinger *et al.* (2005, pp. 79–80) concluded that 10 percent of puaiohi nest failures may be due to predation by pueo, based on pueo presence near predated nests. On Maui, Mounce (2008, p. 19) reported two observations of depredation by pueo on two Maui forest birds, the Maui parrotbill (*Pseudonestor xanthophrys*) and apapane (*Himatione sanguinea*). The author suggested that in Hanawi Natural Area Reserve, pueo may shift habitat during honeycreeper breeding seasons in response to this more abundant and easily captured food, and therefore, may be more of a threat to native birds than previously thought. Such a shift is speculative at this point.

The pueo is a native predator of forest birds in Hawaii, whereas the native Hawaiian forest birds have not coevolved with the introduced barn owl. However, as stated above, we have

no direct evidence of predation specific to akikiki or akekee by either the pueo or the barn owl, so it is not possible to compare the potential levels of predation between these two predators.

(28) *Comment*: Two commenters stated that predation by feral cats is a threat to the akikiki and akekee, including areas outside of the Alakai Preserve, and that emphasis should be placed on developing effective methods to control predation, with funding and support for active management.

Our response: We do not have direct evidence of feral cat predation on the akikiki and akekee, but believe they are a potential threat for the reasons stated in our October 2008 proposal. The long-term protection of many Hawaiian birds, including the akikiki and akekee, will likely require large-scale control of nonnative predators, including feral cats. This management need is identified as a high priority in the *Revised Recovery Plan for Hawaiian Forest Birds* (USFWS 2006, pp. 2–161, 4–3, 4–52). See also our response to comment 7 for additional discussion of this issue.

(29) *Comment*: One commenter stated that the best scientific evidence indicates that the akikiki and the akekee each should be included in both the montane wet and montane mesic ecosystems; that critical habitat should be designated for each of them in both ecosystems; and the boundaries of some units do not make biological sense for the two bird species and do not appear to agree with descriptions of where the primary constituent elements occur. The commenter also stated that the recovery area identified for the akikiki in the *Revised Recovery Plan for Hawaiian Forest Birds* is considerably larger than the area proposed as critical habitat, and questioned why critical habitat was not designated in other areas where the akikiki or akekee may occur.

Our response: We agree that the habitat requirements of the akikiki and akekee are very similar, and critical habitat for the two bird species should be the same; in this final rule, we have designated critical habitat for the akikiki and akekee in both the montane wet and montane mesic ecosystems (See also our responses to comments 18, 19 and 21, above).

Under section 3(5)(A) of the Act, critical habitat can be designated in areas that were occupied at the time of listing and contain the physical and biological features essential to the species' conservation, and which may require special management considerations; or in areas that were unoccupied at the time of listing but have been determined to be essential to

the conservation of the species. To delineate critical habitat for the akikiki and akekee, we focused on the physical and biological features essential to the conservation of those species, which we consider to be the primary constituent elements laid out in the appropriate quantity and spatial arrangement for the conservation of the species. We relied on information and data obtained from several sources, including peer reviewers and other qualified individuals familiar with these species and ecosystems, to derive the final critical habitat designation for the akikiki and akekee. We also considered the recovery area recommended for the akikiki in the *Revised Recovery Plan for Hawaiian Forest Birds* (USFWS 2006). The akikiki was a candidate species at the time of the plan's publication; the akekee was not addressed in the plan.

The *Revised Recovery Plan for Hawaiian Forest Birds* states that the primary strategy for the recovery of the akikiki is the protection and management of remaining forest on Kauai, especially high elevation montane wet forest above 3,000 to 3,500 ft (900 to 1,060 m) in the Alakai Wilderness Preserve and surrounding State and private lands (USFWS 2006, p. 3-16). Although much of the designated critical habitat overlaps with the recovery area recommended in the *Revised Recovery Plan for Hawaiian Forest Birds*, we did not find that all of the recommended recovery area met our definition of critical habitat in terms of providing the physical and biological features essential for the conservation of the species in the appropriate quantity and spatial arrangement. For example, some of the recovery area identified for the akikiki in the recovery plan has a number of residential cabins and other forms of development, resulting in a fair amount of human activity. We determined that while the birds may use this area on occasion, it is unlikely to be utilized by the species to the extent that the features there may be considered essential to the conservation of the species. An additional area, Laau Ridge, was not included because this area is too small and isolated to support viable populations of the birds, as acknowledged in the recovery plan (USFWS 2006, p. 3-16), although another small isolated area, Namolokama Ridge, was designated as critical habitat since it supports several of the plant species. Some of the recommended recovery area was below the elevation limit that defines the montane wet and montane mesic ecosystems, and hence would harbor mosquito populations that threaten the

two bird species with avian malaria; we are not designating such areas as critical habitat for the akikiki and akekee.

Section 3(5)(C) of the Act specifies "Except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species." The critical habitat designation includes remaining forest areas above the 3,000 ft (914 m) elevation, focusing on the Alakai Wilderness Preserve, as recommended in the *Revised Recovery Plan for Hawaiian Forest Birds*. Although there is limited information available regarding the habitat needs of the akikiki, as acknowledged in the recovery plan (USFWS 2006, p. 3-16), after considering the best available scientific information we have designated critical habitat for the akikiki and the akekee based on providing these species with the physical and biological features essential to their conservation, in the appropriate quantity and spatial arrangement needed for their conservation. However, the Act provides for the revision of this critical habitat designation, if new information should become available indicating that such revision may be appropriate.

Public Comments-Listing and Climate Change

(30) *Comment:* One commenter suggested that any predictions about climate change and its impacts on these species would not meet the listing standard under section 4 of the Act, nor the definition of an endangered species under section 3 of the Act.

Our response: Section 4 of the Act requires that we determine whether any species is an endangered or threatened species based on any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Climate change may lead to changes in the intensity of threats under any of these factors for a species. As with any threat, we evaluate each climate-induced factor for specific effects and determine the magnitude and immediacy of the threat to a species before proposing to list it under the Act. In this final rule, we acknowledge that climate change may be a significant threat to native species on Kauai, that we are not capable of determining the specific effects of probable climate

change on these 48 species at this time, and conclude that at present we are unable to determine the magnitude of this threat with confidence. Although climate change may potentially present a threat in the future, we are not listing any of these 48 species as endangered based on the threat of climate change alone.

Federal Agency Comments

(31) *Comment:* The U.S. Navy, on behalf of the National Aeronautics and Space Administration, requested that we exclude the portions of Kokee Sites D and E that overlap with the proposed critical habitat. They characterized the areas as fenced and developed, and commented that these areas would be unlikely to support any of the 47 species for which critical habitat is proposed.

Our response: We have modified units Lowland Mesic Section 1 and Montane Mesic Section 1 (Kokee Sites D and E) to exclude areas lacking the physical and biological features (primary constituent elements) essential to the conservation of the species, in response to the above comment. Manmade features and structures within the boundaries of the areas mapped as critical habitat, such as buildings, roads, existing fences, telecommunications equipment towers and associated structures and equipment, communication facilities and regularly maintained associated rights-of-way, radars, telemetry antennas, paved areas, and other landscaped areas, existing on the effective date of this final rule do not contain one or more of the primary constituent elements described for any of the 47 proposed species. Accordingly, the text of the rule clarifies that these types of areas are not included in the critical habitat designation, even if they appear to occur within the boundary of a mapped critical habitat unit.

Comments from the State of Hawaii

(32) The State of Hawaii Department of Land and Natural Resources—Land and Engineering Division and State Water Commission's Stream Protection and Management Branch reviewed the proposed rule. Neither agency expressed support or concerns with regard to the proposed listing or designation of critical habitat for the species included in this rule.

Other Public Comments

(33) *Comment:* One commenter stated that because we are designating critical habitat in unoccupied areas, the rule would establish a prohibition against the adverse modification of critical habitat under section 9 of the Act where one would otherwise not exist.

Our response: Except as provided in sections 6(g)(2) and 10 of the Act, with respect to any endangered species of fish or wildlife listed under section 4 of the Act, it is unlawful for any person subject to the jurisdiction of the United States to:

(A) Import or export any such species from the United States;

(B) Take any such species within the United States or the territorial sea of the United States;

(C) Take any such species upon the high seas;

(D) Possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of (B) and (C) above;

(E) Deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(F) Sell or offer for sale in interstate or foreign commerce any such species; or

(G) Violate any regulation pertaining to such species or to any threatened species of fish or wildlife listed under authority provided under the Act.

The Act does not establish a section 9 prohibition against the adverse modification of critical habitat.

(34) *Comment:* One landowner opposed the designation of critical habitat on private lands within Wainiha Valley. They believe the designation will negatively impact the rights of private landowners, and serve as a disincentive for landowners to participate in voluntary conservation efforts. They stated that the designation of additional critical habitat is unnecessary in light of the ongoing conservation management activities benefiting endangered species in the valley. They also stated that critical habitat designation would result in little if any additional benefit to the species, and that any limited regulatory, educational, or recovery benefits that might arise from the designation would be outweighed by the benefits of encouraging voluntary conservation efforts by other private landowners.

Our response: We agree that developing and maintaining public and private partnerships for species conservation is important. The conservation agreement between this landowner and The Nature Conservancy has established the third largest private nature preserve of over 7,000 ac (2,833 ha) in Wainiha Valley. Based on the nature of the agreement and the ongoing conservation actions being implemented, we are excluding some of the subject property within Montane Wet Section 1 from the final critical

habitat designation under section 4(b)(2) of the Act. The private landowner is proactively managing this area in a way that provides conservation benefits for 18 of the 44 plant species, the akikiki and akekee, *Drosophila sharpi*, and several other listed species. The excluded area is not already designated as critical habitat for other species, and we believe that there is a higher likelihood that beneficial conservation activities will continue by not including this area in the critical habitat designation. The rationale for concluding that the benefits of exclusion outweigh the benefits of including this area as critical habitat is discussed in detail in the "Exclusions Under Section 4(b)(2) of the Act" section below. However, we considered but did not exclude other proposed lands owned by this private landowner that are already designated as critical habitat for other species, since we could not conclude that the benefits of excluding these areas would outweigh the benefits of designating them as critical habitat. Designating critical habitat in areas that are already designated as critical habitat for other species will likely not impose any appreciable difference in regulatory requirements under section 7 of the Act for ongoing or future management activities that may be undertaken on these areas. The essential physical and biological features (primary constituent elements) defined in previous critical habitat designations, and special management considerations or protection needed for those species, are similar to those for the species addressed in this final rule.

(35) *Comment:* One commenter suggested that the impact of listing and critical habitat designation would primarily impact sportsmen who hunt game in those units.

Our response: A critical habitat designation does not create a wilderness area, preserve, or wildlife refuge, nor does it automatically close an area to human access or use. Its federal regulatory effect applies only to activities where there is some Federal involvement. Land uses such as logging, grazing, and recreation that may require Federal permits would require compliance with the Act's section 7(a)(2) requirement that Federal action in issuing the permit not destroy or adversely modify critical habitat. Critical habitat designations do not constitute land management plans, and the designation of critical habitat does not require a private or State landowner to fence the designated areas or remove game mammals. It is well understood that feral ungulates are responsible for the decline of native vegetation in

Hawaii (Cuddihy and Stone 1990, pp. 40, 63–67) and that they present a primary threat to the native species in each of the ecosystems described in this final rule, including the 48 species addressed in this final rule. The Service recognizes that the populations of many game mammal species directly or indirectly affect the distribution and abundance of many listed endangered plant and animal species to varying degrees. We are also aware that game mammal hunting is a highly valued activity to a portion of the present-day Hawaiian culture, and that hunting is an important tool to manage wild game populations. We support hunting as a recreational activity and hunting programs within the State of Hawaii. We will continue to work in partnership with the State in this regard, as Federal law requires that hunting programs that receive federal funding be designed and implemented in a manner compatible with endangered species conservation.

(36) *Comment:* Two commenters stated that it appears that critical habitat was designated with a priority given to plants rather than the akikiki and akekee, and one commenter stated that Laau ridge between the Alakai Wilderness Preserve and Namolokama should be included as critical habitat for both birds.

Our response: As explained in the Criteria Used to Identify Critical Habitat Boundaries section of the proposed rule, we proposed critical habitat on lands occupied by the species that contain the physical and biological features essential to the conservation of each species that may require special management considerations or protection. We also proposed critical habitat on lands that were not occupied by the species, but were determined to be essential to their conservation. Based on the best scientific data available, we believe this final rule adequately reflects the areas essential for the conservation of the 47 species for which we are designating critical habitat, including the akikiki and akekee. Although Laau ridge may potentially be important to the recovery of the akikiki and akekee, the reviewer did not present scientific data with which we could evaluate whether this area is essential to their conservation. We have no information indicating that Laau ridge is occupied by either akikiki or akekee. The last confirmed observation of the akikiki on Laau ridge that we are aware of was in 1969 (Service 1983, pp. 53, 66).

(37) *Comment:* Two commenters stated that the Hawaiian honeycreepers should be included in the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703–712) to gain protections under that

statute. One commenter suggested that the MBTA specifically and arbitrarily excludes Hawaiian honeycreepers, and that the inadequacy of existing regulatory mechanisms (Factor D) presents a threat to the akikiki and akekee because they are not protected under the MBTA. The commenter states that these species should be protected under the MBTA since they are members of the avian family Fringillidae, which is covered by the statute.

Our response: A species qualifies for protection under the MBTA if it meets one or more criteria, including whether it belongs to a family or group of species named in the Canadian convention of 1961, as amended in 1996; the Mexican convention of 1936, as amended in 1972; the annex to the Japanese convention of 1972, as amended; or the Russian convention of 1976. The proposed rule (71 FR 50194, August 24, 2006) to revise the List of Migratory Birds that receive protections under the MBTA states that the MBTA does not apply to native species that belong to families or groups represented in the United States that are not expressly mentioned in the Canadian, Mexican, or Russian treaties. Although the Hawaiian honeycreepers, including akikiki and akekee are in the family Fringillidae, and fringillids are covered by the MBTA, the proposed rule to revise the List of Migratory Birds specifically names the subfamily Drepanidinae (the Hawaiian honeycreepers) as one of those groups that do not receive protections under the MBTA (71 FR 50205). However, regulatory actions under the MBTA are beyond the scope of this final rule.

Summary of Changes from Proposed Rule

We fully considered comments from the public and peer reviewers on the proposed rule to develop this final listing and critical habitat designation for the 48 species from Kauai. This final rule incorporates the following substantive changes to our proposed listing and designation, based on the comments that we received.

(1) At the time we proposed *Drosophila attigua* as endangered, we followed the taxonomic treatment of Hardy and Kaneshiro (1969, p. 41). Subsequently, a peer reviewer informed us of a recent taxonomic revision in which *D. attigua* was determined to be identical to, and synonymized with, *D. sharpi*, a species described by Grimshaw in 1901 (Grimshaw 1901, p. 65; Magnacca and O'Grady 2008, p. 55). Since the synonymy of *D. attigua* with *D. sharpi* is currently accepted by the

scientific community, we are listing this picture-wing fly species as endangered in the final rule under the name *D. sharpi* rather than *D. attigua*. We are also designating critical habitat for *D. sharpi* in this final rule. This name change does not affect the boundaries of the proposed designation of critical habitat.

(2) We designated an additional 2,936 ac (1,204 ha) of montane mesic habitat as critical habitat for the akikiki (*Oreomystis bairdi* Units 1–3 Montane Mesic) based on information received during the public comment period indicating that these areas are occupied by this species and contain the physical and biological features essential to its conservation that may require special management considerations or protection (see our response to comment 18 above). The addition of this area does not increase the total amount of critical habitat we are designating in this final rule, since these areas were already proposed as critical habitat for the akekee, *Drosophila sharpi*, and several plant species.

(3) We designated an additional 5,013 ac (2,029 ha) of lowland wet habitat as critical habitat for the plant *Tetraplasandra flynnii* (Kauai 10–*Tetraplasandra flynnii*–b, Kauai 11–*Tetraplasandra flynnii*–d, Kauai 21–*Tetraplasandra flynnii*–g). These areas were not proposed as critical habitat for *T. flynnii* in our proposed rule, but information we received during the public comment period indicates these areas are occupied by the species and contain the physical and biological features essential to its conservation that may require special management considerations or protection. The addition of this area does not increase the total amount of critical habitat we are designating in this final rule, since the areas were already proposed as critical habitat for several other plant species.

(4) We excluded 1,052 ac (426 ha) owned by Alexander and Baldwin, Inc., from this final critical habitat designation. We proposed this area as critical habitat for 18 plants, akekee, akikiki, and *Drosophila attigua* within several units (as described in the proposed rule: Kauai 18–Montane Wet for 18 plants; *Drosophila attigua*–Unit 5–Montane Wet; *Oreomystis bairdi*–Unit 1–Montane Wet; and *Loxops caeruleirostris*–Unit 4–Montane Wet). The “Exclusions Under Section 4(b)(2) of the Act” section of this final rule presents a detailed explanation of our analysis of this area.

This exclusion additionally resulted in a change to some of the critical habitat unit numbers. As Kauai 18–

Montane Wet as described in the proposed rule was excluded, that left the critical habitat unit numbered Kauai 18 “vacant” in the final rule, with the end result that the unit Kauai 19–Wet Cliff from the proposed rule is now Kauai 18–Wet Cliff in this final rule. The effects of this change are also seen in various maps and tables throughout this final rule, as all new critical habitat units have been renumbered from the proposed rule, starting with Unit 18, through Unit 25.

(5) In accordance with Terrell *et al.* (2005, p. 818), we changed the scientific name for *Hedyotis* to *Kadua*. This change is reflected in Table 3–Ecosystem-level Primary Constituent Elements (PCEs) for Each Species and in the Regulation Promulgation section of this rule.

(6) We revised certain unit boundaries for plants (Kauai 11–Lowland Mesic and Kauai 11–Montane Mesic in §17.99(a)(1)); akekee (*Loxops caeruleirostris*–Unit 1–Montane Mesic in §17.95(b)); and the picture-wing fly (*Drosophila sharpi*–Unit 1–Montane Mesic in §17.95(i)) based on comments received from the U.S. Navy (see our response to comment 31 above).

(7) We corrected the upper elevation limit of the ecosystem-level PCEs for the Montane Mesic and Montane Wet Ecosystems (See Table 3). The upper limit is now 5,243 ft (1,598 m) instead of 6,600 ft (2,000 m), as 5,243 ft (1,598 m) represents the maximum elevation on Kauai.

(8) We corrected the species-specific PCE for *Lysmiachia daphnoides* in Table 4 and elsewhere in the final rule; this PCE now clarifies that the species utilizes not bogs, but more specifically hummocks in bogs.

(9) We have corrected the species-specific PCE for *Drosophila sharpi* to reflect the fact that this picture-wing fly uses both *Cheirodendron* sp. and *Tetraplasandra* sp. as larval host plants; the genus *Tetraplasandra* was not included as a species-specific PCE in the proposed rule.

(10) We made some corrections to Table CDLIX (Table Of Protected Species Within Each Critical Habitat Unit For Kauai) in the Regulation Promulgation section of this rule to accurately reflect which units are occupied or unoccupied by the species.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and our implementing regulations (50 CFR part 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be

determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational	purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. The threats to each of the individual 48	species are summarized in Table 2, and discussed in detail below. Factor D is not included in the table because we have no information on primary threats to the species that would fall under this category.

TABLE 2.—SUMMARY OF PRIMARY THREATS IDENTIFIED FOR EACH OF THE 48 KAUAI SPECIES

Species	Ecosystem	Factor A								Factor B	Factor C			Factor E
		Non-native plants	Pigs	Goats	Deer	Fire	Hurricanes	Land-slides or Flooding	Climate Change		Predation by ungulates	Predation by rats	Predation by non-native invertebrates	
<i>Astelia waiataleale</i>	MW (hummocks in bogs)	X	X	X			X		X		X			LN, NR
<i>Canavalia napaliensis</i>	LM	X		X		X	X		X		X	X	X	
<i>Chamaesyce eleanoriae</i>	LM, DC	X		X			X	L	X		X	X		LN
<i>Chamaesyce remyi</i> var. <i>kauaiensis</i>	LW, WC	X	X				X	L	X		X			
<i>Chamaesyce remyi</i> var. <i>remyi</i>	LM, LW, MM, MW, WC	X	X	X	X		X	L	X		X	X	X	
<i>Charpentiera densiflora</i>	LM, LW	X		X		X	X	L, F	X		X	X	X	
<i>Cyanea dolichopoda</i>	WC	X					X	L	X				X	NW
<i>Cyanea eleeleensis</i>	LW	X	X				X	L	X		X	X	X	NW
<i>Cyanea kolekoleensis</i>	LW	X	X				X	F	X		X	X	X	NW
<i>Cyanea kuhihewa</i>	LW	X	X				X	L	X		X	X	X	NW
<i>Cyrtandra oenobarba</i>	LW, WC	X	X	X			X	L, F	X		X	X	X	
<i>Cyrtandra paliku</i>	WC	X					X	L	X					LN
<i>Diellia mannii</i>	MM	X	X		X	X	X	L	X		X			LN
<i>Doryopteris angelica</i>	LM	X	X	X			X		X		X	X		LN
<i>Dryopteris crinalis</i> var. <i>podosorus</i>	MW	X	X				X		X					LN
<i>Dubautia imbricata</i> ssp. <i>imbricata</i>	LW	X	X				X		X		X			
<i>Dubautia kalalauensis</i>	MW	X		X			X		X		X			LN
<i>Dubautia kenwoodii</i>	LM	X	X	X			X	FR	X		X			NW
<i>Dubautia plantaginea</i> ssp. <i>magnifolia</i>	WC	X	X				X	L	X		X			

TABLE 2.—SUMMARY OF PRIMARY THREATS IDENTIFIED FOR EACH OF THE 48 KAUAI SPECIES—Continued

Species	Ecosystem	Factor A								Factor B	Factor C			Factor E
		Non-native plants	Pigs	Goats	Deer	Fire	Hurricanes	Land-slides or Flooding	Climate Change		Predation by ungulates	Predation by rats	Predation by non-native invertebrates	
<i>Dubautia waialealae</i>	MW (bogs only)	X	X	X			X		X		X			
<i>Geranium kauaiense</i>	MW (bogs only)	X	X				X		X		X			
<i>Keysseria erici</i>	MW (bogs only)	X	X				X		X		X			
<i>Keysseria helenae</i>	MW (bogs only)	X	X				X		X		X			
<i>Labordia helleri</i>	LM, LW, MM, MW	X	X	X	X		X		X		X	X		
<i>Labordia pumila</i>	MW (bogs only)	X	X				X		X		X			
<i>Lysimachia daphnoides</i>	MW (hum-mocks in bogs)	X	X				X		X		X			
<i>Lysimachia iniki</i>	WC	X					X	L	X					LN
<i>Lysimachia pendens</i>	WC	X	X				X	L	X		X			LN
<i>Lysimachia scopulensis</i>	DC	X	X	X			X	L	X		X			LN
<i>Lysimachia venosa</i>	WC	X					X	L	X					NW
<i>Melicope degeneri</i>	MW	X	X	X			X		X		X		X	LN, NR
<i>Melicope paniculata</i>	LW	X	X	X			X	L	X		X		X	
<i>Melicope puberula</i>	LW, MW	X	X	X			X		X		X		X	
<i>Myrsine knudsenii</i>	MM	X	X	X	X		X		X		X	X		LN
<i>Myrsine mezii</i>	MM, MW	X	X	X			X	L	X		X			LN
<i>Phyllostegia renovans</i>	LW, MW	X	X	X			X	L	X		X	X		LN
<i>Pittosporum napaliense</i>	LM	X		X			X		X		X	X		

<i>Platydesma rostrata</i>	LM, LW, MMMW, WC	X	X	X	X	X	X	L	X	Animals										X	X	X	AD, pPCO
<i>Pritchardia hardyi</i>	LW, WC	X	X	X	X	X	X		X											X	X	X	AD, pPCO
<i>Psychotria grandiflora</i>	MM, MW	X	X	X	X				X											X	X	X	AD, pPCO
<i>Psychotria hobydi</i>	LM	X	X	X	X	X	X		X											X			CTF
<i>Schiedea attenuata</i>	DC	X		X	X			L	X														LN
<i>Stenogyne kealiae</i>	LW, MM, DC	X	X	X	X	X	X	L	X											X	X	X	LN
<i>Tetraplasandra bisattenuata</i>	LM, LW	X	X						X											X	X	X	LN
<i>Tetraplasandra flynnii</i>	LW, MM, MW	X	X	X	X				X											X			LN
<i>Akekee</i>	MM, MW	X	X	X	X				X											X	X	X	AD, pPCO
<i>Akikiki</i>	MM, MW	X	X	X	X				X											X	X	X	AD, pPCO
Picture-wing fly, <i>Drosophila sharpi</i>	MM, MW	X	X	X	X				X											X	X	X	CTF

LM = Lowland Mesic
 LW = Lowland Wet
 MM = Montane Mesic
 MW = Montane Wet
 DC = Dry Cliff
 WC = Wet Cliff
 L = Landslides
 F = Flooding
 LN = Limited numbers ≤ 50 wild individuals
 NR = No reproduction
 FR = Falling rocks
 NW = Not extant in wild
 AD = Avian diseases
 pPCO = Potential predation by feral cats, nonnative owls
 CTF = Competition with nonnative tipulid flies
 Factor A - Habitat Modification
 Factor B - Overutilization
 Factor C - Disease or Predation
 Factor E - Other

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The Hawaiian Islands are located over 2,000 mi (3,200 km) from the nearest continent. This isolation has allowed the few plants and animals that arrived in the Hawaiian Islands to evolve into many varied and highly endemic species (species that occur nowhere else in the world). The only native terrestrial mammal on the Hawaiian Islands is a flying mammal, the Hawaiian hoary bat (*Lasurus cinereus semotus*). The native plants and animals of the Hawaiian Islands have therefore evolved in the absence of any mammalian predators, browsers, or grazers; many of the native species have lost defenses against threats such as mammalian predation and competition with aggressive, weedy plant species that are typical of mainland environments (Loope 1992, p. 11; Wagner *et al.* 1999, pp. 3–6, 45). For example, Carlquist (*in* Carlquist and Cole 1974, p. 29) states that “Hawaiian plants are notably nonpoisonous, free from armament, and free from many characteristics thought to be deterrents to herbivores (oils, resins, stinging hairs, coarse texture).” In addition, species restricted to highly specialized locations or food sources (e.g., some Hawaiian forest birds and picture-wing flies) are particularly vulnerable to changes (from nonnative species, hurricanes, fire, and climate change) in their habitat (Carlquist and Cole 1974, pp. 28–29; Loope 1992, pp. 3–6; Stone 1992, pp. 88–95).

Habitat destruction and modification by introduced ungulates

Introduced mammals have greatly impacted the native vegetation, as well as the native fauna, of the Hawaiian Islands. The first introductions of nonnative mammals began with pigs, dogs, and rats that arrived with the Polynesians around 400 A.D. (Kirch 1982, pp. 3–4). Nonnative species impacts to native species and ecosystems of Hawaii accelerated following the arrival of Captain James Cook in 1778. The Cook expedition and subsequent explorers intentionally introduced a European race of pigs or boars and other livestock, such as goats, to serve as food sources for seagoing explorers (USGS 1998, p. 752). The mild climate of the islands, combined with the lack of competitors or predators led to the successful establishment of large populations of these introduced mammals to the detriment of native Hawaiian species and ecosystems. Over the 200 years following the introduction of these animals, the numbers of

introduced ungulates has increased, and the adverse impacts on native vegetation have become increasingly apparent (Mueller-Dombois *et al.* 1981, p. 310).

Beyond the direct effects of trampling and consuming native plants, feral ungulates (hoofed mammals) contribute significantly to increased erosion on the islands, and their behavior (i.e., rooting, moving across large expanses) facilitates the spread and establishment of competing, invasive, nonnative plant species. The presence of introduced nonnative mammals is one of the primary factors underlying the alteration and degradation of native vegetation and habitats on the island of Kauai. Each of the six ecosystems and the associated native species therein are threatened by the destruction or degradation of habitat due to nonnative ungulates, including pigs (*Sus scrofa*), goats (*Capra hircus*), and black-tailed deer (*Odocoileus hemionus*).

Pigs have been described as the most pervasive and disruptive nonnative influence on the unique native forests of the Hawaiian Islands, and are widely recognized as one of the greatest current threats to forest ecosystems in Hawaii (Aplet *et al.* 1991, p. 56; Anderson and Stone 1993, p. 195; Loope 1999, p. 56). European pigs introduced to Hawaii by Captain James Cook in 1778 hybridized with domesticated Polynesian pigs, became feral, and invaded forested areas, especially wet and mesic forests and dry areas at high elevations. These animals are currently present on Kauai, Niihau, Oahu, Molokai, Maui, and Hawaii. These introduced pigs are extremely destructive and have both direct and indirect impacts on native plant communities. While rooting in the earth in search of invertebrates and plant material, pigs directly impact native plants by disturbing and destroying vegetative cover, and trampling plants and seedlings. They may also reduce or eliminate plant regeneration by damaging or eating seeds and seedlings (further discussion of predation by nonnative ungulates is under Factor C, below). Pigs are a major vector for the establishment and spread of competing invasive nonnative plant species, by dispersing plant seeds on their hooves and coats as well as through the spread of manure and fertilizing the disturbed soil through their feces. Pigs feed preferentially on the fruits of many nonnative plants, such as *Passiflora tarminiana* (banana poka) and *Psidium cattleianum* (strawberry guava), spreading the seeds of these invasive species through their feces as they travel in search of food.

In addition, rooting pigs contribute to erosion by clearing vegetation and

creating large areas of disturbed soil, especially on slopes (Aplet *et al.* 1991, p. 56; Smith 1985, pp. 190, 192, 196, 200, 204, 230–231; Stone 1985, pp. 254–255, 262–264; Medeiros *et al.* 1986, pp. 27–28; Scott *et al.* 1986, pp. 360–361; Tomich 1986, pp. 120–126; Cuddihy and Stone 1990, pp. 64–65; Loope *et al.* 1991, pp. 1–21; Wagner *et al.* 1999, p. 52). The compacted volcanic soils, wallows, and downed, hollowed-out tree ferns created by feral pig activity hold water and create breeding sites for mosquitoes, which transmit avian disease (Scott *et al.* 1986, pp. 365–368; Atkinson *et al.* 1995, p. S68). Mosquito-borne diseases such as malaria present a significant threat to native Hawaiian forest birds, including the akikiki and akeke (see Factor C).

Goats native to the Middle East and India were also successfully introduced to the Hawaiian Islands in the late 1700s. Feral goats now occupy a wide variety of habitats on Kauai, where they consume native vegetation, trample roots and seedlings, accelerate erosion, and promote the invasion of alien plants (Stone 1985, p. 48; van Riper and van Riper 1982, pp. 34–35). Goats are able to access and forage in extremely rugged terrain, including nearly vertical cliffs of the Na Pali Coast, and have a high reproductive capacity (Clarke and Cuddihy 1980, pp. C–19, C–20; Culliney 1988, p. 336; Cuddihy and Stone 1990, p. 64); because of these factors, goats are believed to have completely eliminated some plant species from islands (Atkinson and Atkinson 2000, p. 21). Goats can be highly destructive to natural vegetation, and they contribute to erosion by eating young trees and young shoots of plants before they can become established. They also create trails that can damage native vegetative cover, destabilize substrate, and create gullies that convey water and exacerbate erosion, as well as dislodge stones from ledges that can damage vegetation below (Cuddihy and Stone 1990, p. 64). The erosion caused by goats on the steep slopes of Kauai contributes to the potential for landslides and also increases the potential for flooding. Large feral herds of goats can cause damage at multiple scales; their climbing ability allows access to the more remote areas of Kauai, and their browsing causes habitat degradation that can lead to erosion and landslides.

Black-tailed deer (also known as mule deer) were first introduced to Kauai in 1961 for the purposes of sport hunting. These deer are currently limited to the western side of Kauai, where they feed on a variety of native and alien plants (van Riper and van Riper 1982, pp. 42–46). In addition to directly impacting

native plants through browsing, deer likely impact native plants indirectly by serving as a primary vector for the spread of introduced plants. Deer feed on many alien plant species, and likely distribute these plants seeds through their feces as they travel. Black-tailed deer have been identified as a vector of habitat alteration in the Kauai ecosystems (NTBG report 2007a; HBMP 2007), and impact the Kauai plants through predation as well (Factor C).

Each of the six Kauai ecosystems identified in this final rule (lowland mesic, lowland wet, montane mesic, montane wet, dry cliff, and wet cliff) and the native species dependent on these habitat types are directly and indirectly adversely impacted by feral ungulates, resulting in the destruction and degradation of habitat for the native Kauai species. These effects include the destruction of vegetative cover; trampling of plants and seedlings; consumption of native vegetation; soil disturbance; dispersal of alien plant seeds on hooves, coats, and through the spread of seeds in feces; and the creation of open disturbed areas conducive to further invasion by nonnative pest plant species. Each of these impacts lead to the subsequent conversion of a plant community dominated by native species to one dominated by nonnative species (see Habitat destruction and modification by nonnative plants below). In addition, because these mammals inhabit terrain that is often steep and remote (Cuddihy and Stone 1990, p. 59), foraging and trampling contributes to severe erosion of watersheds. As early as 1900, there was increasing concern expressed about the integrity of island watersheds leading to establishment of a professional forestry program emphasizing soil and water conservation (Nelson 1989, p. 3).

Habitat destruction and modification by nonnative plants

General Ecosystem Impacts

The native vegetation on all of the main Hawaiian Islands has undergone extreme alteration because of past and present land management practices, including ranching, the deliberate introduction of nonnative plants and animals, and agricultural development (Cuddihy and Stone 1990, pp. 27, 58). All of the species being addressed in this final rule are threatened by almost 50 taxa of introduced plants that alter their habitat. The original native flora of Hawaii (species that were present before humans arrived) consisted of about 1,000 taxa, 89 percent of which were endemic (species that occur only on the

Hawaiian Islands). Over 800 plant taxa have been introduced from elsewhere, and nearly 100 of these have become pests (e.g., injurious plants) in Hawaii (Smith 1985, p. 180; Gagne and Cuddihy 1999, p. 45; Cuddihy and Stone 1990, p. 73). Some of these plants were brought to Hawaii by various groups of people, including the Polynesians, for food or cultural reasons. Plantation owners (and the territorial government of Hawaii), alarmed at the reduction of water resources for their crops caused by the destruction of native forest cover by grazing feral and domestic animals, introduced nonnative trees for reforestation. Ranchers intentionally introduced pasture grasses and other nonnative plants for agriculture, and sometimes inadvertently introduced weed seeds as well. Other plants were brought to Hawaii for their potential horticultural value (Cuddihy and Stone 1990, p. 73; Scott *et al.* 1986, pp. 361–363).

Nonnative plants adversely impact native Hawaiian habitat, including the 6 Kauai ecosystems and the 48 species identified in this final rule, by modifying the availability of light, altering soil-water regimes, modifying nutrient cycling, altering fire characteristics of native plant communities (e.g., successive fires that burn farther and farther into native habitat, destroy native plants, and remove habitat for native species by altering microclimatic conditions to favor alien species), and ultimately converting native dominated plant communities to nonnative plant communities (Cuddihy and Stone, 1990, p. 74; D'Antonio and Vitousek 1992, p. 73; Smith 1985, pp. 180–181; Vitousek *et al.* 1997, p. 6). This directly and indirectly affects the plant and animal species in this rule by modifying or destroying their habitat and reducing food sources. Below we have organized by ecosystem a list of nonnative plants followed by a discussion of the specific negative effects of those nonnative plants on these species.

Lowland Mesic Ecosystem

The nonnative plant threats to the species inhabiting the lowland mesic ecosystem include the understory and subcanopy species *Blechnum appendiculatum* (no common name, hereafter “NCN”), *Erigeron karvinskianus* (daisy fleabane), *Hedychium gardnerianum* (kahili ginger), *Kalanchoe pinnata* (air plant), *Lantana camara* (lantana), *Melastoma septemnerium* (Indian rhododendron), *Rubus argutus* (prickly Florida blackberry), *Rubus rosifolius* (thimbleberry), and the canopy species

Psidium cattleianum (strawberry guava), *P. guajava* (common guava), *Rhodomyrtus tomentosa* (downy or rose myrtle), and *Schinus terebinthifolius* (Christmasberry) (Carr 1998, p. 10; NTBG Accession Database 1999; NTBG Provenance Report 1991; Wood 1998, p. 1; Wood 1999, p. 1; Wood 2005, p. 1; Wood 2007a, p. 1; Wood 2007f, p. 1; HBMP 2007). In addition, there are several nonnative grasses such as *Melinis minutiflora* (molasses grass), *Oplismenus hirtellus* (basketgrass), *Paspalum conjugatum* (Hilo grass), *P. urvillei* (Vasey grass), and *Setaria parviflora* (yellow foxtail) that present a significant threat to the species dependent on this ecosystem (HBMP 2007).

Lowland Wet Ecosystem

The nonnative plant threats to the species inhabiting the lowland wet ecosystem include the understory and subcanopy species *Axonopus fissifolius* (narrow-leaved carpetgrass), *Christella parasitica* (NCN), *Clidemia hirta* (Koster's curse), *Coffea arabica* (Arabian coffee), *Cyperus meyenianus* (NCN), *Erigeron karvinskianus*, *Juncus planifolius* (bog rush), *Lantana camara*, *Melastoma septemnerium*, *Oplismenus hirtellus*, *Pterolepis glomerata* (NCN), *Rubus rosifolius*, *Sacciolepis indica* (glenwood grass), *Setaria parviflora*, and *Sphaeropteris cooperi* (Australian tree fern), and the canopy species *Psidium cattleianum*, *P. guajava*, and *Rhodomyrtus tomentosa* (Hawaii State Comprehensive Wildlife Strategy (HSCWS) 2005; NTBG 2006; Wood 1998, p. 2; Wood 2007f, p. 3; HBMP 2007).

Montane Mesic Ecosystem

The nonnative plant threats to the species inhabiting the montane mesic ecosystem include the understory and subcanopy species *Axonopus fissifolius*, *Blechnum appendiculatum*, *Christella parasitica*, *Cyperus meyenianus*, *Ehrharta stipioides* (meadow ricegrass), *Erigeron karvinskianus*, *Hedychium gardnerianum*, *Holcus lanatus* (common velvet grass), *Kalanchoe pinnata*, *Lantana camara*, *Lonicera japonica* (Japanese honeysuckle), *Melastoma septemnerium*, *Paspalum urvillei*, *Passiflora tarminiana* (banana poka), *Rubus argutus*, and *R. rosifolius*, and the canopy species *Corynocarpus laevigatus* (karakanut), *Eucalyptus robusta* (swamp mahogany), *Psidium cattleianum*, *Rhodomyrtus tomentosa*, and *Ricinus communis* (castor bean) (HBMP 2007).

Montane Wet Ecosystem

The nonnative plant threats to the species inhabiting the montane wet

ecosystem include the understory and subcanopy species *Andropogon glomeratus* (bushy bluestem), *Andropogon virginicus* (broomsedge), *Axonopus fissifolius*, *Clidemia hirta*, *Cyperus meyenianus*, *Erechtites valerianifolia* (fireweed), *Erigeron karvinskianus*, *Hedychium gardnerianum*, *Juncus planifolius*, *Kalanchoe pinnata*, *Lantana camara*, *Paspalum urvillei*, *Passiflora tarminiana*, *Rubus argutus*, *R. rosifolius*, *Sacciolepis indica*, *Setaria parviflora*, and *Xyris complanata* (yellow-eyed grass), and the canopy species *Morella faya* (firetree) and *Psidium cattleianum* (HBMP 2007).

Dry Cliff Ecosystem

The nonnative plant threats to the species inhabiting the dry cliff ecosystem include the understory and subcanopy species *Andropogon glomeratus*, *Erigeron karvinskianus*, *Kalanchoe pinnata*, *Lantana camara*, *Lonicera japonica*, *Passiflora tarminiana*, *Rubus argutus*, and *Verbena litoralis* (vervain) (Wood 2007d; HBMP 2007).

Wet Cliff Ecosystem

The nonnative plant threats to the species inhabiting the wet cliff ecosystem include the understory and subcanopy species *Ageratum conyzoides* (maile honohono), *Andropogon glomeratus*, *Blechnum appendiculatum*, *Clidemia hirta*, *Cyperus meyenianus*, *Erigeron karvinskianus*, *Juncus planifolius*, *Kalanchoe pinnata*, *Lonicera japonica*, *Paspalum conjugatum*, *Passiflora edulis* (passion fruit, lilikoi), *P. tarminiana*, *Pluchea carolinensis* (sourbush), *Rubus argutus*, *R. rosifolius*, *Setaria parviflora*, *Sphaeropteris cooperi*, and *Youngia japonica* (oriental hawkbeard), and the canopy species *Buddleja asiatica* (dog tail) and *Psidium cattleianum* (Perlman 2007; HBMP 2007).

Nonnative Species-Specific Impacts

Nonnative plants represent a significant and immediate threat to each of the 48 species being addressed in this final rule throughout their ranges by destroying and modifying habitat. They can adversely impact microhabitat by modifying the availability of light, altering soil-water regimes, and modifying nutrient cycling processes. They can also alter fire characteristics of native plant habitat, leading to incursions of fire-tolerant nonnative plant species into native habitat. Nonnative plants outcompete native plants by growing faster; in addition, some release chemicals that inhibit the growth of other plants. By outcompeting

native species, nonnative plants convert native-dominated plant communities to nonnative plant communities (Cuddihy and Stone 1990, p. 74; Vitousek 1992, pp. 33–35). The following list provides a brief description of the nonnative plants that present a threat to the species that occur in the ecosystems being addressed in this final rule.

- *Ageratum conyzoides* is a perennial herb that produces thousands of seeds spread by wind and water, with over half germinating shortly after being shed, displacing native understory vegetation (Pacific Island Ecosystem at Risk (PIER) 2007).
- *Andropogon glomeratus*, a grass species, displaces native vegetation by invading disturbed areas, with culms (stems of grasses or similar plants) to 5 ft (1.5 m) tall, and reproduces readily by seed (Ohio Department of Natural Resources 2006; PIER 2008a).
- *Andropogon virginicus* is a grass with seeds that are easily distributed by wind, clothing, vehicles, and feral animals (Smith 1989, p. 63). Some research suggests that this species may also release allelopathic substances (chemicals that inhibit growth in other plants) that dramatically decrease the reestablishment of native plants (Rice 1972, p. 752). This species is included in the Hawaii State noxious weed list (HAR Title 4, Subtitle 6, Chapter 68).
- *Axonopus fissifolius* is a pasture grass that forms dense mats with tall foliage. This species does well in soils with low nitrogen levels, and can outcompete other grasses in wet forests and bogs. The species is not subject to any major diseases or insect pests, and recovers quickly from fire. The seeds are readily spread by water, vehicles, and grazing animals (O'Connor 1999, pp. 1500–1502; Cook *et al.* 2005, p. 4).
- *Blechnum appendiculatum* is a fern with fronds to 23 in (60 cm) long which forms large colonies, outcompeting many native fern species (Palmer 2003, p. 81).
- *Buddleja asiatica* is a shrub or small tree that can tolerate a wide range of habitats, forms dense thickets, and is rapidly spreading into wet forest and even lava and cinder substrate areas in Hawaii where it displaces native vegetation (Wagner *et al.* 1999, p. 415; Pacific Island Ecosystem at Risk (PIER) 2008b).
- *Christella parasitica* (a fern) is known to hybridize with other *Christella* species, and may hybridize with endemic Hawaiian *Christella* species (Palmer 2003, p. 90).
- *Clidemia hirta* is a noxious shrub in the Melastomataceae family that forms a dense understory, shades out native plants and prevents their regeneration, and is considered a significant nonnative plant threat (Wagner *et al.* 1985, p. 41; Smith 1989, p. 64). All plants in the Melastomataceae family are designated as noxious weeds in the State of Hawaii (HAR Title 4, Subtitle 6, Chapter 68).
- *Coffea arabica* is shade tolerant and can form dense stands in the forest understory. Its seeds are dispersed by birds and rats and can germinate under the forest canopy displacing native vegetation (PIER 2008c).
- *Corynocarpus laevigatus* is a tree up to 49 ft (15 m) tall. *Corynocarpus laevigatus* seeds were broadcast by aircraft over the interior of Kauai in 1929 in an attempt to restore the watershed, and it is now naturalized there (Wagner *et al.* 1985, p. 39; Forster and Forster 1999, p. 566). It forms dense shade which excludes other species, and the seeds are distributed by frugivorous (fruit-eating) birds and pigs (PIER 2008d).
- *Cyperus meyenianus* can grow as tall as 2 ft (0.6 m) in height and outcompetes native plants (Koyama 1999, p. 1421).
- *Ehrharta stipioides* is a grass that creates a thick mat in which other species cannot regenerate; its seeds are easily dispersed by awns (slender, terminal, bristle-like process found at the spikelette in many grasses) that attach to fur or clothing (U.S. Army 2006, p. 2–1–20).
- *Erechtites valerianifolia*, a tall (up to 8 ft (2.5 m)), widely-distributed annual herb, produces thousands of wind-dispersed seeds, outcompeting native plants (Wagner *et al.* 1999, p. 314).
- *Erigeron karvinskianus* reproduces and spreads rapidly to form dense mats, and can spread by stem layering and regrowth of broken roots. This species crowds out and displaces ground level plants (Weeds of Blue Mountains Bushland 2006).
- *Eucalyptus robusta* was planted by State foresters in the early 1900s on all the main Hawaiian Islands except Niihau and Kahoolawe in an attempt to protect watersheds. These trees are quick-growing, can reach 99 ft (30 m) in height, reproduce from seed, and replace native forest species (Cuddihy and

- Stone 1990, p. 52; Wagner *et al.* 1999, p. 957; PIER 2008e).
- *Hedychium gardnerianum* forms vast, dense colonies, displacing other plant species, and reproduces by rhizomes where already established. The conspicuous, fleshy, red seeds are dispersed by fruit-eating birds as well as humans (Smith 1985, p. 191). Aircraft-based analysis has found that this species reduces the amount of nitrogen in the native *Metrosideros* forest canopy in Hawaii, a finding subsequently corroborated by ground-based sampling (Asner and Vitousek 2005). This species may also block stream edges, altering water flow and the native vegetation community (Global Invasive Species Database (GISD) 2007).
 - *Holcus lanatus* is an aggressively growing and possibly allelopathic (having a chemical inhibitory effect on other organisms) grass that quickly becomes dominant over other plants (Pitcher and Russo 1980, p. 3).
 - *Juncus planifolius* forms dense mats and has the potential of displacing native plants by preventing establishment of their seedlings (Medeiros *et al.* 1991, p. 28).
 - *Kalanchoe pinnata* can form dense stands that prevent reproduction of native species. It can also reproduce by vegetative means at indents along the leaf margins (Motooka *et al.* 2003a).
 - *Lantana camara* was brought to Hawaii as an ornamental plant, and is an aggressive, thicket-forming shrub which is now found on all of the main islands (Wagner *et al.* 1999, p. 1320).
 - *Lonicera japonica* is a sprawling vine that can grow over and smother shrubs and small trees, and cover the forest floor, preventing growth of native species (PIER 2008f).
 - *Melastoma septemnerium* is an invasive shrub that displaces and outcompetes native vegetation because of its invasive characteristics such as high germination rate, rapid growth, early maturity, ability of fragments to root, possible asexual reproduction, and efficient seed dispersal, especially by birds (Smith 1985, p. 194; University of Florida Herbarium 2006). This species is on the Hawaii State noxious weed list (HAR Title 4, Subtitle 6, Chapter 68).
 - *Melinis minutiflora* forms dense mats that can fuel more intense fires that destroy native plants (O'Connor 1999, p. 1562; Cuddihy and Stone 1990, p. 89).
 - *Morella faya* is an evergreen shrub or small tree up to 26 ft (8 m) tall. It forms monotypic stands, has the ability to fix nitrogen, and alters the successional ecosystems in areas it invades, displacing native vegetation through competition. It is also a prolific fruit producer (average of 400,000 fruit per individual shrub or tree per year), and the fruit are spread by frugivorous birds and feral pigs (Vitousek 1990, pp. 8–9; Wagner *et al.* 1999, p. 931; PIER 2008g). This species is on the Hawaii State noxious weed list (HAR Title 4, Subtitle 6, Chapter 68).
 - *Oplismenus hirtellus* forms a dense groundcover, is sometimes climbing, and roots at the nodes, enabling its rapid spread. It also has sticky seeds that attach to visiting animals and birds that then carry them to new areas where they are deposited and spread accordingly (O'Connor 1999, p. 1565; Johnson 2005).
 - *Paspalum conjugatum* is found in wet habitats, and forms a dense ground cover. Its small hairy seeds are easily transported on humans and animals or are carried by the wind through native forests, where it establishes and displaces native vegetation (Cuddihy and Stone 1990, p. 83; Tomich 1986, p. 125; PIER 2006; University of Hawaii 2008h).
 - *Paspalum urvillei* forms dense stands which displace native vegetation (Motooka *et al.* 2003b, p. 1).
 - *Passiflora edulis* is a vigorous, climbing vine cultivated for its fruit in Hawaii (Escobar 1999, p. 1010). It can grow up to 20 ft (6 m) per year once established, smothering trees and shrubs. Each fruit has hundreds of seeds which are eaten and distributed by pigs (PIER 2008i).
 - *Passiflora tarminiana*, a vine native to South America, is widely cultivated for its fruit (Escobar 1999, p. 1012). First introduced to Hawaii in the early 1900s, it is now a significant pest in mesic forest, where it overgrows and smothers the forest canopy. Its seeds are readily dispersed by humans, birds, and feral pigs (La Rosa 1992, pp. 272, 290).
 - *Pluchea carolinensis* is a fast-growing shrub that forms thickets in dry habitats and can tolerate saline conditions. The wind-dispersed seeds facilitate plant dispersal which displaces native vegetation (Francis 2006).
 - *Psidium cattleianum* forms dense stands in which few other plants can grow, displacing native vegetation through competition. The fruit is eaten by pigs and birds that disperse the seeds throughout the forest (Smith 1985, p. 200; Wagner *et al.* 1985, p. 24).
 - *Psidium guajava* forms dense stands in disturbed forest. The seeds are spread by feral pigs and alien birds, and it can also regenerate from underground parts by suckering (Wagner *et al.* 1999, p. 972).
 - *Pterolepis glomerata* is a member of the Melastomataceae family. The basis for its classification as invasive is the species' germination rate, rapid growth, early maturity, ability of fragments to root, possible asexual reproduction, and seed dispersal by birds (University of Florida Herbarium 2006). Because of these attributes, it displaces native vegetation through competition.
 - *Rhodomyrtus tomentosa* forms dense thickets and produces large amounts of seeds that are dispersed by frugivorous birds and mammals (Smith 1985, p. 201). It also alters natural fire regimes and sprouts prolifically after fires (University of Florida 2006). This species is on the Hawaii State noxious weed list (HAR Title 4, Subtitle 6, Chapter 68).
 - *Ricinus communis* is a fast growing tree that can form thickets that shade out other species (PIER 2007).
 - *Rubus argutus* reproduces both vegetatively and by seed, readily sprouts from underground runners, and is quickly spread by frugivorous birds (Tunison 1991, p. 2; Wagner *et al.* 1999, p. 1107; U.S. Army 2006, pp. 2–1–21, 2–1–22). This species, which displaces native vegetation through competition, is on the Hawaii State noxious weed list (HAR Title 4, Subtitle 6, Chapter 68).
 - *Rubus rosifolius* forms dense thickets and outcompetes native plant species. It easily reproduces from roots left in the ground, and seeds are spread by feral animals and birds (PIER 2008j; GISD 2008b).
 - *Sacciolepis indica* is an annual grass that invades disturbed and open areas in wet habitats. The seeds are dispersed by their ability to attach to animal fur (University of Hawaii 1998).
 - *Schinus terebinthifolius* forms dense thickets and grows in all terrain, and the red berries are attractive to

birds (Smith 1989, p. 63). *Schinus* seedlings grow very slowly and can survive in dense shade, exhibiting vigorous growth when the canopy is opened after a disturbance (Brazilian Pepper Task Force 1997). Because of these attributes, it is able to displace native vegetation through competition.

- *Setaria parviflora* can grow in a wide variety of habitats. Its culms (hollow or pithy stalks or stems) can be up to 4 ft (1.2 m) tall, and this species can form significant colonies shading and crowding out native plant species (O'Connor 1999, p. 1592; University of Florida 2007).
- *Sphaeropteris cooperi* is a tree fern native to Australia that was brought to Hawaii for use in landscaping (Medeiros *et al.* 1992, p. 43). It can achieve high densities in native Hawaiian forest and grows up to 1 ft (0.3 m) in height per year. It reaches maximum known heights of 39 ft (12 m) (Jones and Clemesha 1976, p. 56), and can displace native species. Understory disturbance by pigs facilitates its establishment (Medeiros *et al.* 1992, p. 30), and it has been known to spread over 7 mi (12 km) through windblown dispersal of spores from plant nurseries (Medeiros *et al.* 1992, p. 29).
- *Verbena litoralis* is a perennial herb up to 6.5 ft (2 m) tall, and is naturalized in a wide range of habitats in Hawaii (Wagner *et al.* 1999, p. 1325). It displaces native vegetation through competition.
- *Xyris complanata* is a clumping herb cultivated for use in floral arrangements. It is naturalized in Hawaii in wet muddy areas and on lava and can outcompete native vegetation (Wagner *et al.* 1999, p. 1615).
- *Youngia japonica* is an annual herb 3 ft (0.9 m) tall that is native to southeastern Asia and is now a pantropical (distributed throughout the tropics) weed (Wagner *et al.* 1999, p. 377). In Hawaii it occurs in moist, disturbed sites, and can invade nearly intact native wet forest (Wagner *et al.* 1999, p. 377), outcompeting native vegetation.

Habitat destruction and modification by fire

Fire is a relatively new, human-related threat to native species and natural vegetation in Hawaii. The historical fire regime in Hawaii was characterized by infrequent, low severity fires (Cuddihy and Stone 1990, p. 91; Smith and Tunison 1992, pp.

395–397). Few natural ignition sources existed, natural fuel beds were often discontinuous, and rainfall in many areas on most islands was, and is, moderate to high. Fires inadvertently or intentionally ignited by the original Polynesians in Hawaii probably contributed to the initial decline of native vegetation in the drier plains and foothills. These early settlers practiced slash-and-burn agriculture that created open lowland areas suitable for the later colonization of nonnative, fire-adapted grasses (Kirch 1982, pp. 5–6, 8; Cuddihy and Stone 1990, pp. 30–31). Beginning in the late 18th century, Europeans and Americans introduced plants and animals that further degraded native Hawaiian ecosystems. Pasturage and ranching, in particular, created highly fire-prone areas of nonnative grasses and shrubs (D'Antonio and Vitousek 1992, p. 67). Although fires are infrequent in mountainous regions today, extensive fires have occurred in lowland mesic areas, and up to half of the areas dominated by alien species have been damaged by fire.

Fires of all intensities, seasons, and sources are destructive to native Hawaiian ecosystems (Brown and Smith 2000, p. 172), and a single grass-fueled fire can kill most native trees and shrubs in the burned area (D'Antonio and Vitousek 1992, p. 74). Few native Hawaiian plants and animals are adapted to withstand fire, and none are known to depend on fire for their existence or regeneration. Although Vogl (1969) (*in* Cuddihy and Stone 1990, p. 91) proposed that naturally occurring fires, primarily from lightning strikes, have been important in the development of the original Hawaiian flora, and that many Hawaiian plants might be fire adapted, Mueller-Dombois (1981) (*in* Cuddihy and Stone 1990, p. 91) point out that most natural vegetation types of Hawaii would not carry fire before the introduction of alien grasses, and Smith and Tunison (*in* Stone *et al.* 1992, p. 396) state that native plant fuels typically have low flammability. Cuddihy and Stone (1990, p. 91) state that fire probably influenced the evolution of the montane ecosystems of Maui and Hawaii, which contain grasslands of the native *Deschampsia nubigena* (hairgrass) and stands of native shrub species and *Acacia koa*.

Alien-dominated grasslands and shrublands constitute the greatest fire threat to native lowland vegetation, including the lowland mesic ecosystem described in this final rule. Grasses (particularly those that produce mats of dry material or retain a mass of standing dead leaves) that invade native forests

and shrublands provide fuels that allow fire to burn areas that would not otherwise easily burn (Fujioka and Fujii 1980, *in* Cuddihy and Stone 1990, p. 93). Native woody plants may recover from fire to some degree, but fire tips the competitive balance toward alien species (National Park Service 1989, *in* Cuddihy and Stone 1990, p. 93). Many nonnative invasive plants, especially fire tolerant grasses, outcompete native plants and inhibit their regeneration (D'Antonio and Vitousek 1992, pp. 70, 73–74; Tunison *et al.* 2002, p. 122).

Fire represents a threat to many of the species found in the lowland mesic, montane mesic, and dry cliff ecosystems addressed in this final rule. Fire can destroy dormant seeds as well as plants, even in steep or inaccessible areas. Successive fires that burn farther and farther into native habitat destroy native plants and remove habitat for native species by altering microclimate conditions favorable to alien plants. Alien plant species most likely to be spread as a consequence of fire are those that produce a high fuel load, are adapted to survive and regenerate after fire, and establish rapidly in newly burned areas. For example, a documented increase in the frequency and size of fires at Hawaii Volcanoes National Park since 1968 coincided with an increasing cover of alien grasses (Smith and Tunison 1992, p. 398).

Habitat destruction and modification by hurricanes

Hurricanes adversely impact native Hawaiian habitat, including all six6 Kauai ecosystems and their associated species identified in this final rule. They do this by destroying native vegetation, opening the canopy and thus modifying the availability of light, and creating disturbed areas conducive to invasion by nonnative pest species (Asner and Goldstein 1997, p. 148; Harrington *et al.* 1997, pp. 539–540). Because many Hawaiian plant and animal species, including the 48 species in this final rule, persist in low numbers and in restricted ranges, natural disasters such as hurricanes can be particularly devastating (Hawaii Comprehensive Wildlife Conservation Plan 2005, p. 4–3).

In November 1982, Hurricane Iwa struck the Hawaiian Islands with wind gusts exceeding 100 miles per hour (mph) (161 kilometers per hour (kph)), causing extensive damage, especially on the islands of Niihau, Kauai, and Oahu (Businger 1998, pp. 2, 6). Many forest trees were destroyed, which opened the canopy and facilitated invasion of native habitat by nonnative plants. Competition with nonnative plants is a

threat to each of the 6 ecosystems and the 48 species addressed in this final rule, as described above. In September 1992, Hurricane Iniki, a Category 4 hurricane with maximum wind speeds recorded at 140 mph (225 kph), passed directly over the island of Kauai, causing significant damage to Kauai's native plant populations (Businger 1998, pp. 2, 6; S. Perlman 1992, pp. 1–9). Several species of Kauai's endemic forest birds suffered significant declines in population, and some have not been observed since the hurricanes. In addition, populations of several of Hawaii's rare plants, including three of the species in this final rule, *Lysimachia iniki*, *L. pendens*, and *L. venosa*, were adversely impacted by hurricanes Iwa and Iniki through wind damage, canopy disruption, and landslides (S. Perlman 1992, p. 1). Damage by future hurricanes could further decrease the remaining native-plant dominated habitat areas that support rare plants and wildlife in Kauai ecosystems (S. Perlman 1992, pp. 1–9).

Habitat destruction and modification due to landslides and flooding

Landslides and flooding destabilize substrates, damage and destroy individual plants, and alter hydrological patterns, which result in changes to native plant and animal communities. Due to the steep topography of much of the island of Kauai, erosion and disturbance caused by introduced ungulates exacerbate the potential for landslides or flooding, which in turn threaten native plants. For those species that occur in small numbers in highly restricted geographic areas, such events have the potential to eradicate all individuals of a population, or even all populations of a species, resulting in extinction.

Landslides and flooding likely adversely impact many of the species addressed in this final rule, including: *Chamaesyce eleanoriae*, *C. remyi* var. *kauaiensis*, *C. remyi* var. *remyi*, *Charpentiera densiflora*, *Cyanea dolichopoda*, *C. eleleensis*, *C. kolekoleensis*, *C. kuhihewa*, *Cyrtandra oenobarba*, *C. paliku*, *Diellia mannii*, *Dubautia kenwoodii*, *D. plantaginea* ssp. *magnifolia*, *Lysimachia iniki*, *L. pendens*, *L. scopulensis*, *L. venosa*, *Melicope paniculata*, *Myrsine mezii*, *Phyllostegia renovans*, *Platydesma rostrata*, *Schiedea attenuata*, and *Stenogyne kealiae*. Monitoring data from the HBMP suggests that these species are threatened by landslides or falling rocks, since they are found in landscape settings susceptible to these events (e.g., steep slopes and cliffs). Since *S. attenuata* is known from only

a single population of 20 individuals on a steep cliff, one landslide could lead to the extinction of the species by direct destruction of the individual plants, mechanical damage to individual plants which could lead to their death, destabilization of the cliff habitat leading to additional landslides, and alteration of hydrological patterns (e.g., affecting the availability of soil moisture). Field survey data presented in the HBMP suggest that *Charpentiera densiflora* and *Cyanea oenobarba* are threatened by both landslides and flooding, and *Cyanea kolekoleensis* is threatened by flooding.

Habitat destruction and modification by climate change

The exact nature of the impacts of global climate change and increasing temperatures on native Hawaiian ecosystems, including the 6 Kauai ecosystems and each of the associated 48 species identified in this final rule, are unknown, but are likely to include the loss of native species that comprise the communities in which the 48 Kauai species occur (Benning *et al.* 2002, pp. 14246 and 14248; Pounds *et al.* 1999, pp. 611–612; Still *et al.* 1999, p. 610). Future changes in precipitation are uncertain because they depend in part on how El Niño (a disruption of the ocean atmospheric system in the Tropical Pacific having important global consequences for weather and climate) might change, and reliable projections of changes in El Niño have yet to be made (Benning *et al.* 2002, pp. 14248–14249).

According to some climate change projections, temperature increases could present an additional threat specific to the akekee and akikiki by causing an increase in the elevation at which regular transmission of avian malaria occurs, potentially reducing the remaining suitable habitat for these species by 85 percent (Benning *et al.* 2002). Experimental evidence has shown that the malaria parasite does not develop in birds in an environment below 55 degrees Fahrenheit (°F) (13 °C)), and field studies have found that maximum malaria transmission occurs where mean ambient summer temperature is 63 °F (17 °C) (Benning *et al.* 2002, p. 14,246). Between 55 and 63 °F (13 and 17 °C), malaria transmission is sporadic and usually associated with warmer periods, such as El Niño events (Benning *et al.* 2002, p. 14246). There are no forested areas on Kauai where mean ambient temperature is below 55 °F (13 °C), which indicates that all areas are subject to malaria at least periodically. Benning *et al.* (2002) used GIS simulation to show that an increase

in temperature of 3.6 °F (2 °C), which is within the range predicted by some climate models (e.g. Still *et al.* 1999 and references therein, p. 608; IPCC 2001, pp. 67–69), would raise the 63 °F (17 °C) isotherm in the Alakai Swamp region on Kauai by 984 ft (300 m), resulting in an 85 percent decrease in the land area where malaria transmission currently is only periodic. If climate change were to reduce the remaining suitable habitat for the akekee and akikiki by 85 percent as predicted, it would likely contribute to the extinction of the species over time.

The 48 Kauai species in this final rule may be among the species most vulnerable to extinction due to anticipated global climate change, although the specific impacts of such climate change on these species cannot currently be known. Impacts to the species in this final rule would be expected to include habitat loss and alteration or changes in disturbance regimes, in addition to direct physiological stress. The probability of species going extinct as a result of these factors increases when ranges are restricted, habitat decreases, and population numbers decline (IPCC 2007, p. 8). Such is the case for each of the 48 Kauai species, which are characterized by limited climatic ranges and restricted habitat requirements, small population size, and low number of individuals. The threat of climate change for the akikiki and akekee would be further exacerbated by the extensive loss of suitable habitat due to the expansion of the transmission zone for malaria.

Summary of Habitat Destruction and Modification

The threats to each of the 48 Kauai species addressed in this final rule are occurring throughout the entire range of each of the species. These threats include introduced ungulates, nonnative plants, fire, natural disasters, and climate change.

The effects from ungulates are immediate because ungulates currently occur in all of the ecosystems on which these species depend. The threat presented by introduced ungulates is significant for the following reasons:

- (1) They trample and graze areas, directly impacting the plant species addressed in this final rule;
- (2) They increase soil disturbance, leading to mechanical damage to individuals of these plants and host plants of *Drosophila sharpi*;
- (3) They trample and graze on native plants used for nesting and foraging by the akekee and akikiki, and for larvae development and foraging by *D. sharpi*;

(4) They create open, disturbed areas that are conducive to weedy plant invasion and establishment of alien plants from dispersed fruits and seeds. Over time, this results in the conversion of a community dominated by native vegetation to one dominated by nonnative vegetation (leading to all of the negative impacts associated with nonnative plants, detailed below);

(5) They increase watershed erosion and sedimentation; and

(6) They create breeding sites for mosquitoes, the primary vector for the transmission of avian diseases, which threaten the akikiki and akekee.

These significant threats are ongoing and are expected to continue or increase in magnitude and intensity into the foreseeable future without control or eradication.

Nonnative plants represent a significant and immediate threat to all 48 species being addressed in this final rule through habitat destruction and modification for the following reasons:

(1) They adversely impact microhabitat by modifying the availability of light;

(2) They alter soil-water regimes;

(3) They modify nutrient cycling processes;

(4) They alter fire characteristics of native plant habitat, leading to incursions of fire-tolerant nonnative plant species into native habitat; and

(5) They outcompete, and possibly directly inhibit the growth of, native plant species.

All of these threats can convert native dominated plant communities to nonnative plant communities (Cuddihy and Stone 1990, p. 74; Vitousek 1992, pp. 33–35). This conversion has negative impacts on and threatens the 45 plant species addressed here, as well as the akikiki, akekee, and *Drosophila sharpi*, which depend upon native plant species for essential life history needs. The significant threat presented by nonnative plants is ongoing and is expected to continue or increase in magnitude and intensity into the foreseeable future without the implementation of effective native ecosystem restoration actions.

The threat from fire to the species in this final rule that depend on lowland mesic, montane mesic, and dry cliff ecosystems (see Table 2) is significant because fire damages and destroys native vegetation, including dormant seeds, seedlings, and juvenile and adult plants. Many nonnative invasive plants, particularly fire-tolerant grasses, outcompete native plants and inhibit their regeneration (D'Antonio and Vitousek 1992, pp. 70, 73–74; Tunison *et al.* 2001, p. 122). Successive fires that

burn farther and farther into native habitat destroy native plants and remove habitat for native species by altering microclimatic conditions and creating conditions favorable to alien plants. The threat from fire is unpredictable but omnipresent in these ecosystems that have been invaded by nonnative, fire-prone grasses.

Natural disasters such as hurricanes represent a significant threat to native habitat and the 48 species addressed in this final rule because they open the forest canopy, modify available light, and create disturbed areas that are conducive to invasion by nonnative pest plants (Asner and Goldstein 1997, p. 148; Harrington *et al.* 1997, pp. 346–347). These impacts can be particularly devastating to the 48 species addressed in this final rule because due to other threats they now persist in low numbers or occur in restricted ranges, and are therefore less resilient to such disturbances. Furthermore, a particularly destructive hurricane holds the potential of driving a highly localized endemic species to extinction in a single event. In 1982 and 1992, the island of Kauai received the brunt of hurricane-force winds and rain associated with hurricanes Iwa and Iniki. Field biologists noted significant declines in native Hawaiian plant and wildlife populations following these events, and believe that future hurricane damage could further exacerbate these declines (S. Perlman 1992, p. 1). Hurricanes present an immediate and ever-present threat, because they can occur at any time, although their occurrence is not predictable.

Landslides and flooding adversely impact many of the species in this final rule (see Table 2) by destabilizing substrates, damaging and destroying individual plants, and altering hydrological patterns, which result in habitat destruction or modification and changes to native plant and animal communities. These threats are significant and, as with hurricanes, have the potential to occur at any time, although their occurrence is not predictable.

The projected effects of global climate change and increasing temperatures on the 48 species addressed in this final rule relate to changes in microclimatic conditions, which may lead to the loss of native species due to direct physiological stress, the loss or alteration of habitat, or changes in disturbance regimes (e.g., storms and hurricanes). The probability of species going extinct increases when ranges are restricted, habitat decreases, and population numbers decline, as is the case with small populations of single-

island endemic species. Each of the 48 Kauai species are particularly vulnerable to extinction because of these kinds of environmental changes. In addition, climate change may present a significant threat specific to the akekee and akikiki by causing an increase in the elevation at which regular transmission of avian malaria occurs, thereby reducing available habitat. However, because the specific effects of probable climate change on these species are unknown at this time, we are not able to determine the magnitude of this threat with confidence. Each of the Factor A threats are ongoing and are expected to continue or increase in magnitude and intensity into the foreseeable future. These threats are acting in concert with other threats to the species, magnifying the cumulative detrimental effects on the status of each of the 48 Kauai species identified in this rule.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The palm tree *Pritchardia hardyi* is found only on the island of Kauai. Rare palm trees are highly desirable to collectors, and there is an active internet sales and online auction market for their seeds and seedlings, including *P. hardyi* (GardenGuides.com 2007; Rarepalmseeds.com 2007; South Coast Palms 2007; Kapoho Palms 2007; J.D. Anderson Nursery 2007; Jungle Music Palms and Cycads 2007; Tropical Gardens of Maui 2007). Seeds of *P. hardyi* have been illegally removed from an outplanting site in the past (R. Nishek, NTBG, pers. comm. 2007), and we have evidence of vandalism and illegal collection of other species of endangered *Pritchardia* palms on Kauai (Johnson 1996, pp. 16–17; A. Kyono, DOFAW, pers. comm. 2000; R. Nishek, pers. comm. 2007). Because this species is found in only two populations with limited numbers of individuals, and is vulnerable to vandalism and illegal collection, we consider overutilization to be an immediate and significant threat to *P. hardyi* throughout its entire range. We do not consider overutilization to present a threat to any of the other 47 Kauai species.

C. Disease or Predation

Avian Diseases

Avian diseases transmitted by the introduced southern house mosquito (*Culex quinquefasciatus*), including avian pox (*Poxvirus avium*) and malaria (*Plasmodium relictum*), play a major role in limiting the distribution of many Hawaiian forest bird species and present

a significant and immediate threat to the akekee and akikiki throughout their ranges (Benning *et al.* 2002, p. 14246). Like many other native Hawaiian forest birds, the akikiki and akekee are no longer found at lower elevations, and are now restricted to the higher elevation montane mesic and montane wet ecosystems where mosquitoes and the diseases they carry are less prevalent (Scott *et al.* 1986, pp. 367–368). In the warmer fall months, *C. quinquefasciatus* breeds at higher densities in upper elevation forests, coinciding with a prevalence of malaria in avian populations at higher elevations (van Riper *et al.* 1986, pp. 332–333, 338).

Native Hawaiian birds became exposed to mosquito-borne avian diseases when mosquitoes were introduced to the islands in 1827 with imported caged birds and domestic fowl (Yorinks and Atkinson 2000, p. 731 and references therein). Native Hawaiian forest birds are more susceptible to malaria than are nonnative bird species (van Riper *et al.* 1986, pp. 327–328), and native birds infected with malaria also show altered behaviors that increase their vulnerability to predation (Yorinks and Atkinson 2000, pp. 731–738). Avian malaria appears to be highly pathogenic for the Hawaiian honeycreepers (birds in the subfamily Drepanidinae), including the akikiki and akekee (Yorinks and Atkinson, p. 737); in a study of iiwi (*Vestiaria coccinea*), another Hawaiian honeycreeper, Atkinson *et al.* (1995, p. S65) described “extraordinarily high mortality” of birds infected with malaria. This susceptibility, in combination with the observation that other Hawaiian honeycreepers have become restricted to high elevation forests, led Atkinson *et al.* (1995, p. S68) to predict that a shift in the current mosquito distribution to higher elevations could be disastrous for those species with already reduced populations. As discussed below (“Other Natural or Manmade Factors Affecting Their Continued Existence”), climate change may present such a threat to the akikiki and akekee, by potentially causing an increase in the elevation at which regular transmission of avian malaria occurs (Benning *et al.* 2002, pp. 14246–14247). Atkinson *et al.* (2009, pp. 58–59) state that in the Alakai Wilderness Preserve, a projected 2 °C temperature rise from global warming would reduce the forested habitat where transmission is currently highly seasonal to conditions where transmission could occur throughout the year by 85 percent.

Disease is not known to be a threat to the 45 plants or Hawaiian picture-wing fly addressed in this final rule.

Predation

Hawaii's plants and animals evolved in nearly complete isolation. Successful colonization of these remote volcanic islands was infrequent, and many organisms never established populations. As an example, Hawaii lacks any native ants or conifers, has very few bird families, and has only a single native land mammal (Loope 1998, p. 748). Defenses against mammalian herbivory, such as thorns, prickles, and production of toxins, were not needed, and evolutionary pressure for plants to produce or maintain them was lacking. Therefore, Hawaiian plants lost or never developed these defenses (Carlquist 1980, p. 173). Likewise, birds endemic to Hawaii lost their resistance to diseases common to their continental origins, and strategies to avoid mammalian predators. Native Hawaiian birds were not able to withstand the stressors of habitat change and predation caused when browsers, grazers, rooters, and predators were introduced (e.g., goats, cattle, pigs, rats, cats, and deer) (Scott *et al.* 1986, pp. 352–361, 364–365). The native flora and fauna of the islands are thus particularly vulnerable to the impacts of introduced alien species.

Introduced Ungulates

In addition to the habitat impacts discussed above (see “Habitat destruction and modification by introduced ungulates”), the 45 plant species in this final rule are likely impacted by ungulates due to trampling and eating individual plants. This information is also presented in Table 2.

Feral pigs

We have direct evidence of ungulate damage to some of these species, but for many, ungulate damage is presumed based on several studies conducted in Hawaii and elsewhere. In a study conducted by Diong (1982, p. 160) on Maui, feral pigs were observed browsing on young shoots, leaves, and fronds of a wide variety of plants, of which over 75 percent were endemic species (Diong 1982, p. 160). A stomach content analysis in this study showed that 60 percent of the pigs' food source consisted of the endemic *Cibotium* (tree fern). Pigs were observed to fell plants and remove the bark of the native plant species *Clermontia*, *Cibotium*, *Coprosma*, *Psychotria*, *Scaevola*, and *Kadua* (*Hedyotis*), resulting in larger trees being killed over a few months of repeated feeding (Diong 1982, p. 144). A study in Texas conducted by Beach (1997, pp. 3–4) revealed that feral pigs spread disease and parasites, and that

their rooting and wallowing behavior led to spoilage of watering holes and loss of soil through leaching and erosion. Rooting activities also decreased the survivability of some plant species through disruption at root level of mature plants and seedlings (Beach 1997, pp. 3–4).

Feral goats

Feral goats thrive on a variety of food plants, and are instrumental in the decline of native vegetation in many areas (Cuddihy and Stone 1990, p. 64). Feral goats trample roots and seedlings, cause erosion, and promote the invasion of alien plants. They are able to forage in extremely rugged terrain and have a high reproductive capacity (Clarke and Cuddihy 1980, p. C–20; van Riper and van Riper 1982, pp. 34–35; Tomich 1986, pp. 153–156; Cuddihy and Stone 1990, p. 64). A study of goat predation on a native *Acacia koa* forest on the island of Hawaii has shown that grazing pressure by goats can cause the eventual extinction of *koa* because it is unable to reproduce (Spatz and Mueller-Dombois 1973, p. 874). If goats are maintained at constantly high numbers, mature trees will eventually die, including the root systems that support suckers and vegetative reproduction. An enclosure analysis demonstrated that restricting goat access using fencing resulted in a rapid recovery in height growth and numbers of vegetative resprouts of *koa* (Spatz and Mueller-Dombois 1973, p. 873). Another study at Puuwaawaa on the island of Hawaii demonstrated that prior to management actions in 1985, regeneration of endemic shrubs and trees in the goat-grazed area was almost totally lacking, contributing to the invasion of the forest understory by exotic grasses and weeds. After the removal of grazing animals in 1985, *koa* and *Metrosideros* spp. (*ohia*) seedlings were observed germinating by the thousands (Department of Land and Natural Resources 2002, p. 52). Goats have been observed uprooting, eating, and trampling native plants in the Kauai ecosystems (e.g., K. Wood 1994; S. Perlman 2007). Based on a comparison of fenced and unfenced areas, it is clear that goats can devastate native ecosystems. They can also outcompete black-tailed deer. It is estimated that there can be up to 2 goats per hectare in areas in Hawaii (C. Kessler, pers. comm. 2008).

Black-tailed deer

Black-tailed deer consume native vegetation, trample roots and seedlings, accelerate erosion, and promote the invasion of nonnative plants (van Riper and van Riper 1982, pp. 42–43; Stone

1985, pp. 261–262; Tomich 1986, pp. 132–134; Cuddihy and Stone 1990, p. 67). About 350 animals are known to occur in and near Waimea Canyon, with some invasion into Alakai Swamp in drier periods (Cuddihy and Stone 1990, p. 67). According to current State records, they feed largely on the introduced species strawberry guava, thimbleberry, passion flower, and blackberry, as well as the native species *Alyxia oliviformis* (maile), *Dodonaea viscosa* (aalii), *Dianella sandwicensis* (ukiuki), *Coprosma* sp. (pilo), and *Acacia koa* (Cuddihy and Stone 1990, p. 67). Black-tailed deer affect the species and ecosystems addressed in this final rule by damaging native plants through browsing or trampling, resulting in plant mortality and the loss of reproductive vigor. By spreading seeds of nonnative species on their coats or in their digestive tracts, they also increase competition for resources with native species.

Rats

There are three species of introduced rats in the Hawaiian Islands. The Polynesian rat (*Rattus exulans*) and the black rat (*Rattus rattus*) are primarily found in the wild, in dry to wet habitats, while the Norway rat (*Rattus norvegicus*) is typically found in manmade habitats such as urban areas or agricultural fields (Tomich 1986, p. 41). The Polynesian rat probably arrived on the Hawaiian Islands as an inadvertent introduction by early Polynesian colonizers from the central Pacific (Tomich 1986, p. 42). More recently, the black rat and the Norway rat most likely arrived on the Hawaiian Islands as stowaways on ships sometime in the 19th century (Atkinson and Atkinson 2000, p. 25).

Rats occur in all 6 of the Kauai ecosystems, and rat predation threatens at least 19 of the 45 plant species addressed in this final rule (see Table 2). Although introduced rats are best known for their impacts on island birds, rat predation on seeds and young plants can seriously affect regeneration. They are also known to have caused declines or even the total elimination of island plant species (Campbell and Atkinson 1999, as cited in Atkinson and Atkinson 2000, p. 24). Rats impact the native plants by eating fleshy fruits, seeds, flowers, stems, leaves, roots, and other plant parts (Atkinson and Atkinson 2000, p. 23). On the Hawaiian Islands, rats may consume as much as 90 percent of the seeds produced by some trees, or in some cases prevent the regeneration of forest species completely (Cuddihy and Stone 1990, pp. 68–69). Plants with large, fleshy

fruits are particularly susceptible to rat predation including several of the plant genera in this listing, for example the fruits of *Pritchardia* spp., and plants in the bellflower (e.g., *Cyanea* spp.) and African violet (e.g., *Cyrtandra* spp.) families (Cuddihy and Stone 1990, pp. 67–69). Research on rats in forests in New Zealand has demonstrated that, over time, rats may alter the species composition of forest plants (Cuddihy and Stone 1990, pp. 68–69).

Rat predation may also threaten the native host plants of *Drosophila sharpi*, and the akeke and akikiki in the montane mesic and montane wet ecosystems. Rats are reported in the ecosystems where these birds occur and are potential predators on roosting or incubating adults, nests, and young (VanderWerf and Smith 2002, p. 73; Scott *et al.* 1986, pp. 363–364; USFWS 2007 Candidate Status Assessments). Predation by rats was the greatest cause of nest failure for the puaiohi, or small Kauai thrush (*Myadestes palmeri*), an endangered bird that inhabits the same areas as the akeke and akikiki (Tweed *et al.* 2006, p. 753). Puaiohi nest almost exclusively in pseudo-cavities on cliff faces (Snetsinger *et al.* 2005, p. 77), unlike akikiki and akeke that build cup nests in trees (Birds of North America Online, 2008a,b). Captive-raised puaiohi constructed cup nests in trees during a 1999 captive release in the Kawaikoi, and two females and their associated young were killed by rats at these nests (Tweed *et al.* 2003, USGS/BRD, unpublished data). From these data and information on rat predation for cliff nests (Snetsinger *et al.* 2005, p. 79), it is apparent that puaiohi cliff nests and cup nests in trees are both vulnerable to rat predation. Although we do not have direct evidence of rat predation on the akeke or akikiki from nest studies, it is reasonable to assume that birds nesting in the same area as the puaiohi would be exposed to similar impacts from rat predation.

Cats and Owls

Feral cats are present in the Alakai Swamp, which is within the montane wet ecosystem (Tweed *et al.* 2006, p. 753). Cats are believed to prey on roosting or incubating akeke and akikiki adults, nests, and young (VanderWerf and Smith 2002, p. 73; Scott *et al.* 1986, pp. 363–364). Though cats are most common at lower elevations, they have been observed in high-elevation rain forests on Hawaii and Maui (Scott *et al.* 1986, p. 363). On Hawaii Island, native forest birds have been found to be a regular component in the diets of feral cats in the montane wet forest (Smucker *et al.* 2000, p. 233).

Examination of the stomach contents of 118 feral cats at Hakalau forest found native and introduced birds to be the most common prey item (Banko *et al.* 2004, p. 162). In addition, two species of owls, the native pueo and the introduced barn owl, are also known to prey on forest birds. Between 1996 and 1998, 10 percent of nest failures of the endangered puaiohi on Kauai were attributed to owls (Snetsinger *et al.* 1994, p. 47; Snetsinger *et al.* 2005, pp. 72, 79). Since the puaiohi occurs in the same area and forest type as the akikiki and akeke and is of generally similar size, it is not unreasonable to assume there may be similar impacts to these bird species.

Invertebrates

Predation by nonnative invertebrate pests adversely impacts 14 of the plant and animal species (see Table 2) in this final rule through mechanical damage to plants, destruction of plant parts, parasitism, and mortality. Those introduced invertebrate pests with the greatest effect on these native species include at least 12 different species of slugs (Joe 2006, pp. 6, 12), the black twig borer (*Xylosandrus compactus*) (Davis 1970, pp. 38–39), the two-spotted leafhopper (*Sophonia rufofascia*) (Hawaii Department of Agriculture, p. 1; Fukada 1996, pp. 1–12), and the western yellow-jacket wasp (*Vespula pensylvanica*) (Gambino and Loope 1992, p. 1).

Predation by nonnative slugs is most likely a threat to individuals of the four species of *Cyanea* in this final rule: *Cyanea dolichopoda*, *C. eleleensis*, *C. kolekoleensis*, and *C. kuhihewa* (Joe 2006, p. 10). On Oahu, slugs have been reported to destroy *C. grimesiana* ssp. *obatae* and *C. superba* ssp. *superba* in the wild, and have been observed eating leaves and fruit of cultivated individuals of *Cyanea* (L. Mehrhoff, pers. comm. 1995; U.S. Army Garrison 2005, pp. 3–34, 3–51). Little is known about the predation of certain rare plants by slugs; however, information in the U.S. Army's 2005 Status Report for the Makua Implementation Plan indicates that slugs can be a threat to all species of *Cyanea* (U.S. Army Garrison 2005, p. 3–51). Research investigating slug herbivory and control methods shows that slug impacts on *Cyanea* seedlings results in up to 70 to 80 percent seedling mortality (U.S. Army Garrison 2005, p. 3–51). Although we do not have direct evidence of slug predation on the four species of *Cyanea* addressed in this rule, slugs are found in the ecosystems on Kauai in which these plants occur. It is therefore reasonable to assume these plant species

would be exposed to similar impacts from slug predation.

The black twig borer (*Xylosandrus compactus*) is known to infest a wide variety of common plant taxa, including native species of *Melicope* (Davis 1970, p. 39; Extension Entomology and UH-CTAHR Integrated Pest Management Program 2006a, p. 1). This insect pest burrows into branches, introduces a pathogenic fungus as food for its larvae, and lays its eggs (Davis 1970, p. 39). Twigs, branches, and even entire plants can be killed from an infestation (Extension Entomology and UH-CTAHR Integrated Pest Management Program 2006a, p. 2). On the Hawaiian Islands, the black twig borer has many hosts, disperses easily, and is probably present at most elevations up to 2,500 ft (762 m) (Howarth 1985, pp. 152–153). Damage caused by the black twig borer has been observed by field biologists on *Canavalia napaliensis*, *Charpentiera densiflora*, *Melicope degeneri*, *M. paniculata*, and *M. puberula* (HBMP 2006).

The two-spotted leafhopper is a threat as the effects of its predation have been observed on four plant species included in this final rule: *Chamaesyce remyi* var. *remyi* (K. Wood, pers. comm. 2000), *Cyanea kuhihewa* (Wood 2004), *Platydesma rostrata* (HBMP 2007), and *Psychotria hobbdyi* (HBMP 2006). This nonnative insect damages the leaves it feeds on, typically causing chlorosis (yellowing due to disrupted chlorophyll production) to browning and death of foliage (Hawaii Department of Agriculture 2006, p. 1). The damage to plants can result in the death of affected leaves or the whole plant, owing to the combined action of its feeding and oviposition behavior (Alyokhin *et al.* 2004, p. 13). In addition to the mechanical damage caused by the feeding process, the insect may introduce plant pathogens that lead to eventual plant death (Extension Entomology and UH-CTAHR Integrated Pest Management Program 2006b, p. 2). The two-spotted leafhopper is a highly polyphagous (generalist) insect, and of its recorded host plant species, 68 percent are fruit, vegetable, and ornamental crops, and 22 percent are endemic plants; over half of which are rare and endangered (Alyokhin *et al.* 2004, p. 13). Its range is limited to below 4,000 ft (1,219 m) in elevation, unless there is a favorable microclimate. There has been a dramatic reduction in the two-spotted leafhopper populations in the past few years, possibly due to egg parasitism (M. Fukada, pers. comm. 2007).

Nonnative predatory and parasitic insects are considered significant factors

contributing to the reduction in range and abundance of *Drosophila* species in Hawaii (Science Panel 2005, p. 25). In addition to the accidental establishment of nonnative species, nonnative predators and parasites have been purposefully imported and released in Hawaii since 1865 for biological control of pests. Between 1890 and 2004, 387 nonnative species were introduced, sometimes with the specific intent of reducing populations of native Hawaiian insects (Funasaki *et al.* 1988, pp. 109–110, 143; Lai 1988, pp. 180, 186; Staples and Cowie 2001, pp. 41, 54–57). Nonnative arthropods present a serious threat to Hawaii's native *Drosophila*, both through direct predation or parasitism as well as competition for food and space; therefore, these nonnative arthropods may be a threat to *Drosophila sharpi* (Howarth and Medeiros 1989, pp. 82–83; Howarth and Ramsay 1991, pp. 80–83; Kaneshiro and Kaneshiro 1995, pp. 41–45; Staples and Cowie 2001, pp. 41, 54–57).

Due to their large colony sizes and systematic foraging habits, species of social Hymenoptera (ants and some wasps) and parasitic wasps present a predation threat to the Hawaiian picture-wing flies, including *Drosophila sharpi* (Gambino *et al.* 1987, p. 170; Foote and Carson 1995, p. 370; Kaneshiro and Kaneshiro 1995, p. 12). Hawaiian arthropods, including *D. sharpi*, evolved without the predation influence of social wasps (Kaneshiro and Kaneshiro 1995, pp. 41–45), and therefore have no defenses against such predation. In 1977, an aggressive race of the western yellow-jacket wasp became established in the State of Hawaii, and is now abundant between 1,969 and 5,000 ft (600 and 1,524 m) in elevation (Gambino *et al.* 1990, p. 1,087; Foote and Carson 1995, p. 370) on all the main islands (Tenorio and Nishida 1995, p. 174).

Drosophila sharpi is present within the elevation range occupied by the yellow-jacket wasps, which are voracious predators in most ecosystems in which they are found. Compared with typical North American populations, yellow-jacket wasps in Hawaii display a high incidence of colonies that overwinter and persist into at least a second year. The result is that numbers of workers at such colonies are much greater than at annual colonies (Gambino *et al.* 1987, p. 169). Yellow-jacket wasp colonies in Hawaii can each produce over a half-million foragers that consume tens of millions of arthropods (Gambino and Loope 1992, p. 19). Picture-wing flies may be particularly vulnerable to predation by wasps due to

the flies' lekking (gathering in groups for breeding) behavior, conspicuous courtship displays that can last for several minutes, and relatively large size (K. Kaneshiro, University of Hawaii at Manoa, pers. comm. 2006). Yellow-jacket wasps are widespread within at least a portion of the range encompassing the *D. sharpi* population sites in the montane mesic and montane wet ecosystems on Kauai (Science Panel 2005, p. 12).

The rarity or disappearance of numerous picture-wing fly species, including *Drosophila sharpi*, from historical observation sites over the past 25 years may be due to a variety of factors. While there is no documentation that conclusively ties this decrease in observations to the establishment of yellow-jacket wasps within their habitats, the concurrent arrival of wasps and decline of picture-wing fly observations in some areas suggest that the wasps may have played a significant role in the decline of some picture-wing fly populations, including that of *D. sharpi* (Foote and Carson 1995, p. 370; Kaneshiro and Kaneshiro 1995, pp. 41–45; Science Panel 2005, p. 25).

Summary of Predation

We consider predation and parasitism by nonnative animal species (pigs, goats, deer, rats, and invertebrates) to present an immediate and significant threat to 44 of the 48 species in this final rule throughout their ranges for the following reasons:

(1) Browsing and trampling by pigs, goats, and deer has been documented for 40 of the plant species included in this final rule (*Astelia waialealae*, *Canavalia napaliensis*, *Chamaesyce eleanoriae*, *Chamaesyce remyi* var. *kauaiensis*, *Chamaesyce remyi* var. *remyi*, *Charpentiera densiflora*, *Cyanea elealeensis*, *Cyanea kolekokeensis*, *Cyanea kuhihewa*, *Cyrtandra oenobarba*, *Diellia mannii*, *Doryopteris angelica*, *Dubautia imbricata* ssp. *imbricata*, *Dubautia kalalauensis*, *Dubautia kenwoodii*, *Dubautia plantaginea* ssp. *magnifolia*, *Dubautia waialealae*, *Geranium kauaiense*, *Keysseria erici*, *Keysseria helenae*, *Labordia helleri*, *Labordia pumila*, *Lysimachia daphnoides*, *Lysimachia pendens*, *Lysimachia scopulensis*, *Melicope degeneri*, *Melicope paniculata*, *Melicope puberula*, *Myrsine knudsenii*, *Myrsine mezii*, *Phyllostegia renovans*, *Pittosporum napaliense*, *Platydesma rostrata*, *Pritchardia hardyi*, *Psychotria grandiflora*, *Psychotria hobbdyi*, *Schiedea attenuata*, *Stenogyne kealiae*, *Tetraplasandra bisattenuata*, and *Tetraplasandra flynnii*); other studies

have documented the negative impacts of ungulate browsing and trampling on other native plant species from the Hawaiian islands (Spatz and Mueller-Dombois 1973, p. 874; Diong 1982, p. 160; Cuddihy and Stone 1990, p. 67);

(2) Mechanical damage caused by nonnative invertebrates and rats has been documented for 23 of the plant species in this final rule (*Canavalia napaliensis*, *Chamaesyce eleanoriae*, *Chamaesyce remyi* var. *remyi*, *Charpentiera densiflora*, *Cyanea dolichopoda*, *Cyanea eleeleensis*, *Cyanea kolekokeensis*, *Cyanea kuuhihewa*, *Cyrtandra oenobarba*, *Doryopteris angelica*, *Labordia helleri*, *Melicope degeneri*, *Melicope paniculata*, *Melicope puberula*, *Myrsine knudsenii*, *Phyllostegia renovans*, *Pittosporum napaliense*, *Platydesma rostrata*, *Pritchardia hardyi*, *Psychotria grandiflora*, *Psychotria hobbyi*, *Stenogyne kealiae*, and *Tetraplasandra bisattenuata*);

(3) Nonnative invertebrates such as yellow-jacket wasps prey upon, parasitize, and kill *Drosophila sharpi*, and rat predation likely impacts the larval host plants of *D. sharpi*; and

(4) Rats, owls, and cats are likely predators on roosting or incubating adults, nests, and young of the akekee and akikiki (See Table 2).

These significant threats are ongoing, acting in concert with other threats to the species, and are expected to continue or increase in magnitude and intensity into the foreseeable future without effective management actions to control or eradicate them.

D. The Inadequacy of Existing Regulatory Mechanisms

Currently, there are no Federal, State, or local laws, treaties, or regulations that specifically conserve or protect the 48 species from the threats described in this final rule. The Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703-712) is the domestic law that implements the United States' commitment to four international conventions (with Canada, Japan, Mexico, and Russia) for the protection of shared migratory bird resources. Each of the conventions protects selected species of birds. The MBTA does not provide protection for any Hawaiian honeycreepers (Drepanidinae), including the two species being addressed in this final rule (akikiki and akekee), because they belong to a group not expressly mentioned by the Canadian, Mexican, or Russian treaties (71 FR 50205; August 24, 2006). The regulatory mechanisms of the MBTA are directed at the taking, possession, transportation, sale, purchase, barter, exportation, and

importation of migratory birds. Since none of the activities regulated under the MBTA pose a threat to either the akikiki or akekee, we do not consider the lack of regulatory protection under the MBTA to pose a threat to either of these two bird species.

E. Other Natural or Manmade Factors Affecting Their Continued Existence

Competition with Nonnative Invertebrates

Competition by nonnative crane-flies (family Tipulidae) is a threat to *Drosophila sharpi* in the montane mesic and montane wet ecosystems on Kauai. The Hawaiian Islands now support several established species of nonnative crane-flies, and the larvae of some species feed within the decomposing bark of *Cheirodendron* spp. (Science Panel 2005, p. 18; K. Magnacca, pers. comm. 2005; S. Montgomery, pers. comm. 2005a). These tipulid larvae feed within the same portion of the decomposing host plant area normally occupied by *D. sharpi* larvae during their development. The effect of this competition is a reduction in available host plant material for *D. sharpi* larvae (Science Panel 2005, p. 18). There have been no statistical studies conducted on tipulid larvae competition in Hawaii, but it is thought the issue is severe based on many observations of very high numbers of tipulid flies present within the host plants of several species of Hawaiian *Drosophila* (S. Montgomery, pers. comm. 2008). In laboratory studies, Grimaldi and Jaenike (1984) demonstrated that competition between *Drosophila* larvae and other fly larvae can exhaust food resources, which affects both the probability of larval survival and the body size of adults, resulting in reduced adult fitness, fecundity, and lifespan.

The nonnative yellow-jacket wasp may impact the akikiki and akekee through competition for the same native insect food resources. Both the akikiki and akekee feed primarily on insects, insect larvae, and spiders (Lepson and Pratt 1997, p. 4; Foster *et al.* 2000, p. 4). Wasp colonies in Hawaii do not "overwinter" (that is, they do not become dormant but remain active throughout the year), so there is a greater potential for the wasp colonies to become quite large (Gambino *et al.* 1987, p. 169). Yellow-jacket wasp colonies in Hawaii can each produce over a half-million foragers that consume tens of millions of arthropods (Gambino and Loope 1992, p. 19). While there is no available data that documents the foraging habits of yellow-jacket wasps in the same habitat

as the akikiki and akekee or that yellow-jacket wasps significantly threaten other species of Hawaiian birds through competition for the same prey, it has been suggested that this nonnative wasp may be a potential threat to the akikiki and akekee (D. LaPointe, pers. comm. 2009).

Small Number of Populations and Individuals

Species that are endemic to single islands are inherently more vulnerable to extinction than widespread species because of the increased risk of genetic bottlenecks, random demographic fluctuations, climate change, and localized catastrophes such as hurricanes and disease outbreaks (Mangel and Tier 1994, p. 607; Pimm *et al.* 1998, p. 757). These problems are further magnified when populations are few and restricted to a very small geographic area, and when the number of individuals is very small. Populations with these characteristics face an increased likelihood of stochastic extinction due to changes in demography, the environment, genetics, or other factors (Gilpin and Soule 1986, pp. 24–34).

Small, isolated populations often exhibit reduced levels of genetic variability, which diminishes the species' capacity to adapt and respond to environmental changes, thereby lessening the probability of long-term persistence (e.g., Barrett and Kohn 1991, p. 4; Newman and Pilson 1997, p. 361). The problems associated with small population size and vulnerability to random demographic fluctuations or natural catastrophes are further magnified by synergistic interactions with other threats, such as those discussed above (Factors A–C).

Very small plant populations may experience reduced reproductive vigor due to ineffective pollination or inbreeding depression. This is particularly true for dioecious species, such as *Melicope degeneri* and *Myrsine mezii* in this final rule, in which staminate (male) and pistillate (female) flowers occur on separate individuals. Isolated individuals have difficulty achieving natural pollen exchange, which decreases the production of viable seed. Populations are also impacted by demographic stochasticity, through which populations are skewed toward either male or female individuals by chance.

The following 24 plant species in this final rule are threatened by the effects of small population size (fewer than 50 wild individuals): *Astelia waialealae*, *Chamaesyce eleanoriae*, *Cyanea dolichopoda*, *C. eleeleensis*, *C.*

kolekoleensis, *C. kuhihewa*, *Cyrtandra paliku*, *Diellia mannii*, *Doryopteris angelica*, *Dryopteris crinalis* var. *podosorus*, *Dubautia kalalauensis*, *D. kenwoodii*, *Lysimachia iniki*, *L. pendens*, *L. scopulensis*, *L. venosa*, *Melicope degeneri*, *Myrsine knudsenii*, *M. mezii*, *Phyllostegia renovans*, *Psychotria grandiflora*, *Schiedea attenuata*, *Tetraplasandra bisattenuata*, and *T. flynnii*. We consider these species threatened by small population size because:

- No viable seeds or reproduction have been observed in *Astelia waialealae*, *Melicope degeneri*, and *Psychotria grandiflora*.
- Only five individuals of *Myrsine mezii* are known, and this number has not changed over 10 years (N. Tangalin 2007b).
- *Cyrtandra paliku*, *Dubautia kalalauensis*, *Lysimachia iniki*, *Schiedea attenuata*, and *Tetraplasandra flynnii* are known only from a single population with fewer than 50 individuals (Wagner *et al.* 1994, p. 187; K. Wood, pers. comm. 1995; Marr and Bohm 1997, pp. 270–271; S. Perlman, pers. comm. 2003b; Baldwin and Carr 2005, p. 261; S. Perlman 2006 and 2007).
- *Diellia mannii* is known from only one individual in the wild (Carr 1998, p. 8; HBMP 2007).
- Research on *Pittosporum* species suggests that small populations are susceptible to loss of genetic variation through inbreeding and drift (C. Gemmill, Center of Biodiversity and Ecology Research, pers. comm. 2009).
- Six species, *Cyanea dolichopoda*, *C. eleeleensis*, *C. kolekoleensis*, *C. kuhihewa*, *Dubautia kenwoodii*, and *Lysimachia venosa*, have not been confirmed to persist in the wild. None of these species are in storage or propagation, but individuals familiar with these species believe they may possibly remain extant and that much of their suitable habitat (lowland mesic, lowland wet, and wet cliff) on Kauai remains to be surveyed (Wood 2006, p. 11; S. Perlman 2007; S. Perlman and K. Wood, pers. comm. 2007; D. Burney, NTBG, pers. comm. 2009).

Summary of Other Natural or Manmade Factors Affecting Their Continued Existence

The threat to *Drosophila sharpi* from nonnative tipulid flies is immediate and significant because the larvae of nonnative tipulid flies feed on the same host plants occupied by the larvae of *D. sharpi*, and the effect of this competition

is a reduction in available host plant material for *D. sharpi* larvae. This threat occurs throughout the range of *D. sharpi*.

Laboratory studies have shown that competition between *Drosophila* larvae and other fly larvae can exhaust food resources, which affects both the probability of larval survival and the body size of adults, resulting in reduced adult fitness, fecundity, and lifespan.

The threat to at least 24 plant species in this final rule from limited numbers of populations and few (less than 50) individuals is significant and immediate for the following reasons:

(1) These species may experience reduced reproductive vigor due to ineffective pollination or inbreeding depression;

(2) They may experience reduced levels of genetic variability leading to diminished capacity to adapt and respond to environmental changes, thereby lessening the probability of long-term persistence; and

(3) A single catastrophic event may result in extinction of the species. This threat applies to the entire range of each species.

The nonnative yellow-jacket wasp is believed to be a potential threat to the akekee and akikiki through competition for the same native insect food resources, however we have no evidence indicating that competition with the nonnative yellow-jacket wasp poses a significant or immediate threat to the akikiki or akekee at this time.

Conclusion and Determination

We have carefully assessed the best scientific and commercial information available regarding threats to each of the 48 Kauai species. We find that all of these species face immediate and significant threats throughout their ranges from the present destruction and modification of their habitats, primarily from feral ungulates and nonnative plants, and from the threatened destruction and modification of their habitats from hurricanes (compounded because of their small population sizes and limited distribution), landslides, and flooding. In addition, we are concerned about the effects of projected climate change, particularly rising temperatures and the increased likelihood of malarial transmission. However, we acknowledge that there is limited information on the specific nature of potential impacts from climate change to the species included in this final rule (Factor A).

There is also immediate and significant threat of disease or predation, including avian diseases such as malaria that impact the akikiki and akekee; widespread impacts of

predation and herbivory on 44 of the species by nonnative pigs, goats, deer, rats, and invertebrates (Factor C); the threat of extinction due to factors associated with small numbers of populations and individuals; and competition from introduced tipulid flies for *Drosophila sharpi* (Factor E) (see Table 2). In addition, the palm *Pritchardia hardyi* is threatened by overcollection (Factor B). Cats and owls are likely predators on roosting or incubating adults, nests, and young of the akekee and akikiki (Factor C). These threats are exacerbated by the species' inherent vulnerability to extinction from stochastic events at any time because of their endemism, small numbers of individuals and populations, and restricted habitats.

The Act defines an endangered species as any species that is "in danger of extinction throughout all or a significant portion of its range." We find that each of these endemic species is presently in danger of extinction throughout its entire range, based on the immediacy, severity, and scope of the threats described above. Based on our analysis, we have no reason to believe that population trends for any of the species addressed in this final rule will improve, nor will the effects of current threats acting on the species be ameliorated in the foreseeable future. Therefore, on the basis of the best available scientific and commercial information, we are listing the following 48 species as endangered under the Act: the plants *Astelia waialealae*, *Canavalia napaliensis*, *Chamaesyce eleanoriae*, *Chamaesyce remyi* var. *kauaiensis*, *Chamaesyce remyi* var. *remyi*, *Charpentiera densiflora*, *Cyanea dolichopoda*, *Cyanea eleeleensis*, *Cyanea kolekoleensis*, *Cyanea kuhihewa*, *Cyrtandra oenobarba*, *Cyrtandra paliku*, *Diellia mannii*, *Doryopteris angelica*, *Dryopteris crinalis* var. *podosorus*, *Dubautia imbricata* ssp. *imbricata*, *Dubautia kalalauensis*, *Dubautia kenwoodii*, *Dubautia plantaginea* ssp. *magnifolia*, *Dubautia waialealae*, *Geranium kauaiense*, *Keysseria erici*, *Keysseria helenae*, *Labordia helleri*, *Labordia pumila*, *Lysimachia daphnoides*, *Lysimachia iniki*, *Lysimachia pendens*, *Lysimachia scopulensis*, *Lysimachia venosa*, *Melicope degeneri*, *Melicope paniculata*, *Melicope puberula*, *Myrsine knudsenii*, *Myrsine mezii*, *Phyllostegia renovans*, *Pittosporum napaliense*, *Platydesma rostrata*, *Pritchardia hardyi*, *Psychotria grandiflora*, *Psychotria hobdyi*, *Schiedea attenuata*, *Stenogyne kealiae*, *Tetraplasandra bisattenuata*, and *Tetraplasandra flynnii*; the birds, akekee

(*Loxops caeruleirostris*) and akikiki (*Oreomystis bairdi*); and the insect *Drosophila sharpi*.

Under the Act and our implementing regulations, a species may warrant listing if it is threatened or endangered throughout all or a significant portion of its range. Each of the 48 endemic Kauai species in this listing rule is highly restricted in its range, and the threats occur throughout its range. Therefore, we assessed the status of each species throughout its entire range. In each case, the threats to the survival of these species occur throughout the species' range and are not restricted to any particular portion of that range. Accordingly, our assessment and determination applies to each species throughout its entire range.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation by Federal, State, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection measures required of Federal agencies and the prohibitions against certain activities involving listed animals and plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(1) of the Act mandates that all Federal agencies shall utilize their authorities in furtherance of the purposes of the Act by carrying out programs for the conservation of endangered and threatened species listed in accordance with section 4 of the Act. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of critical habitat. If a Federal action may affect the continued existence of a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

For the 48 species in this rule, Federal agency actions that may require consultation as described in the preceding paragraph include, but are not limited to, actions within the jurisdiction of the Natural Resources Conservation Service, Fish and Wildlife Service, and branches of the Department of Defense (DOD).

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife and plants. The prohibitions, codified at 50 CFR 17.21 and 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, take, possess, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce to possession listed wildlife species from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies. Federal listing of the species included in this rule will automatically invoke State listing under Hawaii's Endangered Species law and supplement the protection available under other State laws.

We may issue permits to carry out otherwise prohibited activities involving threatened or endangered wildlife and plant species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.62 for endangered wildlife and plants, respectively. Such permits are available for scientific purposes and to enhance the propagation and survival of the species and for incidental take in connection with otherwise lawful activities. Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to U.S. Fish and Wildlife Service, Ecological Services, Eastside Federal Complex, 911 N.E. 11th Avenue, Portland, OR 97232-4181 (telephone 503-231-6158; facsimile 503-231-6243).

Critical Habitat

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance

with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means the use of all methods and procedures that are necessary to bring any endangered or threatened species to the point at which the measures provided under the Act are no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by the private landowner. Where a landowner seeks or requests Federal agency funding or authorization that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the Federal action agency's and the applicant's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

To be included in a critical habitat designation, habitat within the geographic area occupied by the species at the time it was listed must contain the physical and biological features that are essential to the conservation of the species, and will be included only if those features may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found those physical and biological features essential to the conservation of the species). Under the Act and our implementing regulations, we can

designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed only when we determine that those areas are essential for the conservation of the species and that designation limited to those areas occupied at the time of listing would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), (Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining those areas that should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

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

Areas that are important to the conservation of the species, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented by the Service and other Federal agencies under section 7(a)(1) of the Act. They may also be subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available

information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if any new information available to these planning efforts calls for a different outcome.

Section 4(a)(3) of the Act, as amended, and our implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

In considering the designation of critical habitat for each of the 48 Kauai species, we have determined that there is one species, the palm *Pritchardia hardyi*, for which the designation of critical habitat is not prudent. Rare palm trees are highly desirable to collectors, and there is an active market for the seeds and seedlings of rare palms, including those of *P. hardyi*, through internet sales and online auctions (GardenGuides.com 2007; Rarepalmseeds.com 2007; South Coast Palms 2007; Kapoho Palms 2007; J.D. Anderson Nursery 2007; Jungle Music Palms and Cycads 2007; Tropical Gardens of Maui 2007). Seeds and entire plants of *P. hardyi* have been illegally removed from an outplanting site in the past (A. Kyono, pers. comm. 2000; R. Nishek, pers. comm. 2007), and we have evidence of vandalism and illegal collection of other species of endangered *Pritchardia* palms on Kauai (Johnson 1996, pp. 16–17; R. Nishek, pers. comm. 2007). The designation of critical habitat for *P. hardyi* would require us to identify the geographic areas where the species occurs, thereby increasing the species' vulnerability to further unauthorized and illegal collection. Since collecting and vandalism is identified as a threat specific to *P. hardyi* in our threats analysis, and the designation of critical habitat for this species would exacerbate

this ongoing threat, we have determined that the designation of critical habitat for *P. hardyi* is not prudent in accordance with the Act and its implementing regulations.

With the exception of *Pritchardia hardyi*, we find that the designation of critical habitat for each of the other 47 species addressed in this rule will be beneficial by serving to focus conservation efforts on the restoration and maintenance of ecosystem functions that are essential for attaining the species' recovery and long-term viability. The designation of critical habitat also serves to inform management and conservation decisions by identifying any additional physical and biological features of the ecosystem that may be essential for the conservation of certain species (e.g., the availability of sufficient arthropod prey for the akikiki and akekee, or hummocks in bog systems for *Astelia waialeale*). We have therefore determined that designation of critical habitat is prudent for the following 47 Kauai species: (1) Plants—*Astelia waialeale*, *Canavalia napaliensis*, *Chamaesyce eleanoriae*, *Chamaesyce remyi* var. *kauaiensis*, *Chamaesyce remyi* var. *remyi*, *Charpentiera densiflora*, *Cyanea dolichopoda*, *Cyanea eleleensis*, *Cyanea kolekoleensis*, *Cyanea kuhihewa*, *Cyrtandra oenobarba*, *Cyrtandra paliku*, *Diellia mannii*, *Doryopteris angelica*, *Dryopteris crinalis* var. *podosorus*, *Dubautia imbricata* ssp. *imbricata*, *Dubautia kalalauensis*, *Dubautia kenwoodii*, *Dubautia plantaginea* ssp. *magnifolia*, *Dubautia waialeale*, *Geranium kauaiense*, *Keysseria erici*, *Keysseria helenae*, *Labordia helleri*, *Labordia pumila*, *Lysimachia daphnoides*, *Lysimachia iniki*, *Lysimachia pendens*, *Lysimachia scopulensis*, *Lysimachia venosa*, *Melicope degeneri*, *Melicope paniculata*, *Melicope puberula*, *Myrsine knudsenii*, *Myrsine mezii*, *Phyllostegia renovans*, *Pittosporum napaliense*, *Platydesma rostrata*, *Psychotria grandiflora*, *Psychotria hobbdi*, *Schiedea attenuata*, *Stenogyne kealiae*, *Tetraplasandra bisattenuata*, and *Tetraplasandra flynnii*; (2) Animals—akekee, akikiki, and *Drosophila sharpi*.

Methods

As required by section 4(b) of the Act, we used the best scientific data available to designate critical habitat. We began our analysis by evaluating the following data sources:

- The known locations of the 47 species, including site-specific species information from the HBMP database (HBMP 2007) and our own rare plant database;

- Species information from the plant database housed at NTBG;
- The Nature Conservancy's Ecoregional Assessment of the Hawaiian High Islands (2006), and ecosystem maps (2007);
- Color mosaic 1:19,000 scale digital aerial photographs for the Hawaiian Islands (April to May 2005);
- Island-wide Geographic Information System (GIS) coverage, e.g., Gap Analysis Program (GAP) vegetation data 2005;
- 1:24,000 scale digital raster graphics of USGS topographic quadrangles;
- Geospatial data sets associated with parcel data from Kauai County (2005);
- Designated critical habitat for listed species on the island of Kauai (68 FR 9116, February 27, 2003);
- Recent biological surveys and reports; and
- Discussions with qualified individuals familiar with these species and ecosystems (HBMP 2007; TNCH 2007; NTBG 2007).

Based upon the best scientific data available, we determined that the 47 species addressed in this final rule occupy or require for their conservation one or more of the six ecosystems described in this rule: lowland mesic (TNC 2006b), lowland wet (TNC 2006c), montane mesic (TNC 2006e), montane wet (TNC 2006f), dry cliff (TNC 2006a), and wet cliff (TNC 2006d).

Physical and Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and the regulations at 50 CFR 424.12, in determining which occupied areas to designate as critical habitat, we consider those physical and biological features essential to the conservation of the species that may require special management considerations or protection. We consider the physical and biological features to be the primary

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

- (1) Space for individual and population growth and for normal behavior;
- (2) Food, water, air, light, minerals, or other nutritional or physiological requirements;
- (3) Cover or shelter;
- (4) Sites for breeding, reproduction, rearing (or development) of offspring, germination, or seed dispersal; and
- (5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the specific PCEs for each of the 47 species based on their biological needs as described below and the physical and biological features that support the successful functioning of the ecosystem upon which they depend. As each species is dependent upon a functioning ecosystem to provide its fundamental life requirements, such as a certain soil type, minimum level of rainfall, or conditions conducive to supporting the presence of a certain species of plant for foraging or larval development, we considered the physical and biological features of the ecosystems described in this rule to be PCEs for each species.

The PCEs collectively provide the suite of environmental conditions within each ecosystem essential to meeting the requirements of each species, including the appropriate microclimatic conditions for germination and growth of the plants (e.g., light availability, soil nutrients, hydrologic regime, temperature); habitat for shelter, foraging, nesting, and raising young in the case of the akikiki and akekee; larval host plants in the case of the picture-wing fly; and in all cases,

space within the appropriate habitats for population growth and expansion, as well as to maintain the historical geographical and ecological distribution of each species. In many cases, due to our limited knowledge of the specific life-history requirements for these species that are little-studied and occur in remote or inaccessible areas, the generalized description of the essential physical and biological features that provide for the successful function of the ecosystem is the best—and in many cases the only—scientific information available.

Table 3 identifies the PCEs of a functioning ecosystem for each of the ecosystem types identified in this final rule; these are termed “ecosystem-level PCEs.”

Each species identified in this rule requires the ecosystem-level PCEs for each ecosystem in which it occurs, as identified in Table 4. The ecosystem-level PCEs are defined by elevation, annual levels of precipitation, substrate type and slope, as well as the characteristic native plant genera that are found in the canopy, subcanopy, and understory levels of the vegetative community, where applicable. Where further information is available that identifies specific life-history requirements for some species, PCEs relating to these requirements are described separately as “species-specific PCEs,” which are also identified in Table 4. In summary, the PCEs for each species are derived from the PCEs necessary for the functioning of its associated ecosystem(s), in combination with any additional species-specific requirements shown in Table 4. The ecosystem-level PCEs identified in Table 4 for each species are presented in detail in Table 3; Table 3 and Table 4 read together fully describe all of the PCEs for each species.

TABLE 3—ECOSYSTEM-LEVEL PRIMARY CONSTITUENT ELEMENTS (PCEs) FOR EACH SPECIES (READ IN ASSOCIATION WITH TABLE 4)

Primary Constituent Elements						
Ecosystem	Elevation	Annual Precipitation	Substrate	One or More of these Associated Native Plants (by Genus)		
				Canopy	Subcanopy	Understory
Lowland Mesic ¹	< 3,000 ft (< 914 m)	50-75 in (127-190 cm)	shallow soils, little to no herba- ceous layer	<i>Acacia</i> , <i>Diospyros</i> , <i>Metrosideros</i> , <i>Myrsine</i> , <i>Pouteria</i> , <i>Santalum</i>	<i>Dodonaea</i> , <i>Freycinetia</i> , <i>Leptecophyllya</i> , <i>Melanthera</i> , <i>Osteomeles</i> , <i>Pleomele</i> , <i>Psydrax</i>	<i>Carex</i> , <i>Dicranopteris</i> , <i>Diplazium</i> , <i>Elaphoglossum</i> , <i>Peperomia</i>

TABLE 3—ECOSYSTEM-LEVEL PRIMARY CONSTITUENT ELEMENTS (PCEs) FOR EACH SPECIES (READ IN ASSOCIATION WITH TABLE 4)—Continued

Primary Constituent Elements						
Ecosystem	Elevation	Annual Precipitation	Substrate	One or More of these Associated Native Plants (by Genus)		
				Canopy	Subcanopy	Understory
Lowland Wet ²	< 3,000 ft (< 914 m)	> 75 in (> 190 cm)	clays, ashbeds, deep well- drained soils, lowland bogs	<i>Antidesma</i> , <i>Metrosideros</i> , <i>Myrsine</i> , <i>Pisonia</i> , <i>Psychotria</i>	<i>Cibotium</i> , <i>Claoxylon</i> , <i>Kadua</i> , <i>Melicope</i>	<i>Alyxia</i> , <i>Cyrtandra</i> , <i>Dicranopteris</i> , <i>Diplazium</i> , <i>Machaerina</i> , <i>Microlepia</i> ,
Montane Mesic ³	3,000-5,243 ft (914-1,598 m)	50-75 in (127-190 cm)	weathered aa lava, rocky mucks, thin silty loams, deep volcanic ash soils	<i>Acacia</i> , <i>Metrosideros</i> , <i>Psychotria</i> , <i>Tetraplasandra</i> , <i>Zanthoxylum</i>	<i>Cheirodendron</i> , <i>Coprosma</i> , <i>Kadua</i> , <i>Ilex</i> , <i>Myoporum</i> , <i>Myrsine</i>	<i>Bidens</i> , <i>Dryopteris</i> , <i>Leptecophylla</i> , <i>Poa</i> , <i>Scaevola</i> , <i>Sophora</i>
Montane Wet ⁴	3,000-5,243 ft (914-1,598 m)	> 75 in (> 190 cm)	well-developed soils, montane bogs	<i>Acacia</i> , <i>Charpentiera</i> , <i>Cheirodendron</i> , <i>Metrosideros</i>	<i>Broussaia</i> , <i>Cibotium</i> , <i>Eurya</i> , <i>Ilex</i> , <i>Myrsine</i>	Ferns, <i>Carex</i> , <i>Coprosma</i> , <i>Leptecophylla</i> , <i>Oreobolus</i> , <i>Rhynchospora</i> , <i>Vaccinium</i>
Dry Cliff ⁵	unrestricted	< 75 in (< 190 cm)	> 65° slope, rocky talus	none	<i>Antidesma</i> , <i>Chamaesyce</i> , <i>Diospyros</i> , <i>Dodonaea</i>	<i>Bidens</i> , <i>Eragrostis</i> , <i>Melanthera</i> , <i>Schiedea</i>
Wet Cliff ⁶	unrestricted	> 75 in (> 190 cm)	> 65° slope, shallow soils, weathered lava	none	<i>Broussaia</i> , <i>Cheirodendron</i> , <i>Leptecophylla</i> , <i>Metrosideros</i>	Ferns, Bryophytes, <i>Coprosma</i> , <i>Dubautia</i> , <i>Kadua</i> , <i>Peperomia</i>

¹The PCEs for species in the lowland mesic ecosystem apply to the following critical habitat units: Kauai—Lowland Mesic Units 1, 2, 3, 4, and 5.

²The PCEs for species in the lowland wet ecosystem apply to the following critical habitat units: Kauai—Lowland Wet Units 1, 2, 3, 4, 5, and 6.

³The PCEs for species in the lowland wet ecosystem apply to the following critical habitat units: Kauai—Lowland Wet Units 1, 2, 3, 4, 5, and 6.

⁴The PCEs for species in the montane mesic ecosystem apply to the following critical habitat units: Kauai—Montane Mesic Units 1, 2, and 3.

⁵The PCEs for species in the montane wet ecosystem apply to the following critical habitat units: Kauai—Montane Wet Units 1, 2, and 3.

⁶The PCEs for species in the dry cliff ecosystem apply to the following critical habitat units: Kauai—Dry Cliff Units 1 and 2.

⁷The PCEs for species in the wet cliff ecosystem apply to the following critical habitat units: Kauai—Wet Cliff Units 1, 2, and 3.

TABLE 4 - PRIMARY CONSTITUENT ELEMENTS FOR THE KAUAI SPECIES ARE A COMBINATION OF THE ECOSYSTEM-LEVEL PCEs (SEE TABLE 3) FOR THE APPLICABLE ECOSYSTEM(S) AS WELL AS SPECIES-SPECIFIC PCEs, IF ANY ARE IDENTIFIED

Species	Ecosystem-level PCEs						Species-specific PCEs
	Lowland Mesic	Lowland Wet	Montane Mesic	Montane Wet	Dry Cliff	Wet Cliff	
Plants							
<i>Astelias waialealae</i>				X			hummocks in bogs
<i>Canavalia napaliensis</i>	X						
<i>Chamaesyce eleanoriae</i>	X				X		
<i>Chamaesyce remyi</i> var. <i>kauaiensis</i>		X				X	
<i>Chamaesyce remyi</i> var. <i>remyi</i>	X	X	X	X		X	
<i>Charpentiera densiflora</i>	X	X					

TABLE 4 - PRIMARY CONSTITUENT ELEMENTS FOR THE KAUAI SPECIES ARE A COMBINATION OF THE ECOSYSTEM-LEVEL PCEs (SEE TABLE 3) FOR THE APPLICABLE ECOSYSTEM(S) AS WELL AS SPECIES-SPECIFIC PCEs, IF ANY ARE IDENTIFIED—Continued

Species	Ecosystem-level PCEs						Species-specific PCEs
	Lowland Mesic	Lowland Wet	Montane Mesic	Montane Wet	Dry Cliff	Wet Cliff	
<i>Cyanea dolichopoda</i>						X	
<i>Cyanea eleeleensis</i>		X					
<i>Cyanea kolekoleensis</i>		X					
<i>Cyanea kuhihewa</i>		X					
<i>Cyrtandra oenobarba</i>		X				X	
<i>Cyrtandra paliku</i>						X	
<i>Diellia mannii</i>			X				
<i>Doryopteris angelica</i>	X						
<i>Dryopteris crinalis</i> var. <i>podosorus</i>				X			
<i>Dubautia imbricata</i> ssp. <i>imbricata</i>		X					
<i>Dubautia kalalauensis</i>				X			
<i>Dubautia kenwoodii</i>	X						
<i>Dubautia plantaginea</i> ssp. <i>magnifolia</i>						X	
<i>Dubautia waialealae</i>				X			bogs
<i>Geranium kauaiense</i>				X			bogs
<i>Keysseria erici</i>				X			bogs
<i>Keysseria helenae</i>				X			bogs
<i>Labordia helleri</i>	X	X	X	X			
<i>Labordia pumila</i>				X			bogs
<i>Lysimachia daphnoides</i>				X			hummocks in bogs
<i>Lysimachia iniki</i>						X	
<i>Lysimachia pendens</i>						X	
<i>Lysimachia scopulensis</i>					X		
<i>Lysimachia venosa</i>						X	
<i>Melicope degeneri</i>				X			
<i>Melicope paniculata</i>		X					
<i>Melicope puberula</i>		X		X			
<i>Myrsine knudsenii</i>			X				
<i>Myrsine mezii</i>			X	X			
<i>Phyllostegia renovans</i>		X		X			
<i>Pittosporum napaliense</i>	X						
<i>Platydesma rostrata</i>	X	X	X	X		X	
<i>Psychotria grandiflora</i>			X	X			

TABLE 4 - PRIMARY CONSTITUENT ELEMENTS FOR THE KAUAI SPECIES ARE A COMBINATION OF THE ECOSYSTEM-LEVEL PCEs (SEE TABLE 3) FOR THE APPLICABLE ECOSYSTEM(S) AS WELL AS SPECIES-SPECIFIC PCEs, IF ANY ARE IDENTIFIED—Continued

Species	Ecosystem-level PCEs						Species-specific PCEs
	Lowland Mesic	Lowland Wet	Montane Mesic	Montane Wet	Dry Cliff	Wet Cliff	
<i>Psychotria hobbii</i>	X						
<i>Schiedea attenuata</i>					X		
<i>Stenogyne kealiae</i>		X	X		X		
<i>Tetraplasandra bisattenuata</i>	X	X					
<i>Tetraplasandra flynnii</i>		X	X	X			
Animals							
Akekee			X	X			arthropod prey
Akikiki			X	X			arthropod prey
<i>Drosophila sharpi</i>			X	X			larval host plants <i>Cheirodendron</i> sp., <i>Tetraplasandra</i> sp.

Many of the species addressed in this final rule occur in more than one ecosystem. The PCEs for these species are described separately for each ecosystem in which they occur, because each species requires a different suite of environmental conditions depending upon the ecosystem in which it occurs. For example, *Stenogyne kealiae* requires a different level of annual precipitation, occurs on different soil types and slopes, and is associated with different native plant species in the dry cliff ecosystem, compared to those physical and biological features in the lowland wet and montane mesic ecosystems where it also occurs. All of the primary constituent elements described for each ecosystem in which a species occurs are essential in maintaining the species' geographical and ecological distribution across the different ecosystem types in which it occurs. The PCEs are also essential in retaining genetic representation that allows this species to successfully adapt to different environmental conditions in various native ecosystems. Although these species are adaptable enough to occur in multiple native ecosystems, their declining abundance in light of ongoing threats is evidence that they are not broad habitat generalists and are unable to persist in highly altered habitats. Based on the best available information, functioning native ecosystems are necessary to provide the fundamental biological requirements for all of these species.

Some examples may help to clarify our approach to describing the PCEs for each individual species. To determine the PCEs for the plant *Cyanea dolichopoda*, one would review Table 4 and observe that the PCEs for *C. dolichopoda* are provided by the ecosystem-level PCEs for the wet cliff ecosystem. Referring back to Table 3 indicates that the PCEs for the wet cliff ecosystem include no restrictions on elevation; annual precipitation greater than 75 inches (190.5 cm); shallow soils or weathered lava at greater than 65 degree slope; no canopy vegetation; subcanopy that includes native plants in the genera *Broussaisia*, *Cheirodendron*, *Leptecophylla*, and *Metrosideros*; and an understory of native plants including ferns, bryophytes, and representatives of the genera *Coprosma*, *Dubautia*, *Kadua*, and *Peperomia*.

As there are no species-specific PCEs identified for *C. dolichopoda*, and this plant is found only in the wet cliff ecosystem, the ecosystem-level PCEs for the wet cliff ecosystem describe the PCEs for *C. dolichopoda* in their entirety.

As another example, Table 4 indicates that the PCEs for the picture-wing fly *Drosophila sharpi* include the ecosystem-level PCEs for the montane mesic and montane wet ecosystems, and also that this species has an additional species-specific PCE, the presence of larval host plants in the genera *Cheirodendron* and *Tetraplasandra*. The PCEs for *D. sharpi* are thus composed of the PCEs for each of the two ecosystems

it occupies, as described in Table 3 for the montane mesic and montane wet ecosystems, as well as the larval host plants *Cheirodendron* and *Tetraplasandra*. Table 4 is read in a similar fashion in conjunction with Table 3 to describe the PCEs for each of the 47 species for which we are designating critical habitat in this final rule.

Criteria Used to Identify Critical Habitat

We considered several factors in determining the specific boundaries for critical habitat for these 47 species. We are designating critical habitat on lands that contain the physical and biological features essential to conserving multiple species, based on their shared dependence on the functioning ecosystems they have in common. Because each of the six ecosystems addressed in this rule does not form a single contiguous area, the ecosystems are divided into 22 geographic subunits that we refer to as "sections." Compliance with **Federal Register** publication requirements required that we subdivide the ecosystem areas presented here into smaller subunits so they could be correlated with the existing critical habitat units previously published in the Code of Federal Regulations (CFR). This was necessary because much of the critical habitat for the plant species in this final rule overlies critical habitat already designated for other plants on the island of Kauai. The reference to ecosystem

“sections” in this rule is primarily intended to emphasize conservation focused on the contiguous ecosystem areas of interest in this final rule. However, especially for purposes of section 7 consultation, it must be recognized that multiple critical habitat units actually make up these sections. Further details on this approach are presented under the “Critical Habitat Designation,” section below.

The critical habitat we are designating in this final rule includes areas currently occupied by a species in a particular ecosystem, as well as areas that may be currently unoccupied by that species within that ecosystem. Because of the extremely remote and inaccessible nature of the area, surveys are relatively infrequent and may be limited in scope. Therefore, it is difficult to determine the presence or absence of individual representatives of a rare species with certainty. Occupied areas provide the physical and biological features essential to the conservation of the species that occur there by providing for the successful functioning of the ecosystem on which they depend. Because of the small population sizes, few numbers of individuals, and reduced geographic range of each of the 47 species for which we are designating critical habitat in this rule, we have determined that limiting critical habitat designation to occupied areas would be inadequate to provide for their conservation.

Areas not known to be occupied (i.e., unoccupied areas) are essential for the conservation and recovery of the species

because they provide the physical and biological features necessary for the expansion and/or reestablishment of wild populations within the historic range. We are designating unoccupied habitat with no known occupied habitat for six of the plant species in this final rule: *Cyanea dolichopoda*, *C. eleeleensis*, *C. kolekoleensis*, *C. kuhihewa*, *Dubautia kenwoodii*, and *Lysimachia venosa*. Although these species have not recently been documented at their last observed locations, the designation of unoccupied critical habitat is essential for their recovery for the reasons stated above. Critical habitat boundaries were delineated in a manner that will promote the recovery and conservation of these species by protecting the functioning ecosystems on which they depend.

With the exception of the six plant species described above, all of the critical habitat units in these ecosystems contain some areas that are occupied by a species and some areas that are currently unoccupied, but have been determined to be essential for the conservation of that species. As discussed above, because of the small numbers of individuals or low population sizes, each of the 47 species requires suitable habitat and space for the expansion of existing populations for recovery. For example, although *Platydesma rostrata* is found in multiple critical habitat units in 5 ecosystem types, only approximately 100 individuals comprise this entire distribution. Therefore, the unoccupied

areas within each unit are essential to provide for the expansion of this species to viable population numbers and to maintain its historical geographical and ecological distribution.

We used current and historical species location information to develop preliminary critical habitat boundaries (polygons) in each of the 6 ecosystems that individually and collectively provide for the conservation of the 47 species addressed in this rule. We superimposed the polygons over digital topographic maps of the island of Kauai and further evaluated the results. We removed land areas that were identified as highly degraded from the designated critical habitat units, and we used natural or manmade features (e.g., ridge lines, valleys, streams, coastlines, roads, obvious land features) to delineate the critical habitat boundaries.

The critical habitat areas described below constitute our best assessment of the physical and biological features essential for the recovery and conservation of the 47 species and the habitat that are essential for population reestablishment or expansion. The approximate size of each of the 22 critical habitat ecosystem sections and the status of their land ownership is identified in Table 5. The species that currently occupy each of the 22 sections are identified by ecosystem type in Table 6, which also identifies the sections that have been designated as unoccupied habitat for the 6 species that have not been observed in the wild at their last documented locations.

TABLE 5.—CRITICAL HABITAT FOR 47 KAUAI SPECIES (TOTALS MAY NOT SUM DUE TO ROUNDING)

			Land ownership (acres)		
Critical habitat area	Size of section in acres	Size of section in hectares	State	Private	Corresponding critical habitat units and maps in the Code of Federal Regulations (CFR)
Kauai—Lowland Mesic					
—Section 1	2,007	812	2,007	0	Plants: 50 CFR 17.99, Unit 11, Map 66a
—Section 2	379	154	379	0	Plants: 50 CFR 17.99, Unit 11, Map 66a
—Section 3	124	50	124	0	Plants: 50 CFR 17.99, Unit 11, Map 66a
—Section 4	81	33	81	0	Plants: 50 CFR 17.99, Unit 11, Map 66a
—Section 5	37	15	0	37	Plants: 50 CFR 17.99, Unit 7, Map 23a
TOTAL Lowland Mesic	2,628	1,064	2,590	37	
Kauai—Lowland Wet					
—Section 1	1,164	471	117	1,047	Plants: 50 CFR 17.99, Unit 11, Map 70a; Unit 20, Map 217c.
—Section 2	172	70	172	0	Plants: 50 CFR 17.99, Unit 11, Map 70a

TABLE 5.—CRITICAL HABITAT FOR 47 KAUAI SPECIES (TOTALS MAY NOT SUM DUE TO ROUNDING)—Continued

Critical habitat area	Size of section in acres	Size of section in hectares	Land ownership (acres)		Corresponding critical habitat units and maps in the Code of Federal Regulations (CFR)
			State	Private	
—Section 3	756	306	0	756	Plants: 50 CFR 17.99, Unit 11, Map 70a
—Section 4	591	239	10	581	Plants: 50 CFR 17.99, Unit 11, Map 70a
—Section 5	1,541	624	442	1,099	Plants: 50 CFR 17.99, Unit 10, Map 36a
—Section 6	789	319	134	655	Plants: 50 CFR 17.99, Unit 10, Map 36a
TOTAL Lowland Wet	5,013	2,029	875	4,138	
Kauai—Montane Mesic					
—Section 1	2,421	980	2,421	0	Plants: 50 CFR 17.99, Unit 11, Map 70c. Akekee and Akikiki: 50 CFR 17.95(b), Unit 1 – Montane Mesic. Picture-wing fly: 50 CFR 17.95(i), Unit 1 – Montane Mesic.
—Section 2	376	152	376	0	Plants: 50 CFR 17.99, Unit 11, Map 70c; Unit 21, map 217d. Akekee and Akikiki: 50 CFR 17.95(b), Unit 2 – Montane Mesic. Picture-wing fly: 50 CFR 17.95(i), Unit 2 – Montane Mesic.
—Section 3	138	56	138	0	Plants: 50 CFR 17.99, Unit 22, Map 217e. Akekee and Akikiki: 50 CFR 17.95(b), Unit 3 – Montane Mesic. Picture-wing fly: 50 CFR 17.95(i), Unit 3 – Montane Mesic.
TOTAL Montane Mesic	2,935	1,188	2,935	0	
Kauai—Montane Wet					
—Section 1	13,055	5,283	12,628	427	Plants: 50 CFR 17.99, Unit 10, Map 35a; Unit 11, Map 74a; Unit 23, Map 217f; Unit 24, Map 217g, Unit 25, Map 217h. Akekee and Akikiki: 50 CFR 17.95(b), Unit 4 – Montane Wet. Picture-wing fly: 50 CFR 17.95(i), Unit 4 – Montane Wet.
—Section 2	790	320	790	0	Plants: 50 CFR 17.99, Unit 11, Map 64a. Akekee and Akikiki: 50 CFR 17.95(b), Unit 5 – Montane Wet. Picture-wing fly: 50 CFR 17.95(i), Unit 5 – Montane Wet.
—Section 3	413	167	156	257	Plants: 50 CFR 17.99, Unit 11, Map 64a. Akekee and Akikiki: 50 CFR 17.95(b), Unit 6 – Montane Wet. Picture-wing fly: 50 CFR 17.95(i), Unit 6 – Montane Wet.
TOTAL Montane Wet	14,258	5,770	13,574	684	
Kauai—Dry Cliff					
—Section 1	404	163	404	0	Plants: 50 CFR 17.99, Unit 11, Map 67a.
—Section 2	309	125	309	0	Plants: 50 CFR 17.99, Unit 11, map 67a.
TOTAL Dry Cliff	713	288	713	0	
Kauai—Wet Cliff					
—Section 1	190	77	190	0	Plants: 50 CFR 17.99, Unit 11, Map 70b.
—Section 2	784	317	778	7	Plants: 50 CFR 17.99, Unit 10, Map 36b; Unit 18, Map 217a.
—Section 3	61	24	8	53	Plants: 50 CFR 17.99, Unit 4, Map 5a; Unit 19, Map 217b.
TOTAL Wet Cliff	1,035	418	976	60	
TOTAL ALL SECTIONS	26,582	10,757	21,666	4,918	

TABLE 6.- SPECIES FOR WHICH CRITICAL HABITAT IS DESIGNATED IN EACH ECOSYSTEM

Species	Critical Habitat Units					
	Lowland Mesic	Lowland Wet	Montane Mesic	Montane Wet	Dry Cliff	Wet Cliff
Plants						
<i>Astelia waialealae</i>				X		
<i>Canavalia napaliensis</i>	X					
<i>Chamaesyce eleanoriae</i>	X				X	
<i>Chamaesyce remyi</i> var. <i>kauaiensis</i>		X				X
<i>Chamaesyce remyi</i> var. <i>remyi</i>	X	X	X	X		X
<i>Charpentiera densiflora</i>	X	X				
<i>Cyanea dolichopoda</i> *						X
<i>Cyanea eleeleensis</i> *		X				
<i>Cyanea kolekoleensis</i> *		X				
<i>Cyanea kuhihewa</i> *		X				
<i>Cyrtandra oenobarba</i>		X				X
<i>Cyrtandra paliku</i>						X
<i>Diellia mannii</i>			X			
<i>Doryopteris angelica</i>	X					
<i>Dryopteris crinalis</i> var. <i>podosorus</i>				X		
<i>Dubautia imbricata</i> ssp. <i>imbricata</i>		X				
<i>Dubautia kalalauensis</i>				X		
<i>Dubautia kenwoodii</i> *	X					
<i>Dubautia plantaginea</i> ssp. <i>magnifolia</i>						X
<i>Dubautia waialealae</i>				X		
<i>Geranium kauaiense</i>				X		
<i>Keysseria erici</i>				X		
<i>Keysseria helenae</i>				X		
<i>Labordia helleri</i>	X	X	X	X		
<i>Labordia pumila</i>				X		
<i>Lysimachia daphnoides</i>				X		
<i>Lysimachia iniki</i>						X
<i>Lysimachia pendens</i>						X
<i>Lysimachia scopulensis</i>					X	
<i>Lysimachia venosa</i> *						X
<i>Melicope degeneri</i>				X		
<i>Melicope paniculata</i>		X				
<i>Melicope puberula</i>		X		X		
<i>Melicope knudsenii</i>			X			
<i>Myrsine mezii</i>			X	X		

TABLE 6.- SPECIES FOR WHICH CRITICAL HABITAT IS DESIGNATED IN EACH ECOSYSTEM—Continued

Species	Critical Habitat Units					
	Lowland Mesic	Lowland Wet	Montane Mesic	Montane Wet	Dry Cliff	Wet Cliff
<i>Phyllostegia renovans</i>		X		X		
<i>Pittosporum napaliense</i>	X					
<i>Platydesma rostrata</i>	X	X	X	X		X
<i>Psychotria grandiflora</i>			X	X		
<i>Psychotria hobdyi</i>	X					
<i>Schiedea attenuata</i>					X	
<i>Stenogyne kealiae</i>		X	X		X	
<i>Tetraplasandra bisattenuata</i>	X	X				
<i>Tetraplasandra flynnii</i>		X	X	X		
Animals						
Akikiki (<i>Oreomystis bairdi</i>)			X	X		
Akekee (<i>Loxops caeruleirostris</i>)			X	X		
Picture-wing fly (<i>Drosophila sharpi</i>)			X	X		

* Species with an asterisk are those that, to the best of our knowledge, may no longer occur naturally in the wild, therefore there is no known occupied critical habitat for these species. The critical habitat units for these species have been determined to be essential to the conservation of the species because the area provides for the reestablishment of populations within the species' historical range.

When determining critical habitat boundaries within this final rule, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack the physical and biological features essential for the conservation of the 47 species. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed areas. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat unless the specific action would affect the PCEs in the adjacent critical habitat.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contains the physical or biological features essential to the conservation of the species that may require special management considerations or protection. It is recognized that

activities in and adjacent to areas designated as critical habitat may affect one or more of the PCEs found in these areas. Special management is needed throughout each of the designated critical habitat units. The following discussion of special management needs is applicable to each of the 47 Kauai species for which we are designating critical habitat.

These 47 Kauai species include 41 species that are currently found in the wild, and 6 species that are not currently extant in the wild. For each of the 41 Kauai species found in the wild, we have determined that the features essential to their conservation are primarily dependent on maintaining the successful functioning of the ecosystem(s) in which they occur (Tables 3 and 4). In some cases, additional species-specific primary constituent elements have also been identified (Table 4). Special management considerations or protections are necessary throughout the critical habitat areas designated here to avoid further degradation or destruction of the habitat that provides those features essential to their conservation. The primary threats to the physical and biological features essential to the conservation of all of these species include habitat destruction and modification by feral ungulates,

predation by nonnative species, competition with nonnative species, hurricanes, landslides, flooding, and climate change. The reduction of these threats will require the implementation of special management actions within each of the critical habitat areas identified in this final rule.

All designated critical habitat in this rule requires active management to address the ongoing degradation and loss of native habitat caused by feral ungulates (pigs, goats, and black-tailed deer). Feral ungulates also impact the habitat through predation and trampling. The State of Hawaii provides game mammal (feral pigs and goats, and black-tailed deer) hunting opportunities on one or more State-designated public hunting areas on the islands of Kauai, Oahu, Maui, Molokai, Lanai, and Hawaii (Hawaii Administrative Rules 13-123; DLNR 2009a). Management of game animals by the State ranges from providing maximal sustained public hunting opportunities and benefits (e.g., "sustained yield") in some areas to game animal removal by State staff, or their designees, in other areas (DLNR 2009b). Public hunting areas are not fenced, and game mammals have unrestricted access to most areas across the landscape, regardless of the underlying land use designation. While fences are sometimes built to provide protection from game

mammals to the natural resources within the fenced area, the current number and locations of fences are not sufficient to prevent habitat destruction and degradation. Without special management, the features that are essential for the conservation of these species will continue to be degraded and destroyed.

All designated critical habitat in this rule requires active management to address the ongoing degradation and loss of native habitat caused by nonnative plants. Special management is also required to prevent the introduction of new alien plant species into native habitats. Particular attention is required in nonnative plant control efforts to avoid creating additional disturbances that may facilitate the further introduction and establishment of invasive plant seeds. Precautions are also required to avoid the inadvertent trampling of listed plant species in the course of management activities. The active control of nonnative plant species will help to address the threat presented by fire to three critical habitat areas in particular (Kauai—Lowland Mesic—Section 1, Kauai—Montane Mesic—Section 2, and Kauai—Dry Cliff—Section 1; see Table 5 for corresponding CFR unit numbers). This threat is primarily due to the presence of nonnative species, such as the grasses *Andropogon* sp. and *Setaria* sp., which increase the fuel load and quickly regenerate after a fire. These species can outcompete native plants that are not adapted to fire, creating a grass-fire cycle that alters ecosystem functions (D'Antonio and Vitousek 1992, pp. 64–66; Brooks *et al.* 2004, p. 680).

In addition, five sections (Kauai—Dry Cliff—Section 1, Kauai—Dry Cliff—Section 2, Kauai—Wet Cliff—Section 1, Kauai—Wet Cliff—Section 2, and Kauai—Wet Cliff—Section 3; see Table 5 for corresponding CFR unit numbers)

may require special management to reduce the threat of landslides and flooding, which threaten to further degrade the habitat conditions and have the potential to eliminate some species in their entirety (e.g., *Schiedea attenuata*).

In summary, we find that each of the areas we are designating as critical habitat contains features essential to the conservation of the species that may require special management considerations or protection to ensure the conservation of the 47 Kauai species. These special management considerations and protections are required to preserve and maintain the essential features provided to these species by the ecosystems upon which they depend. A more detailed discussion of each of these threats is presented above, under the Summary of Factors Affecting the Species section.

Critical Habitat Designation

We are designating critical habitat in 6 ecosystem types for 47 species; including 12 critical habitat units for the plants, 6 critical habitat units for the birds, and 6 critical habitat units for the picture-wing fly (see Table 5, above, for details). In total, approximately 26,582 ac (10,757 ha) of lands under State and private ownership fall within the boundaries of this critical habitat designation; 25,988 ac (10,517 ha), or 98 percent is within areas already designated as critical habitat for other listed species. The critical habitat units described below constitute our best assessment of those areas that meet the definition of critical habitat for the 47 species of plants and animals.

Because 98 percent of the designated critical habitat for the plants overlies critical habitat already designated for other plant species on the island of Kauai, we have incorporated the maps of the ecosystem areas identified in this

final rule into the existing critical habitat unit numbering system established for plants on the island of Kauai in the Code of Federal Regulations (50 CFR 17.99(a)(1)).

This required further subdividing some of the ecosystem areas we identified as “sections” into units that correspond to both existing and new critical habitat unit numbers and map numbers as published in the CFR. The maps and area descriptions that follow represent the 6 essential ecosystem areas we have identified as being essential for the conservation of each of the 47 species, which have been subdivided into 22 sections. For the 44 plant species, the critical habitat unit numbers that collectively represent these ecosystem areas and the corresponding map numbers that will be published at 50 CFR 17.99(a)(1) are presented to provide a crosswalk with the CFR (see text below and figures 1A through 6C). Critical habitat for each of the three animal species is published in a separate section of the CFR (50 CFR 17.95(b) for the akekee and akikiki; 50 CFR 17.95(i) for the picture-wing fly), and thus have separate critical habitat unit numbers and map numbers. These numbers are also provided in each of the critical habitat descriptions below for reference in the CFR.

We present a brief description of each critical habitat unit and the reasons why it meets the definition of critical habitat below.

Kauai—Lowland Mesic—Section 1

Lowland Mesic—Section 1 consists of 2,006 ac (812 ha) in the lowland mesic ecosystem, including mesic forest extending from Awaawapuhi Trail south to Makaha Ridge, in the Na Pali Kona Forest Reserve and the Kuia NAR (Figure 1-A).

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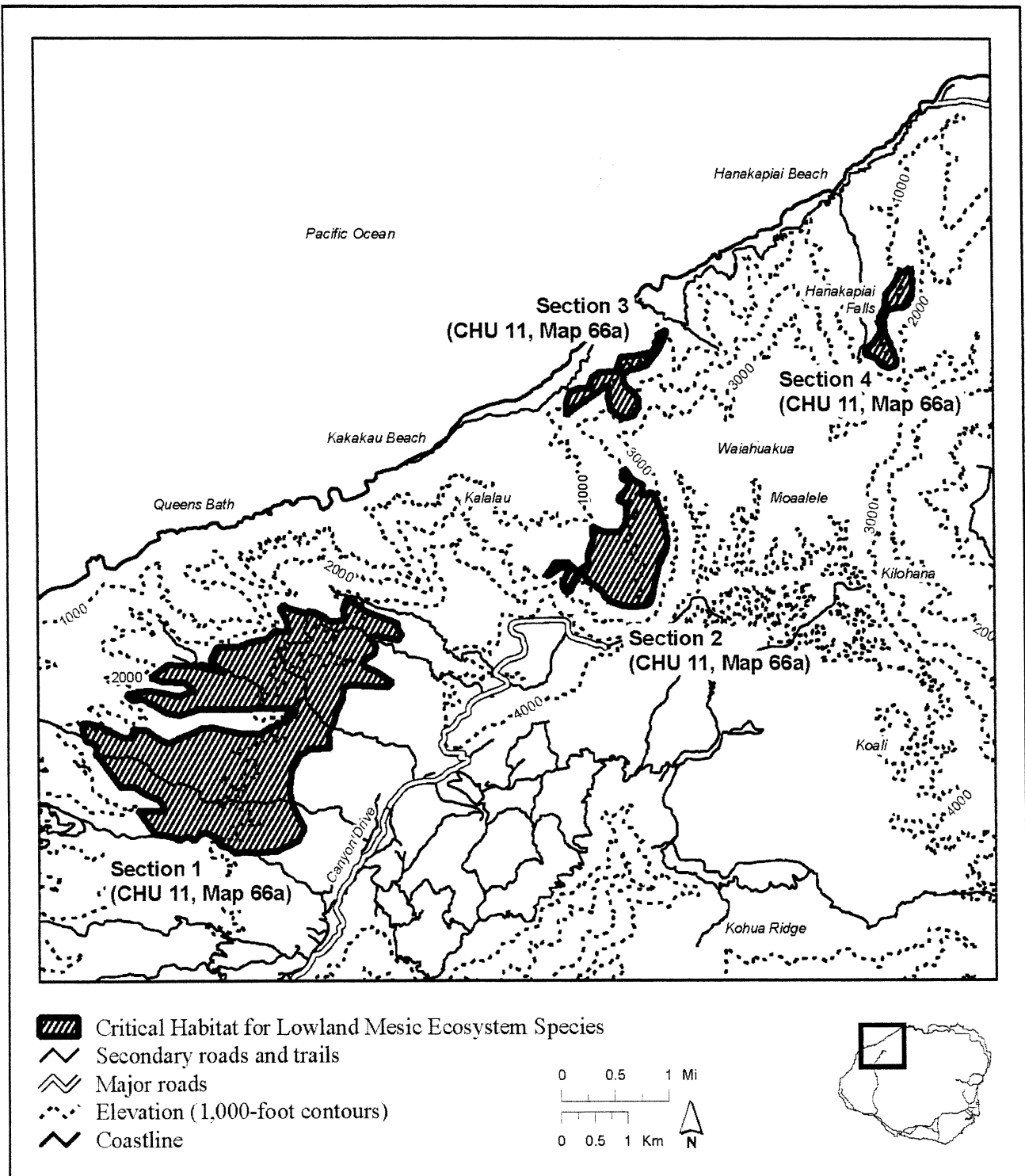


Figure 1-A. Areas designated as critical habitat for 11 plant species in the Lowland Mesic Ecosystem (Sections 1, 2, 3, and 4). Critical habitat unit (CHU) numbers and map numbers for each section, as published in the Code of Federal Regulations (50 CFR 17.99(a)(1)), are provided for ease of referencing.

The entire section is State-owned and within previously designated critical habitat; it falls within Critical Habitat Unit 11 of 50 CFR 17.99(a)(1), Map 66a. This section is occupied by the plants *Doryopteris angelica*, *Labordia helleri*, *Platydesma rostrata* and *Psychotria hobdyi*, and includes mesic forest, the moisture regime, and canopy, subcanopy, and understory native plant species identified as PCEs in the lowland mesic ecosystem (Table 3). This section also contains unoccupied habitat that is essential to the conservation of these four species by providing the physical and biological features necessary for the expansion of the existing wild populations. Although Lowland Mesic—Section 1 is not known to be occupied by the species *Canavalia napaliensis*, *Chamaesyce eleanoriae*, *Chamaesyce remyi* var. *remyi*, *Charpentiera densiflora*, *Dubautia kenwoodii*, *Pittosporum napaliense*, and *Tetraplasandra bisattenuata*, we have determined this area to be essential for the conservation and recovery of these lowland mesic species because it provides the physical and biological features necessary for the reestablishment of wild populations within their historic range. Due to the small numbers of individuals or low population sizes of each of these species, each requires suitable habitat and space for expansion or reintroduction to achieve recovery.

Kauai—Lowland Mesic—Section 2

Lowland Mesic—Section 2 consists of 379 ac (154 ha) in the lowland mesic ecosystem, including mesic forest extending from Keanapuka to Kahuamaa Flat along the rim and cliffs of the Kalalau Valley, in the Na Pali Coast State Park (Figure 1-A, above). The entire section is State-owned and within previously designated critical habitat; it falls within Critical Habitat Unit 11 of 50 CFR 17.99(a)(1), Map 66a. This section is occupied by the plants *Canavalia napaliensis*, *Chamaesyce eleanoriae*, *C. remyi* var. *remyi*, *Charpentiera densiflora*, *Pittosporum napaliense*, and *Psychotria hobdyi*, and includes mesic forest, the moisture regime, and canopy, subcanopy, and understory native plant species identified as PCEs in the lowland mesic ecosystem (Table 3).

This section also contains unoccupied habitat that is essential to the conservation of these six species by providing the physical and biological features necessary for the expansion of the existing wild populations. Although Lowland Mesic—Section 2 is not known to be occupied by the species *Doryopteris angelica*, *Dubautia kenwoodii*, *Labordia helleri*, *Platydesma rostrata*, and *Tetraplasandra bisattenuata*, we have determined this area to be essential for the conservation and recovery of these lowland mesic species because it provides the physical and biological features necessary for the reestablishment of wild populations within their historical range. Due to the small numbers of individuals or low population sizes of each of these species, each requires suitable habitat and space for expansion or reintroduction to achieve recovery.

Kauai—Lowland Mesic—Section 3

Lowland Mesic—Section 3 consists of 124 ac (50 ha) in the lowland mesic ecosystem, including mesic forest extending from Manono Ridge, Pohakuao Valley, to Kanakuu, within the Na Pali Coast State Park (Figure 1-A, above). The entire section is State-owned and within previously designated critical habitat; it falls within Critical Habitat Unit 11 of 50 CFR 17.99(a)(1), Map 66a. This section is occupied by the plants *Canavalia napaliensis*, *Chamaesyce eleanoriae*, and *Charpentiera densiflora*, and includes mesic forest, the moisture regime, and canopy, subcanopy, and understory native plant species identified as PCEs in the lowland mesic ecosystem (Table 3). This section also contains unoccupied habitat that is essential to the conservation of these three species by providing the physical and biological features necessary for the expansion of the existing wild populations. Although Lowland Mesic—Section 3 is not known to be occupied by the species *Chamaesyce remyi* var. *remyi*, *Doryopteris angelica*, *Dubautia kenwoodii*, *Labordia helleri*, *Pittosporum napaliense*, *Platydesma rostrata*, *Psychotria hobdyi*, and *Tetraplasandra bisattenuata*, we have determined this area to be essential for the conservation and recovery of these lowland mesic species because it provides the physical and biological

features necessary for the reestablishment of wild populations within their historic range. Due to the small numbers of individuals or low population sizes of each of these species, each requires suitable habitat and space for expansion or reintroduction to achieve recovery.

Kauai—Lowland Mesic—Section 4

Lowland Mesic—Section 4 consists of 81 ac (33 ha) in the lowland mesic ecosystem, including mesic forest at the head of the Hanakapiai Valley, in the Na Pali Coast State Park (Figure 1-A, above). The entire section is State-owned and within previously designated critical habitat; it falls within Critical Habitat Unit 11 of 50 CFR 17.99(a)(1), Map 66a. This section is occupied by the plant *Charpentiera densiflora* and includes mesic forest, the moisture regime, and canopy, subcanopy, and understory native plant species identified as PCEs in the lowland mesic ecosystem (Table 3). This section also contains unoccupied habitat that is essential to the conservation of this species by providing the physical and biological features necessary for the expansion of the existing wild population. Although Lowland Mesic—Section 4 is not known to be occupied by the species *Canavalia napaliensis*, *Chamaesyce eleanoriae*, *Chamaesyce remyi* var. *remyi*, *Doryopteris angelica*, *Dubautia kenwoodii*, *Labordia helleri*, *Pittosporum napaliense*, *Platydesma rostrata*, *Psychotria hobdyi*, and *Tetraplasandra bisattenuata*, we have determined this area to be essential for the conservation and recovery of these lowland mesic species because it provides the physical and biological features necessary for the reestablishment of wild populations within their historic range. Due to the small numbers of individuals or low population sizes of each of these species, each requires suitable habitat and space for expansion or reintroduction to achieve recovery.

Kauai—Lowland Mesic—Section 5

Lowland Mesic—Section 5 consists of 37 ac (15 ha) in the lowland mesic ecosystem, including mesic forest on the slopes of Mt. Haupu, on privately owned land (Figure 1-B).

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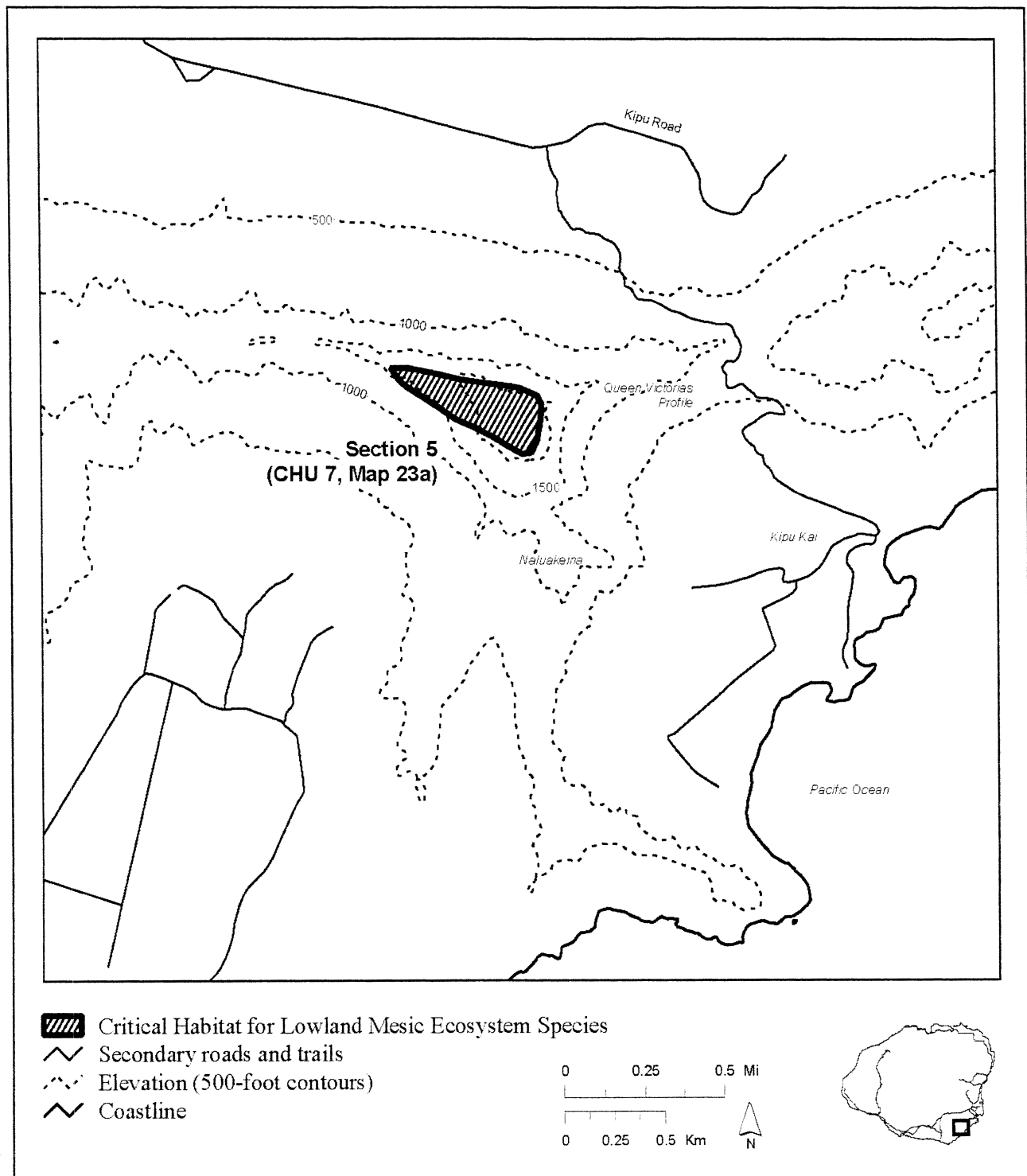


Figure 1-B. Area designated as critical habitat for 11 plant species in the Lowland Mesic Ecosystem (Section 5). Critical habitat unit (CHU) number and map number, as published in the Code of Federal Regulations (50 CFR 17.99(a)(a)), are provided for ease of referencing.

The entire section is within previously designated critical habitat, and falls within Critical Habitat Unit 7 of 50 CFR 17.99(a)(1), Map 23a. This section is occupied by the plants *Chamaesyce remyi* var. *remyi* and *Tetraplasandra bisattenuata*, and includes mesic forest and shrubland, the moisture regime, and subcanopy and understory native plant species identified as PCEs in the lowland mesic ecosystem (Table 3). This section also contains unoccupied habitat that is essential to the conservation of these two species by providing the physical and biological features necessary for the

expansion of the existing wild populations. Although Lowland Mesic—Section 5 is not known to be occupied by the species *Canavalia napaliensis*, *Chamaesyce eleanoriae*, *Charpentiera densiflora*, *Doryopteris angelica*, *Dubautia kenwoodii*, *Labordia helleri*, *Pittosporum napaliense*, *Platydesma rostrata*, and *Psychotria hobyi*, we have determined this area to be essential for the conservation and recovery of these lowland mesic species because it provides the physical and biological features necessary for the reestablishment of wild populations within their historic range. Due to the

small numbers of individuals or low population sizes of each of these species, each requires suitable habitat and space for expansion or reintroduction to achieve recovery.

Kauai—Lowland Wet—Section 1

Lowland Wet—Section 1 consists of 1,164 ac (471 ha) in the lowland wet ecosystem (117 ac (47.4 ha) on State land; 1,047 ac (424 ha) on private land), including wet forest extending from Kulanalilia into Limahuli Valley to Honoanapali, in the Halelea Forest Reserve (Figure 2-A).

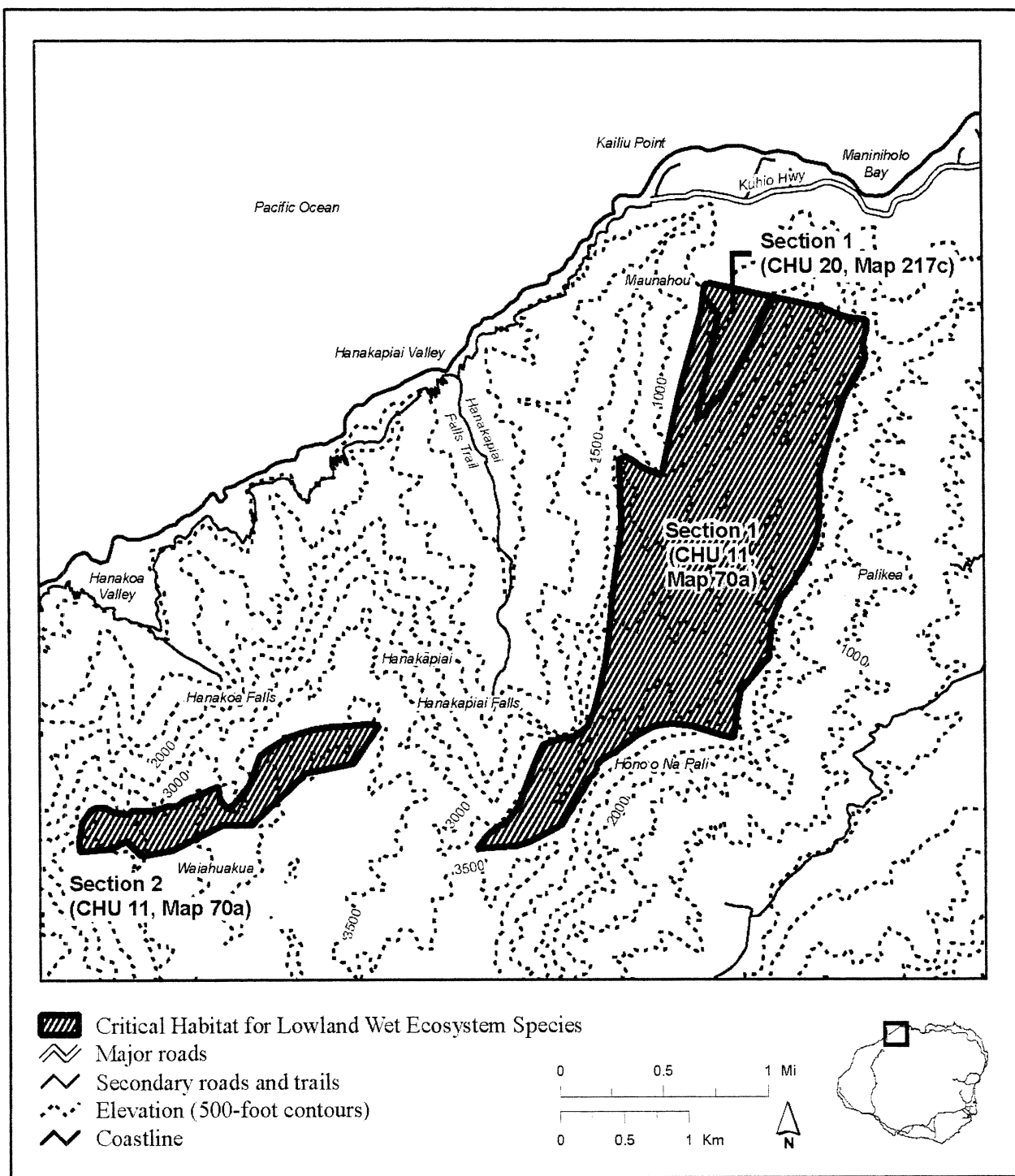


Figure 2-A. Areas designated as critical habitat for 16 plant species in the Lowland Wet Ecosystem (Sections 1 and 2). Section 1 overlies an existing critical habitat unit (CHU) on Kauai (CHU 11) and an area not currently designated as critical habitat. CHU numbers and map numbers for each section, as published in the Code of Federal Regulations (50 CFR 17.99(a)(1)), are provided for ease of referencing.

The section includes 1,099 ac (445 ha) of State and privately owned land within previously designated critical habitat and 65 ac (26 ha) of newly designated critical habitat on private land. The area that falls within designated critical habitat lies within Critical Habitat Unit 11 of 50 CFR 17.99(a)(1), Map 70a, and newly designated Critical Habitat Unit 20, Map 217c. This section is occupied by the plants *Chamaesyce remyi* var. *remyi*, *Charpentiera densiflora*, *Labordia helleri*, and *Phyllostegia renovans*. This section also contains unoccupied habitat that is essential to the conservation of these four species by providing the physical and biological features necessary for the expansion of the existing wild populations. This section includes the lowland wet forest, the moisture regime, and canopy, subcanopy, and understory plant species identified as PCEs in the lowland wet ecosystem (Table 3). Although Lowland Wet—Section 1 is not known to be occupied by the species *Chamaesyce remyi* var. *kauaiensis*, *Cyanea eleeleensis*, *C. kolekoleensis*, *C. kuhihewa*, *Cyrtandra oenobarba*, *Dubautia imbricata* ssp. *imbricata*, *Melicope paniculata*, *M. puberula*, *Platydesma rostrata*, *Stenogyne kealiae*, *Tetraplasandra bisattenuata*, and *T.*

flynnii, we have determined this area to be essential for the conservation and recovery of these lowland wet species because it provides the physical and biological features necessary for the reestablishment of wild populations within their historic range. Due to the small numbers of individuals or low population sizes of each of these species, each requires suitable habitat and space for expansion or reintroduction to achieve recovery.

Kauai—Lowland Wet—Section 2

Lowland Wet—Section 2 consists of 172 ac (70 ha) in the lowland wet ecosystem, including wet forest extending from Alealau to Pohakea, within the Hono o Na Pali NAR and the Na Pali Coast State Park (Figure 2-A, above). The entire section is State-owned and within previously designated critical habitat; it falls within Critical Habitat Unit 11 of 50 CFR 17.99(a)(1), Map 70a, and is occupied by the plant *Melicope puberula*. This section also contains unoccupied habitat that is essential to the conservation of this species by providing the physical and biological features necessary for the expansion of the existing wild population. This section includes the lowland wet forest, the moisture regime, and canopy, subcanopy, and understory plant

species identified as PCEs in the lowland wet ecosystem (Table 3). Although Lowland Wet—Section 2 is not known to be occupied by the species *Chamaesyce remyi* var. *kauaiensis*, *C. remyi* var. *remyi*, *Charpentiera densiflora*, *Cyanea eleeleensis*, *C. kolekoleensis*, *C. kuhihewa*, *Cyrtandra oenobarba*, *Dubautia imbricata* ssp. *imbricata*, *Labordia helleri*, *Melicope paniculata*, *Phyllostegia renovans*, *Platydesma rostrata*, *Stenogyne kealiae*, *Tetraplasandra bisattenuata*, and *T. flynnii*, we have determined this area to be essential for the conservation and recovery of these lowland wet species because it provides the physical and biological features necessary for the reestablishment of wild populations within their historic range. Due to the small numbers of individuals or low population sizes of each of these species, each requires suitable habitat and space for expansion or reintroduction to achieve recovery.

Kauai—Lowland Wet—Section 3

Lowland Wet—Section 3 consists of 756 ac (306 ha) in the lowland wet ecosystem, including wet forest in upper Wainiha Valley, on privately owned land in the Halelea Forest Reserve (Figure 2-B).

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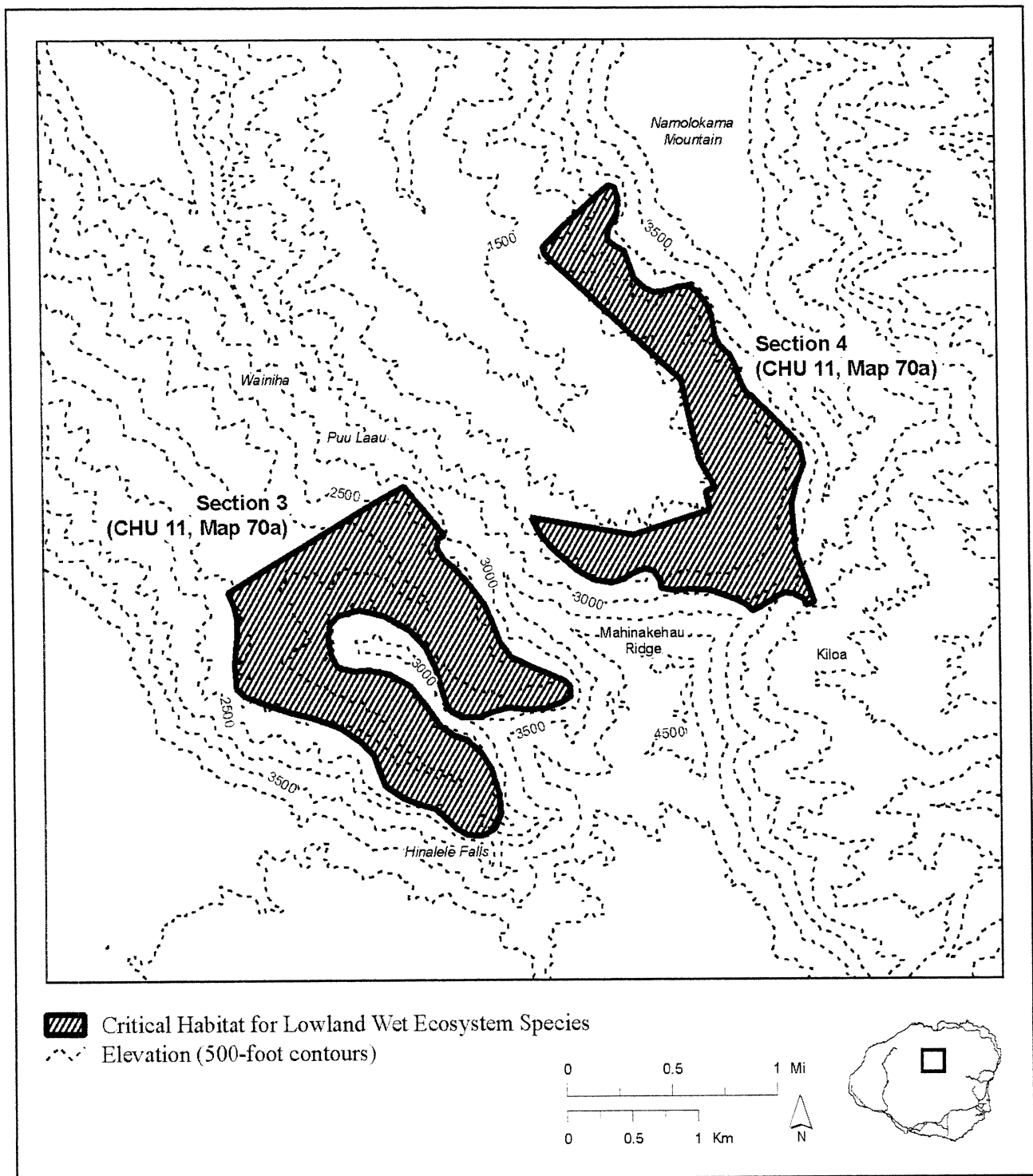


Figure 2-B. Areas designated as critical habitat for 16 plant species in the Lowland Wet Ecosystem (Sections 3 and 4). Critical habitat unit (CHU) numbers and map numbers for each section, as published in the Code of Federal Regulations (50 CFR 17.99(a)(1)), are provided for ease of referencing.

The entire section is within previously designated critical habitat, falling within Critical Habitat Unit 11 of 50 CFR 17.99(a)(1), Map 70a, and is occupied by the plants *Chamaesyce remyi* var. *kauaiensis*, *Cyrtandra oenobarba*, *Melicope puberula*, *Phyllostegia renovans*, and *Stenogyne kealiae*. This section also contains unoccupied habitat that is essential to the conservation of these five species by providing the physical and biological features necessary for the expansion of the existing wild populations. This section includes the lowland wet forest, the moisture regime, and canopy, subcanopy, and understory plant species identified as PCEs in the lowland wet ecosystem (Table 3). Although Lowland Wet—Section 3 is not known to be occupied by the species *Chamaesyce remyi* var. *remyi*, *Charpentiera densiflora*, *Cyanea eleeleensis*, *C. kolekoleensis*, *C. kuhihewa*, *Dubautia imbricata* ssp. *imbricata*, *Labordia helleri*, *Melicope paniculata*, *Platydesma rostrata*, *Tetraplasandra bisattenuata*, and *T. flynnii*, we have determined this area to be essential for the conservation and recovery of these lowland wet species because it provides the physical and biological features necessary for the

reestablishment of wild populations within their historic range. Due to the small numbers of individuals or low population sizes of each of these species, each requires suitable habitat and space for expansion or reintroduction to achieve recovery.

Kauai—Lowland Wet—Section 4

Lowland Wet—Section 4 consists of 591 ac (239 ha) in the lowland wet ecosystem, including wet forest at the head of Lumahai Valley, on State (10 ac, 4.1 ha) and privately owned (581 ac, 235 ha) land in the Halelea Forest Reserve (Figure 2-B, above). The entire section is within previously designated critical habitat, falling within Critical Habitat Unit 11 of 50 CFR 17.99(a)(1), Map 70a, and is occupied by the plants *Chamaesyce remyi* var. *remyi*, *Cyrtandra oenobarba*, *Melicope paniculata*, *Phyllostegia renovans*, and *Platydesma rostrata*. This section also contains unoccupied habitat that is essential to the conservation of these five species by providing the physical and biological features necessary for the expansion of the existing wild populations. This section includes the lowland wet forest, the moisture regime, and canopy, subcanopy, and understory plant species identified as PCEs in the lowland wet ecosystem (Table 3).

Although Lowland Wet—Section 4 is not known to be occupied by the species *Chamaesyce remyi* var. *kauaiensis*, *Charpentiera densiflora*, *Cyanea eleeleensis*, *C. kolekoleensis*, *C. kuhihewa*, *Dubautia imbricata* ssp. *imbricata*, *Labordia helleri*, *Melicope puberula*, *Stenogyne kealiae*, *Tetraplasandra bisattenuata*, and *T. flynnii*, we have determined this area to be essential for the conservation and recovery of these lowland wet species because it provides the physical and biological features necessary for the reestablishment of wild populations within their historic range. Due to the small numbers of individuals or low population numbers of each of these species, each requires suitable habitat and space for expansion or reintroduction to achieve recovery.

Kauai—Lowland Wet—Section 5

Lowland Wet—Section 5 consists of 1,541 ac (624 ha) in the lowland wet ecosystem, including wet forest extending from the headwaters of the Wailua River at “Blue Hole” south to Iole, on State (442 ac, 179 ha) and privately owned (1,099 ac, 445 ha) land in the Lihue-Koloa Forest Reserve (Figure 2-C).

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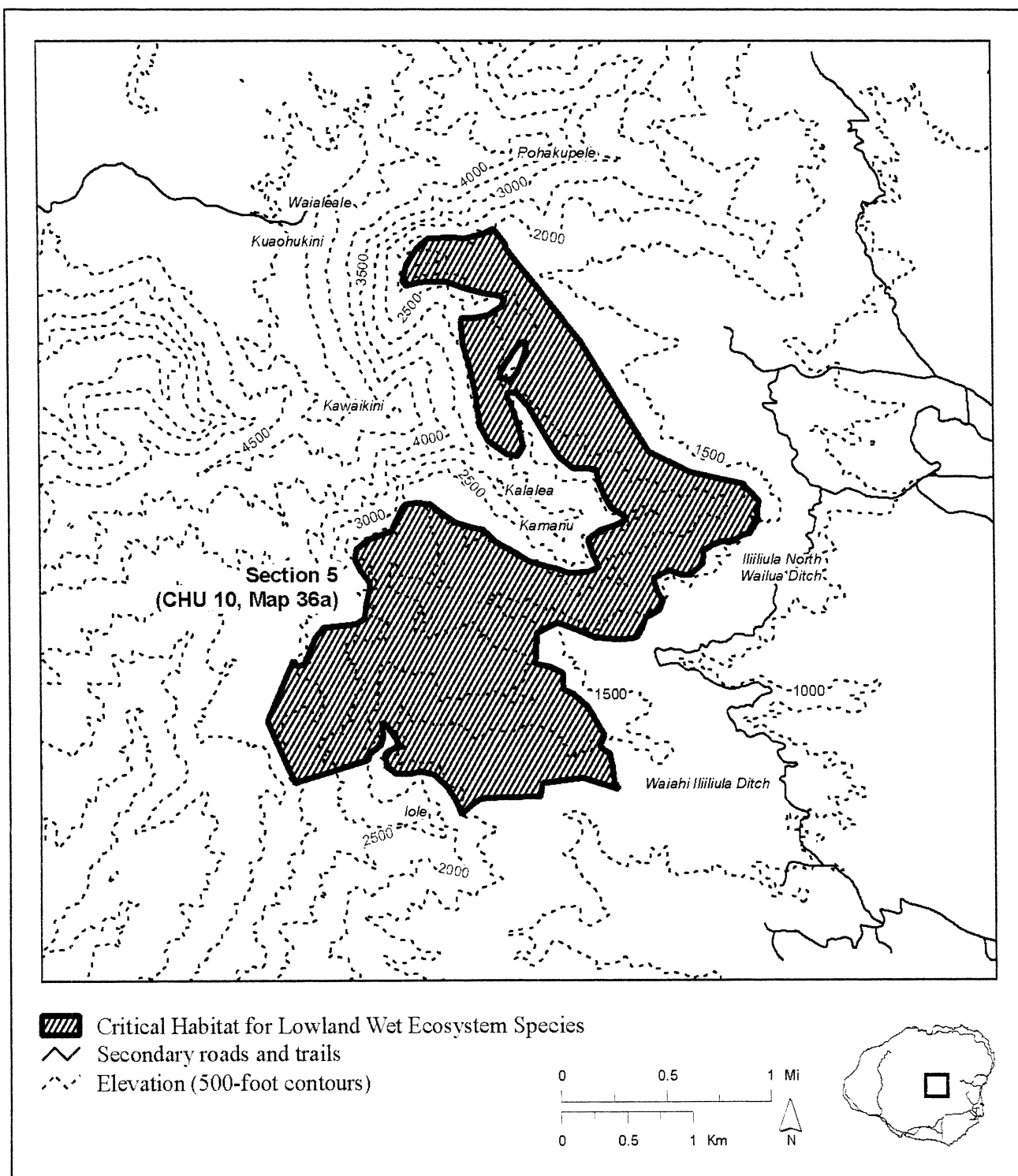


Figure 2-C. Area designated as critical habitat for 16 plant species in the Lowland Wet Ecosystem (Section 5). Critical habitat unit (CHU) number and map number, as published in the Code of Federal Regulations (50 CFR 17.99(a)(1)), are provided for ease of referencing.

The entire section is within previously designated critical habitat, falling within Critical Habitat Unit 10 of 50 CFR 17.99(a)(1), Map 36a, and is occupied by the plants *Cyrtandra oenobarba*, *Dubautia imbricata* ssp. *imbricata*, *Melicope paniculata*, *Phyllostegia renovans*, and *Platydesma rostrata*. This section also contains unoccupied habitat that is essential to the conservation of these five species by providing the physical and biological features necessary for the expansion of the existing wild populations. This section includes the lowland wet forest, the moisture regime, and canopy, subcanopy and understory plant species

identified as PCEs in the lowland wet ecosystem (Table 3). Although Lowland Wet—Section 5 is not known to be occupied by the species *Chamaesyce remyi* var. *kauaiensis*, *C. remyi* var. *remyi*, *Charpentiera densiflora*, *Cyanea eleeeensis*, *C. kolekoleensis*, *C. kuhihewa*, *Labordia helleri*, *Melicope puberula*, *Stenogyne kealiae*, *Tetraplasandra bisattenuata*, and *T. flynnii*, we have determined this area to be essential for the conservation and recovery of these lowland wet species because it provides the physical and biological features necessary for the reestablishment of wild populations within their historic range. Due to the

small numbers of individuals or low population sizes of each of these species, each requires suitable habitat and space for expansion or reintroduction to achieve recovery.

Kauai—Lowland Wet—Section 6

Lowland Wet—Section 6 consists of 789 ac (319 ha) in the lowland wet ecosystem, including wet forest extending from Kapalaoa to Kanaele Bog and Lauahihaihai in the Wahiawa Mountains, on State (134 ac, 54 ha) and privately owned (655 ac, 265 ha) land in the Lihue-Koloa Forest Reserve (Figure 2-D).

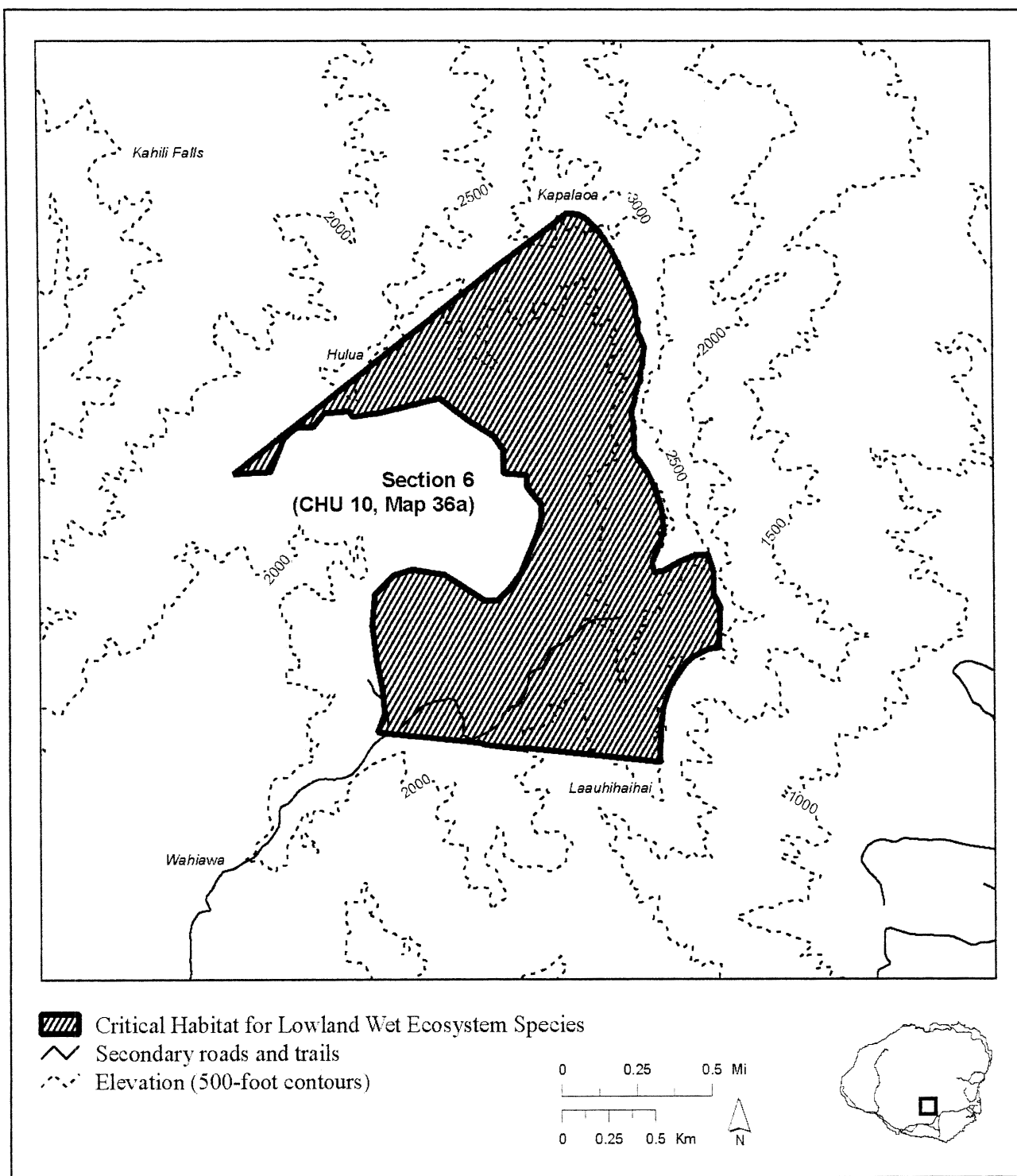


Figure 2-D. Area designated as critical habitat for 16 plant species in the Lowland Wet Ecosystem (Section 6). Critical habitat unit (CHU) number and map number, as published in the Code of Federal Regulations (50 CFR 17.99(a)(1)), are provided for ease of referencing.

The entire section is within previously designated critical habitat, falling within Critical Habitat Unit 10 of 50 CFR 17.99(a)(1), Map 36a, and is occupied by the plants *Chamaesyce remyi* var. *remyi*, *Cyrtandra oenobarba*, *Dubautia imbricata* ssp. *imbricata*, *Platydesma rostrata*, and *Tetraplasandra bisattenuata*. This section also contains unoccupied habitat that is essential to the conservation of these five species by providing the physical and biological features necessary for the expansion of the existing wild populations. This section includes the lowland wet forest, the moisture regime, and canopy,

subcanopy, and understory plant species identified as PCEs in the lowland wet ecosystem (Table 3). Although Lowland Wet—Section 6 is not known to be occupied by the species *Chamaesyce remyi* var. *kauaiensis*, *Charpentiera densiflora*, *Cyanea eleeleensis*, *C. kolekoleensis*, *C. kuhliewa*, *Labordia helleri*, *Melicope paniculata*, *M. puberula*, *Phyllostegia renovans*, *Stenogyne kealiae*, and *Tetraplasandra flynnii*, we have determined this area to be essential for the conservation and recovery of these lowland wet species because it provides the physical and biological features necessary for the reestablishment of

wild populations within their historic range. Due to the small numbers of individuals or low population sizes of each of these species, each requires suitable habitat and space for expansion or reintroduction to achieve recovery.

Kauai—Montane Mesic—Section 1

Montane Mesic—Section 1 consists of 2,423 ac (980 ha) in the montane mesic ecosystem, including the area above Honopu Valley to Mahanaloa Valley, on State owned land in Kokee State Park, the Na Pali-Kona Forest Reserve, and Kuia NAR (Figure 3-A).

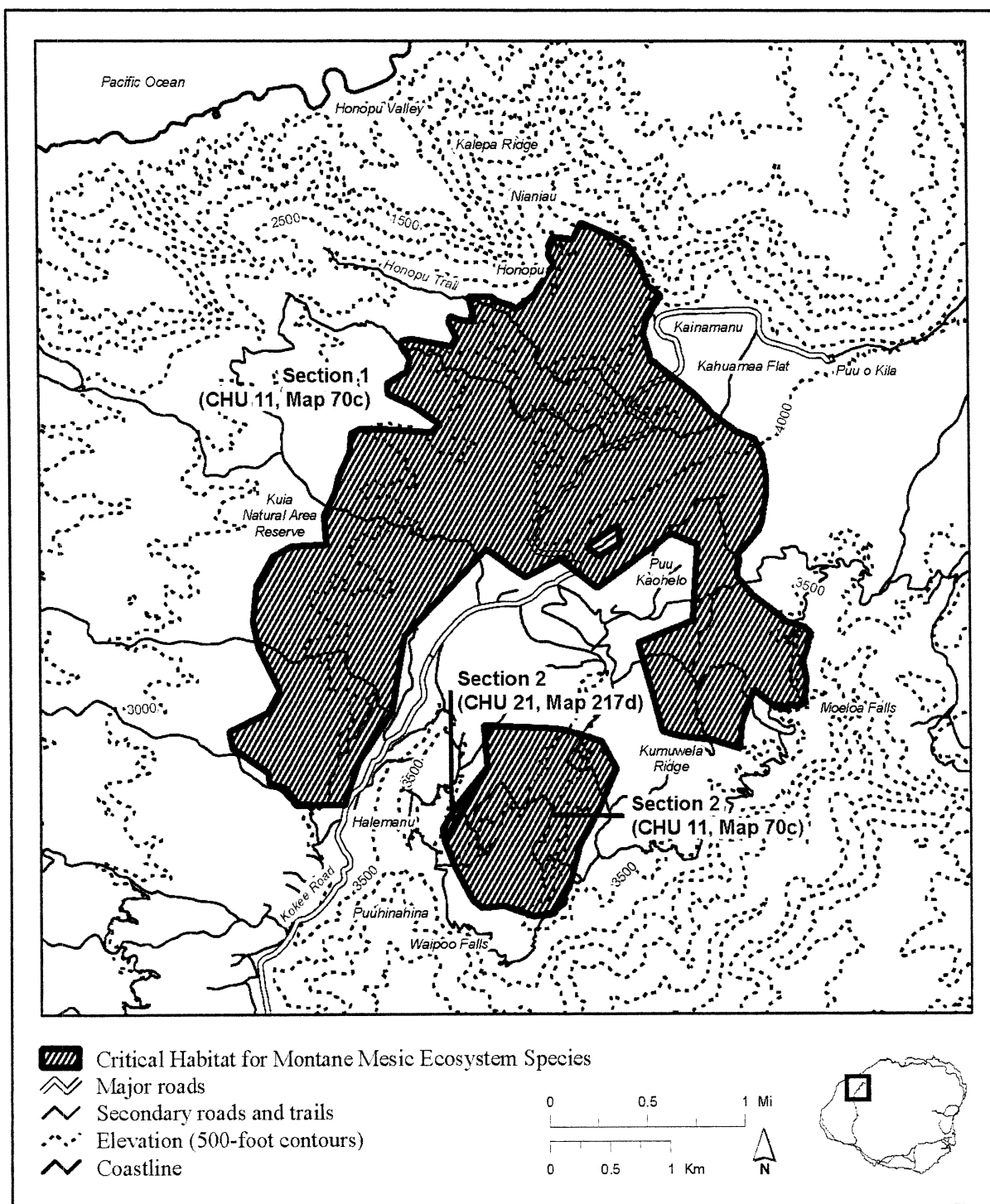


Figure 3-A. Areas designated as critical habitat for 9 plant species, the akekee and akikiki, and the picture-wing fly in the Montane Mesic Ecosystem (Sections 1 and 2). For the plants, section 2 overlays an existing critical habitat unit (CHU) on Kauai (CHU 11) and an area not currently designated as critical habitat. CHU numbers and map numbers for each section, as published in the Code of Federal Regulations (50 CFR 17.99(a)(1)), are provided for ease of referencing.

The entire section is within previously designated critical habitat for the plant species, falling within Critical Habitat Unit 11 of 50 CFR 17.99(a)(1), Map 70c, and is occupied by the plants *Chamaesyce remyi* var. *remyi*, *Labordia helleri*, *Myrsine knudsenii*, *Platydesma rostrata*, *Psychotria grandiflora*, *Stenogyne kealiae*, and *Tetraplasandra flynnii*. This section is also occupied by the akekee and the picture-wing fly; maps of critical habitat for these species can be found at 50 CFR 17.95(b) for the akekee and akikiki (Unit 1–Montane Mesic), and at 50 CFR 17.95(i) for the picture-wing fly (Unit 1–Montane Mesic). This section also contains unoccupied habitat that is essential to the conservation of these nine species by providing the physical and biological features necessary for the expansion of the existing wild populations. This section includes the montane mesic forest, the moisture regime, and canopy, subcanopy, and understory plant species identified as PCEs in the montane mesic ecosystem (Table 3), as well as species-specific PCEs for the akekee and akikiki (arthropod prey) and picture-wing fly (the larval-stage host plants, *Cheirodendron* sp. and *Tetraplasandra* sp.). Although Montane Mesic–Section 1 is not known to be occupied by the species *Diellia mannii*, *Myrsine mezii*, and the akikiki, we have determined this area to be essential for the conservation and recovery of these montane mesic species because it provides the physical and biological features necessary for the

reestablishment of wild populations within their historic range. Due to the small numbers of individuals or low population sizes of each of these species, each requires suitable habitat and space for expansion or reintroduction to achieve recovery.

Kauai—Montane Mesic—Section 2

Montane Mesic–Section 2 consists of 376 ac (152 ha) in the montane mesic ecosystem and includes a portion of the area surrounding a tributary of Nawaimaka Stream east to Kumuwela Ridge (Figure 3-A, above). The entire section is State-owned within Kokee State Park, and includes 8 ac (3 ha) of newly designated critical habitat. This section is occupied by *Diellia mannii* and the picture-wing fly *Drosophila sharpi*, and includes the montane mesic forest, the moisture regime, and canopy, subcanopy, and understory plant species identified as PCEs in the montane mesic ecosystem (Table 3), as well as the larval-stage host plants (*Cheirodendron* sp. and *Tetraplasandra* sp.) associated with the picture-wing fly. This section also contains unoccupied habitat that is essential to the conservation of these two species by providing the physical and biological features necessary for the expansion of the existing wild populations. Although Montane Mesic–Section 2 is not known to be occupied by the plants *Chamaesyce remyi* var. *remyi*, *Labordia helleri*, *Myrsine knudsenii*, *Myrsine mezii*, *Platydesma rostrata*, *Psychotria grandiflora*, *Stenogyne kealiae*, and

Tetraplasandra flynnii, or by the birds the akekee and akikiki, we have determined this area to be essential for the conservation and recovery of these montane mesic species because it provides the physical and biological features necessary for the reestablishment of wild populations within their historical range, as well as species-specific PCEs for the akekee and akikiki (arthropod prey). Due to the small numbers of individuals or low population sizes of each of these species, each requires suitable habitat and space for expansion or reintroduction to achieve recovery.

For the plants, that portion of the section that overlies previously designated critical habitat falls within Critical Habitat Unit 11 of 50 CFR 17.99(a)(1), Map 70c. The previously undesignated land comprises Critical Habitat Unit 21 of 50 CFR 17.99(a)(1), Map 217d. Maps of critical habitat for the akekee and akikiki can be found at 50 CFR 17.95(b) (Unit 2–Montane Mesic), and for the picture-wing fly at 50 CFR 17.95(i) (Unit 2–Montane Mesic).

Kauai—Montane Mesic—Section 3

Montane Mesic–Section 3 consists of 139 ac (56 ha) in the montane mesic ecosystem, including the upper portion of the Nawaimaka Valley up to Kapukapaia Ridge, on State-owned land in the Na Pali-Kona Forest Reserve (Figure 3-B).

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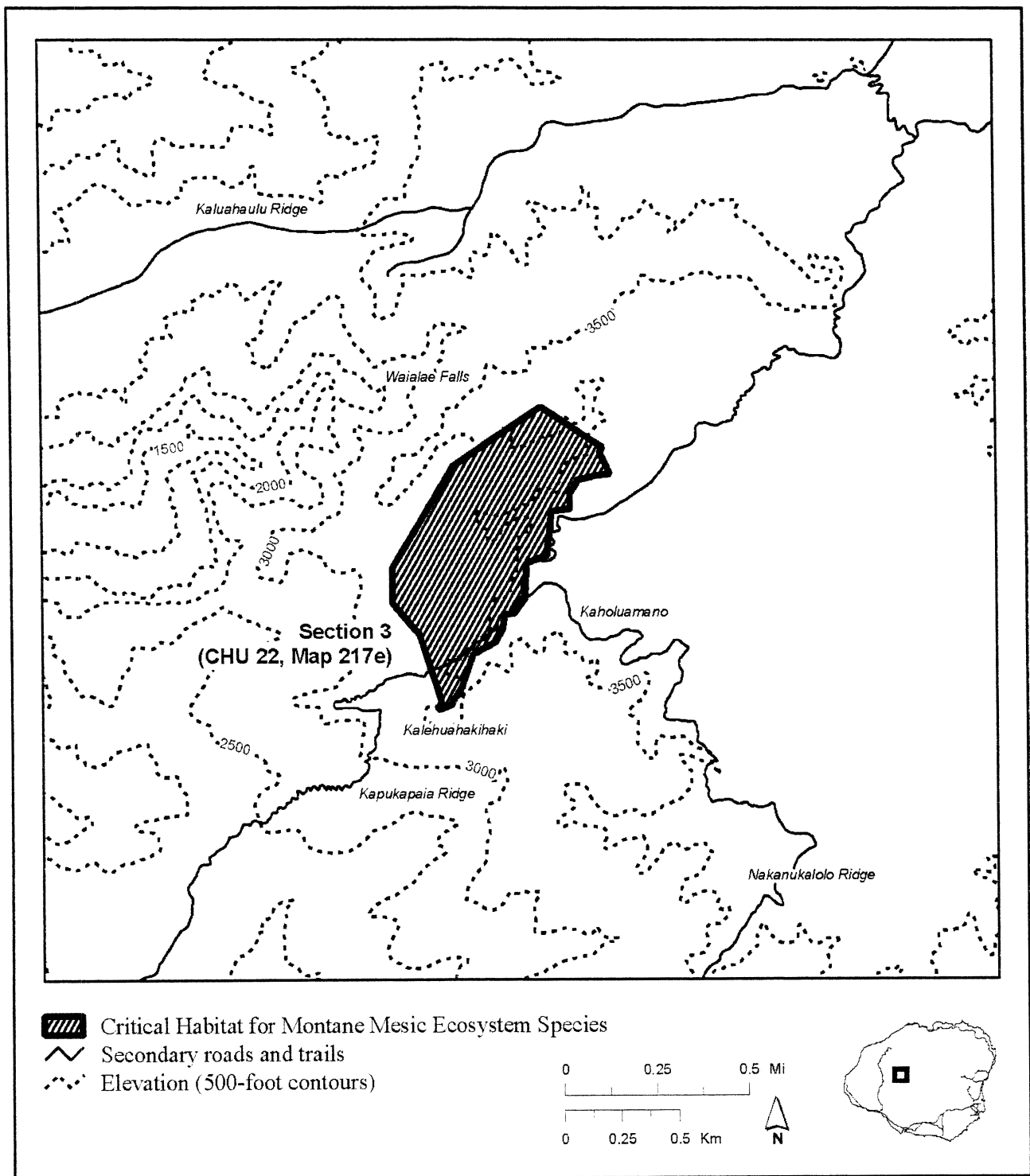


Figure 3-B. Area designated as critical habitat for 9 plant species, the akekee and akikiki, and the picture-wing fly in the Montane Mesic Ecosystem (Section 3). Critical habitat unit (CHU) number and map number, as published in the Code of Federal Regulations (50 CFR 17.99(a)(1)), are provided for ease of referencing.

This section is not in previously designated critical habitat and includes the only montane mesic forest occupied by the plant *Myrsine mezii*, and the moisture regime, and canopy, subcanopy, and understory plant species identified as PCEs in the montane mesic ecosystem (Table 3). This section also contains unoccupied habitat that is essential to the conservation of this species by providing the physical and biological features necessary for the expansion of the existing wild population. Although Montane Mesic—Section 3 is not known to be occupied by the plants *Chamaesyce remyi* var. *remyi*, *Labordia helleri*, *Myrsine knudsenii*, *Myrsine mezii*, *Platydesma rostrata*, *Psychotria grandiflora*, *Stenogyne kealiae*, and

Tetraplasandra flynnii; by the birds the akekee and akikiki; or by the picture-wing fly *Drosophila sharpi*, we have determined this area to be essential for the conservation and recovery of these montane mesic species because it provides the physical and biological features necessary for the reestablishment of wild populations within their historic range. It also provides for the species-specific PCEs for the akekee and akikiki (arthropod prey) and the larval-stage host plants (*Cheirodendron* sp. and *Tetraplasandra* sp.) associated with *D. sharpi*. Due to the small numbers of individuals or low population sizes of each of these species, each requires suitable habitat and space for expansion or reintroduction to achieve recovery.

For the plants, this section comprises Critical Habitat Unit 22 of 50 CFR 17.99(a)(1), Map 217e. Maps of critical habitat for the akekee and akikiki can be found at 50 CFR 17.95(b) (Unit 3—Montane Mesic), and for the picture-wing fly at 50 CFR 17.95(i) (Unit 3—Montane Mesic).

Kauai—Montane Wet—Section 1

Montane Wet—Section 1 consists of 13,055 ac (5,257 ha) in the montane wet ecosystem, extending across the Alakai Plateau from Hanakoa to Mount Waialeale, on State (12,628 ac, 5,110 ha) and privately owned (427 ac, 173 ha) land in the Na Pali Coast State Park, the Alakai Wilderness Preserve, the Na Pali-Kona and Halelea forest reserves, and Hono o Na Pali NAR (Figure 4).

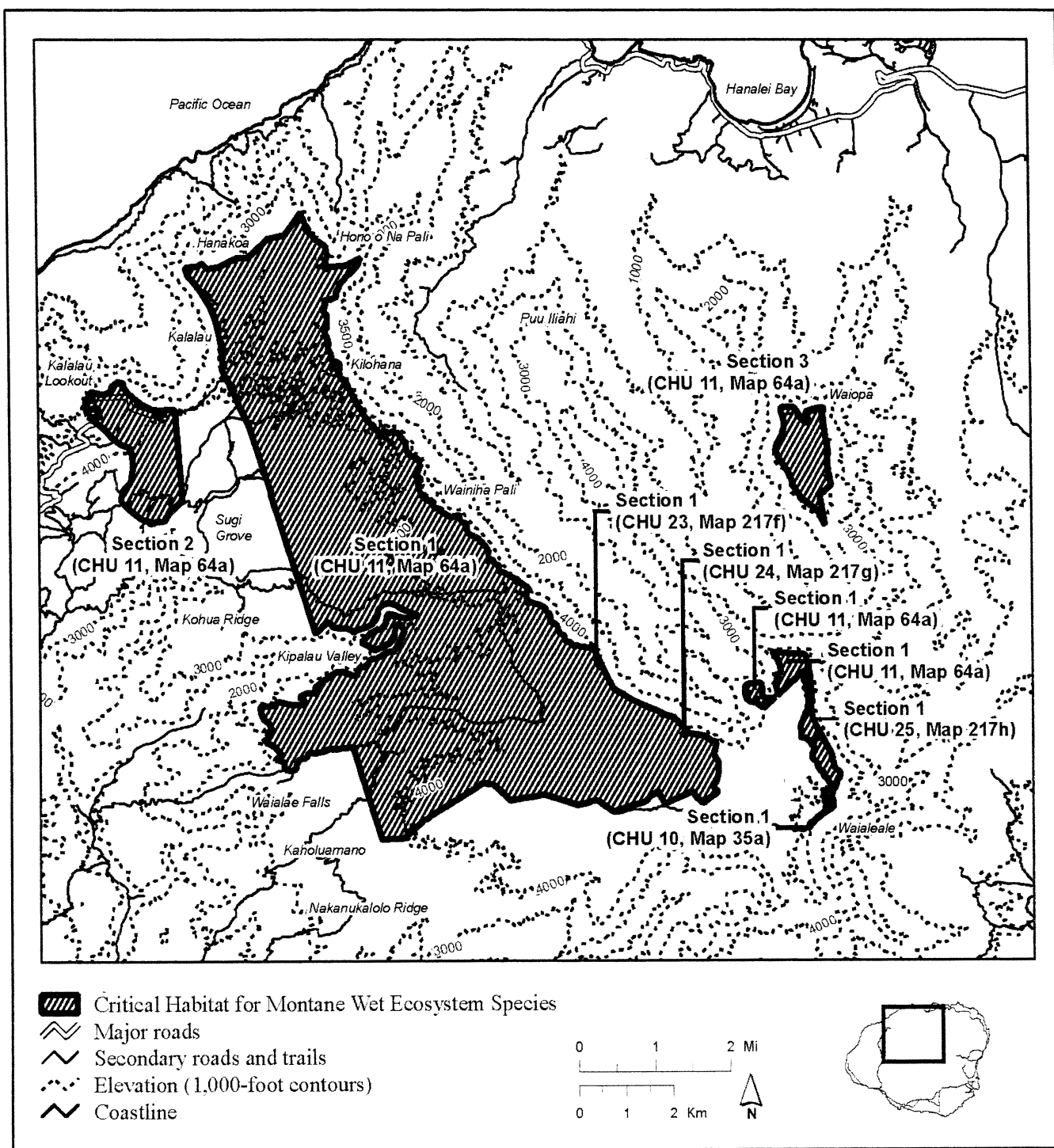


Figure 4. Areas designated as critical habitat for 18 plant species, the akekee and akikiki, and the picture-wing fly in the Montane Wet Ecosystem (Sections 1, 2, and 3). For the plants, section 1 overlies two existing critical habitat units (CHU) on Kauai (CHU 10 and CHU 11) and areas not currently designated as critical habitat. CHU numbers and map numbers for each section, as published in the Code of Federal Regulations (50 CFR 17.99(a)(1)), are provided for ease of referencing.

It is occupied by the plants *Astelia waialealae*, *Chamaesyce remyi* var. *remyi*, *Dryopteris crinalis* var. *podosorus*, *Dubautia waialealae*, *Geranium kauaiense*, *Keysseria erici*, *K. helenae*, *Labordia helleri*, *L. pumila*, *Lysimachia daphnoides*, *Melicope degeneri*, *M. puberula*, *Myrsine mezii*, *Phyllostegia renovans*, and *Platydesma rostrata*; by the akekee and akikiki; and by the picture-wing fly. This section also contains unoccupied habitat that is essential to the conservation of these 18 species by providing the physical and biological features necessary for the expansion of the existing wild populations. This section includes the montane wet forest, the moisture regime, and canopy, subcanopy, and understory plant species identified as PCEs in the montane wet ecosystem (Table 3), and the species-specific PCEs including (1) bogs (identified as PCEs for *Dubautia waialealae*, *Geranium kauaiense*, *Keysseria erici*, *Keysseria helenae*, *Labordia pumila*) (2) bog hummocks (identified as PCEs for *Astelia waialealae* and *Lysimachia daphnoides*); (3) arthropod prey (identified as PCEs for the akekee and the akikiki); and (4) larval-stage host plants, *Cheirodendron* and *Tetraplasandra* sp., (identified as a PCE for the picture-wing fly). Although Montane Wet-Section 1 is not known to be occupied by the plants *Dubautia kalalauensis*, *Psychotria grandiflora*, and *Tetraplasandra flynnii*, we have determined this area to be essential for the conservation and recovery of these montane wet species because it provides the physical and biological features necessary for the reestablishment of wild populations within their historical range. Due to the small numbers of individuals or low population sizes of each of these species, each requires suitable habitat and space for expansion or reintroduction to achieve recovery.

For the plants, those portions of the section that overlie previously designated critical habitat fall within two existing Critical Habitat Units of 50 CFR 17.99(a)(1): Unit 10, Map 35a; and Unit 11, Map 64a. The previously undesignated land comprises Unit 23, Map 217f; and Unit 24, Map 217g. Maps of critical habitat for the akekee and akikiki can be found at 50 CFR 17.95(b) (Unit 4—Montane Wet), and for the picture-wing fly *Drosophila sharpi* at 50 CFR 17.95(i) (Unit 4—Montane Wet).

Kauai—Montane Wet—Section 2

Montane Wet-Section 2 consists of 790 ac (320 ha) in the montane wet ecosystem, extending from Kahuamaa Flat south to the edge of Waimea Canyon, on State-owned land in Kokee State Park (Figure 4, above). The entire section is within previously designated critical habitat, and is occupied by the plants *Chamaesyce remyi* var. *remyi*, *Dubautia kalalauensis*, *Labordia helleri*, *Melicope puberula*, *Platydesma rostrata*, *Psychotria grandiflora*, and *Tetraplasandra flynnii*, and by the akekee. This section includes montane wet forest, potentially some small-scale boggy areas, the moisture regime, and canopy, subcanopy and understory plant species identified as PCEs in the montane wet ecosystem (Table 3), and arthropod prey (identified as a species-specific PCE for the akekee). Although Montane Wet-Section 2 is not known to be occupied by the plants *Astelia waialeale*, *Dryopteris crinalis* var. *podosorus*, *Dubautia waialeale*, *Geranium kauaiense*, *Keysseria erici*, *Keysseria helenae*, *Labordia pumila*, *Lysimachia daphnoides*, *Melicope degeneri*, *Myrsine mezii*, and *Phyllostegia renovans*; by the akikiki; or by the picture-wing fly, *Drosophila sharpi*, we have determined this area to be essential for the conservation and recovery of these montane wet species because it provides the physical and biological features necessary for the reestablishment of wild populations within their historical range. This area also supports the arthropod prey identified as a PCE for the akikiki, and the larval-stage host plants (*Cheirodendron* and *Tetraplasandra* spp.) identified as a PCE for the picture-wing fly. Due to the small numbers of individuals or low population sizes of each of these species, each requires suitable habitat and space for expansion or reintroduction to achieve recovery.

For the plants, critical habitat falls within previously designated Critical Habitat Unit 11 of 50 CFR 17.99(a)(1), Map 64a. Maps of critical habitat for the akekee and akikiki can be found at 50 CFR 17.95(b) (Unit 5—Montane Wet), and for the picture-wing fly *Drosophila sharpi* at 50 CFR 17.95(i) (Unit 5—Montane Wet).

Kauai—Montane Wet—Section 3

Montane Wet-Section 3 consists of 413 ac (167 ha) in the montane wet

ecosystem, encompasses the summit of Namolokama, on State (156 ac, 63 ha) and privately owned (257 ac, 104 ha) land in the Halealea Forest Reserve (Figure 4, above). It is entirely within previously designated critical habitat, and is occupied by the plants *Keysseria erici* and *Labordia pumila*. This section includes the montane wet forest, the moisture regime, and the canopy, subcanopy, and understory plant species identified as PCEs in the montane wet ecosystem (Table 3), and bogs (identified as a species-specific PCE for *K. erici*). Although Montane Wet-Section 3 is not known to be occupied by the plants *Astelia waialeale*, *Chamaesyce remyi* var. *remyi*, *Dryopteris crinalis* var. *podosorus*, *Dubautia kalalauensis*, *D. waialeale*, *Geranium kauaiense*, *Keysseria helenae*, *Labordia helleri*, *Lysimachia daphnoides*, *Melicope degeneri*, *M. puberula*, *Myrsine mezii*, *Phyllostegia renovans*, *Platydesma rostrata*, *Psychotria grandiflora*, and *Tetraplasandra flynnii*; by the akekee and akikiki; or by the picture-wing fly, *Drosophila sharpi*, we have determined this area to be essential for the conservation and recovery of these montane wet species because it provides the physical and biological features necessary for the reestablishment of wild populations within their historic range. It also supports the arthropod prey identified as a PCE for the akekee and akikiki, and the larval-stage host plants (*Cheirodendron* and *Tetraplasandra* spp.) identified as a PCE for the picture-wing fly. Due to the small numbers of individuals or low population sizes of each of these species, each requires suitable habitat and space for expansion or reintroduction to achieve recovery.

For the plants, critical habitat falls within Critical Habitat Unit 11 of 50 CFR 17.99(a)(1), Map 64a. Maps of critical habitat for the akekee and akikiki can be found at 50 CFR 17.95(b) (Unit 6—Montane Wet), and for the picture-wing fly *Drosophila sharpi* at 50 CFR 17.95(i) (Unit 6—Montane Wet).

Kauai—Dry Cliff—Section 1

Dry Cliff-Section 1 consists of 404 ac (163 ha) in the dry cliff ecosystem, along cliffs from Kalanu to Pihea peak, within the Na Pali Coast State Park (Figure 5).

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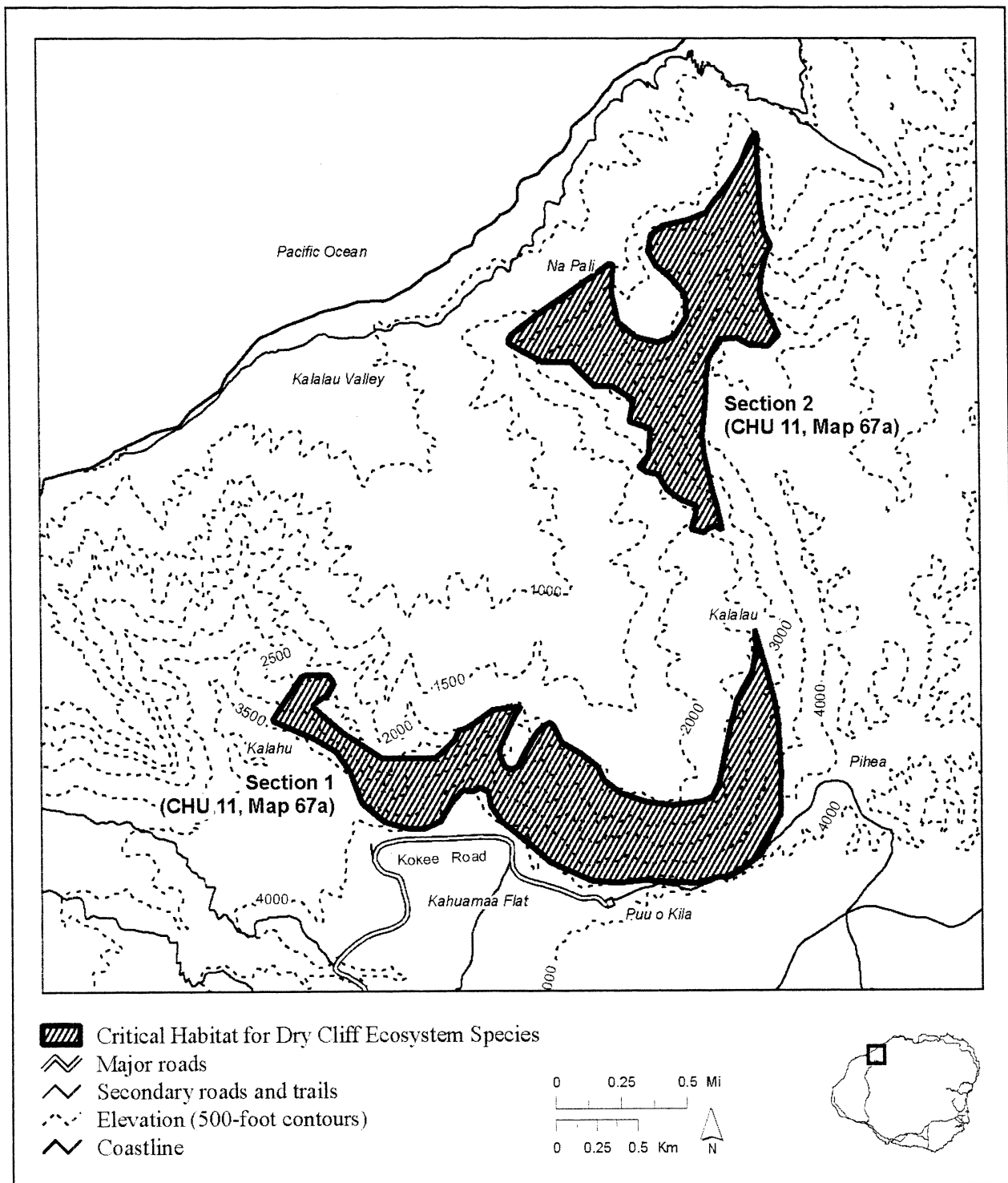


Figure 5. Areas proposed designated as critical habitat for 4 plant species in the Dry Cliff Ecosystem (Sections 1 and 2). Critical habitat unit (CHU) numbers and map numbers for each section, as published in the Code of Federal Regulations (50 CFR 17.99(a)(1)), are provided for ease of referencing.

The entire section is within previously designated critical habitat and is State-owned; it falls within Critical Habitat Unit 11 of 50 CFR 17.99(a)(1), Map 67a. This section is occupied by the plants *Chamaesyce eleanoriae*, *Lysimachia scopulensis*, *Schiedea attenuata*, and *Stenogyne kealiae*. This section includes the dry cliffs, the moisture regime, and subcanopy and understory plant species identified as PCEs in the dry cliff ecosystem (Table 3).

Kauai—Dry Cliff—Section 2

Dry Cliff—Section 2 consists of 309 ac (125 ha) in the dry cliff ecosystem, including cliffs and ridges extending from Kanakou to Keanapuka and along

Manono Ridge, surrounding the hanging valley Pohakuao, in the Na Pali Coast State Park (Figure 5, above). The entire section is State-owned and within previously designated critical habitat; it falls within Critical Habitat Unit 11 of 50 CFR 17.99(a)(1), Map 67a. This section is occupied by the plant *Chamaesyce eleanoriae* and includes the dry cliffs, the moisture regime, and subcanopy and understory plant species identified as PCEs in the dry cliff ecosystem (Table 3). Although Dry Cliff - Section 3 is not known to be occupied by the plants *Lysimachia scopulensis*, *Schiedea attenuata*, and *Stenogyne kealiae*, we have determined this area to be essential for the conservation and recovery of these dry cliff species

because it provides the physical and biological features necessary for the reestablishment of wild populations within their historic range of the species. Due to the small numbers of individuals or low population sizes of each of these species, each requires suitable habitat and space for expansion or reintroduction to achieve recovery.

Kauai—Wet Cliff—Section 1

Wet Cliff—Section 1 consists of 190 ac (77 ha) in the wet cliff ecosystem, including cliffs along the rim of Kalalau Valley from Alealeau to Pihea, on State-owned land in the Na Pali Coast State Park and the Hono o Na Pali NAR (Figure 6-A).

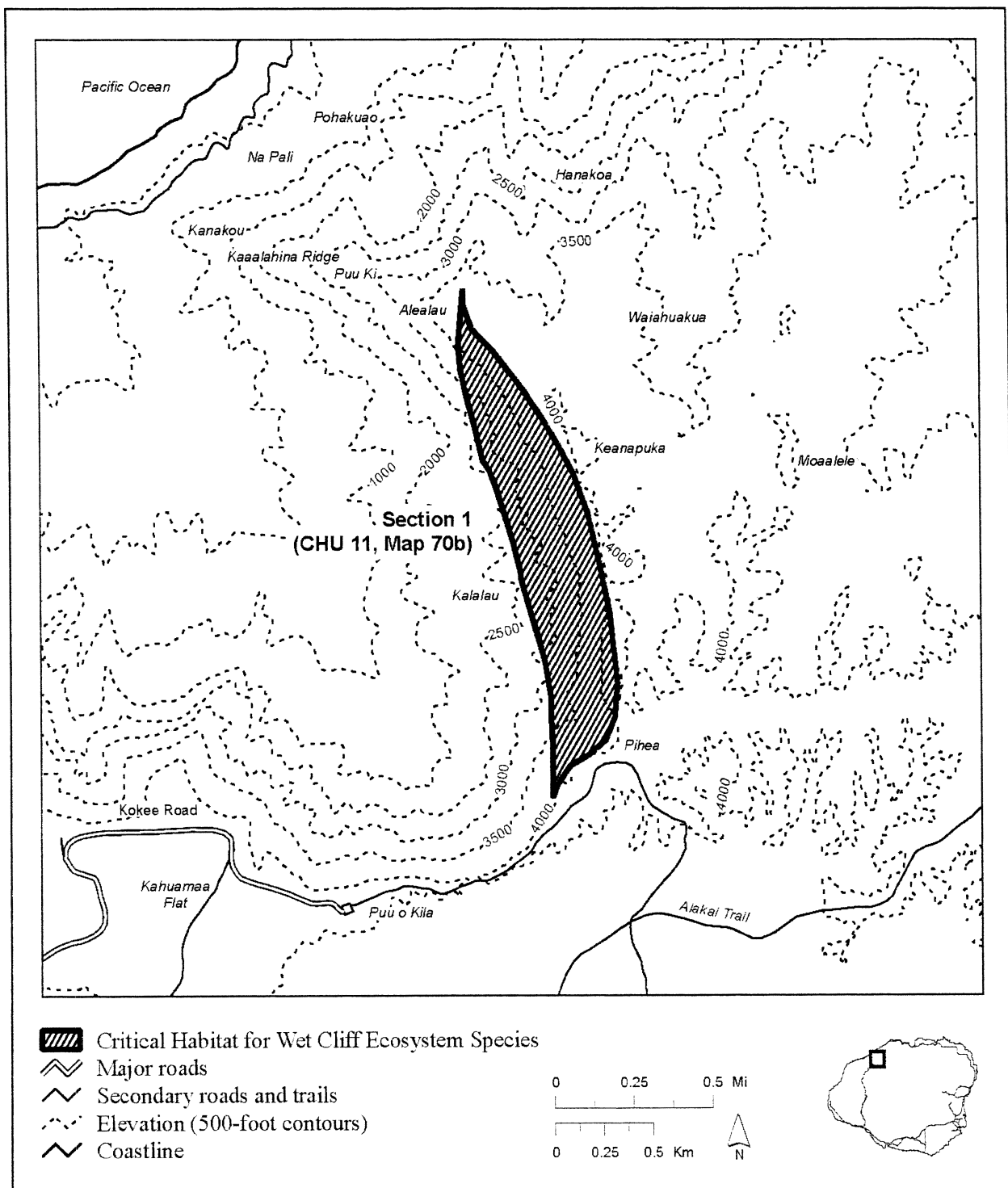


Figure 6-A. Area designated as critical habitat for 10 plant species in the Wet Cliff Ecosystem (Section 1). Critical habitat unit (CHU) number and map number, as published in the Code of Federal Regulations (50 CFR 17.99(a)(1)), are provided for ease of referencing.

The entire section is within previously designated critical habitat, falling within Critical Habitat Unit 11 of 50 CFR 17.99(a)(1), Map 70b, and is occupied by the plant *Chamaesyce remyi* var. *remyi*. This section includes the wet cliffs, the moisture regime, and subcanopy and understory plant species identified as PCEs in the wet cliff ecosystem (Table 3). Although Wet Cliff—Section 1 is not known to be occupied by the plants *Chamaesyce remyi* var. *kauaiensis*, *Cyanea*

dolichopoda, *Cyrtandra oenobarbara*, *C. paliku*, *Dubautia plantaginea* ssp. *magnifolia*, *Lysimachia iniki*, *L. pendens*, *L. venosa*, and *Platydesma rostrata*, we have determined this area to be essential for the conservation and recovery of these wet cliff species because it provides the physical and biological features necessary for the reestablishment of wild populations within their historical range. Due to the small numbers of individuals or low population sizes of each of these

species, each requires suitable habitat and space for expansion or reintroduction to achieve recovery.

Kauai—Wet Cliff—Section 2

Wet Cliff—Section 2 consists of 784 ac (317 ha) in the wet cliff ecosystem, and includes the cliffs at the headwaters of the Wailua River or “Blue Hole,” on State (778 ac, 315 ha) and privately owned (6 ac, 3 ha) land in the Lihue-Koloa Forest Reserve (Figure 6-B).

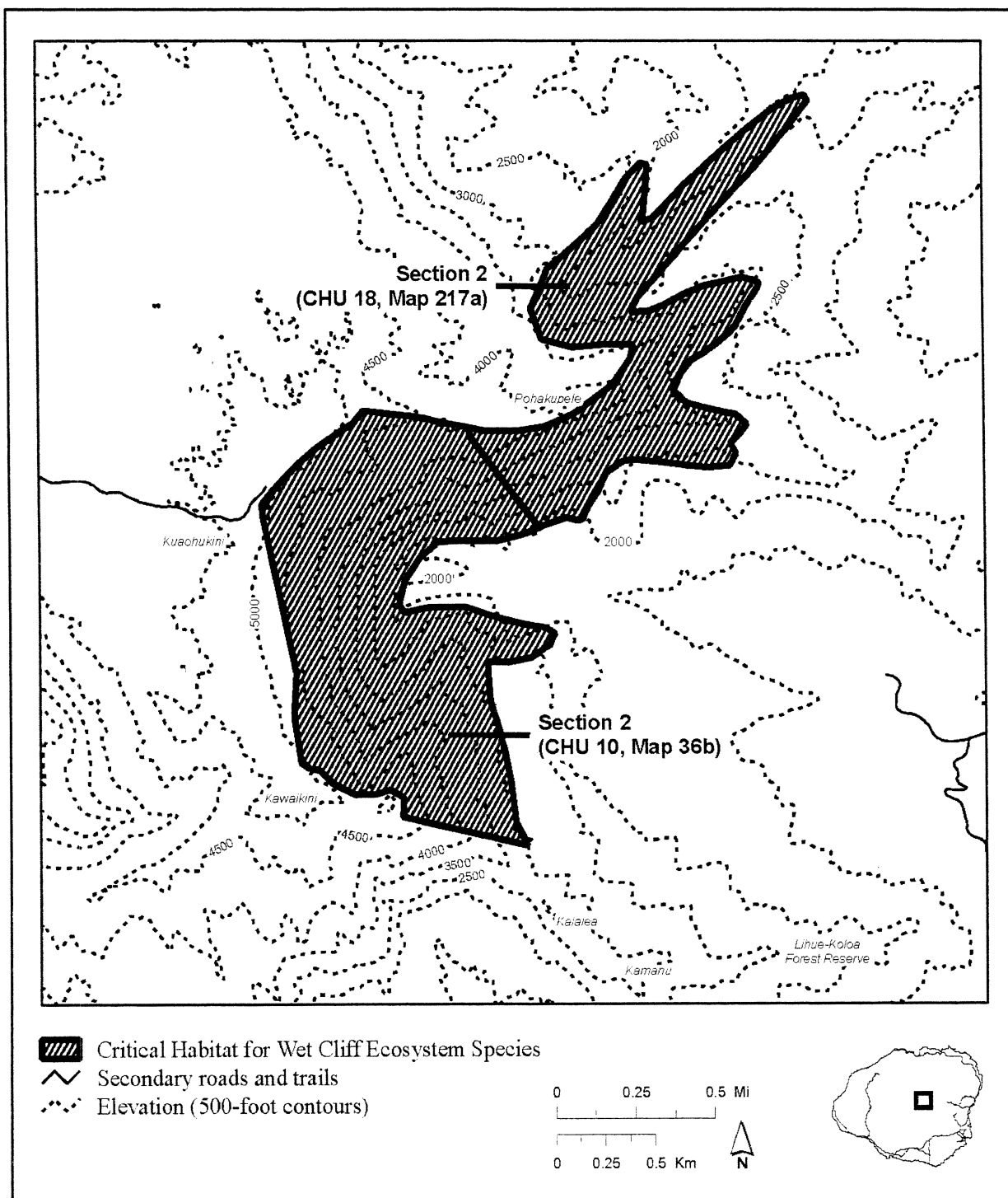


Figure 6-B. Area designated as critical habitat for 10 plant species in the Wet Cliff Ecosystem (Section 2). Section 2 overlies an existing critical habitat unit (CHU) on Kauai (CHU 10) and an area not currently designated as critical habitat. CHU numbers and map numbers for each section, as published in the Code of Federal Regulations (50 CFR 17.99(a)(1)), are provided for ease of referencing.

There are 489 ac (198 ha) within previously designated critical habitat and 296 ac (120 ha) of newly designated critical habitat on State-owned land. The portion of the section that is in previously designated critical habitat falls within Critical Habitat Unit 10 of 50 CFR 17.99(a)(1), Map 36b. The newly designated portion of the section comprises Critical Habitat Unit 18 of 50 CFR 17.99(a)(1), Map 217a. This section is occupied by the plants *Chamaesyce remyi* var. *kauaiensis*, *Cyrtandra oenobarba*, *Dubautia plantaginea* ssp. *magnifolia*, *Lysimachia iniki*, *L.*

pendens, and *Platydesma rostrata*. The section includes the wet cliffs, the moisture regime, and subcanopy and understory plant species identified as PCEs in the wet cliff ecosystem (Table 3). Although Wet Cliff—Section 2 is not known to be occupied by the plants *Chamaesyce remyi* var. *remyi*, *Cyanea dolichopoda*, *Cyrtandra paliku*, and *Lysimachia venosa*, we have determined this area to be essential for the conservation and recovery of these wet cliff species because it provides the physical and biological features necessary for the reestablishment of

wild populations within their historic range. Due to the small numbers of individuals or low population sizes of each of these species, each requires suitable habitat and space for expansion or reintroduction to achieve recovery.

Kauai—Wet Cliff—Section 3

Wet Cliff—Section 3 consists of 61 ac (24 ha) in the wet cliff ecosystem, including cliffs below Kekoiki, on State (8 ac, 3 ha) and privately owned (53 ac, 22 ha) land in the Halelea, Moloaa and Kealia forest reserves (Figure 6-C).

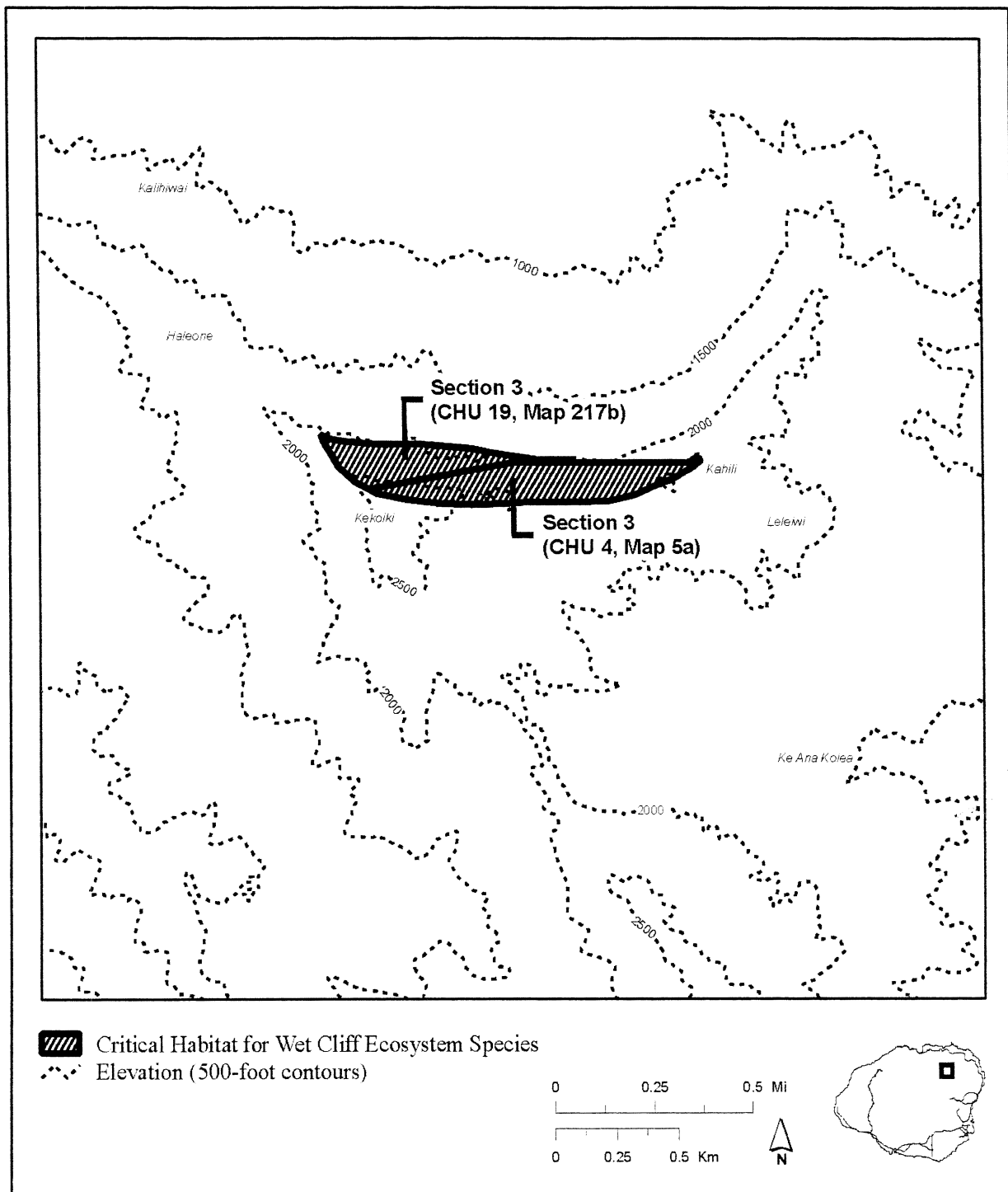


Figure 6-C. Area designated as critical habitat for 10 plant species in the Wet Cliff Ecosystem (Section 3). Section 3 overlies an existing critical habitat unit (CHU) on Kauai (CHU 4) and an area not currently designated as critical habitat. CHU numbers and map numbers for each section, as published in the Code of Federal Regulations (50 CFR 17.99(a)(1)), are provided for ease of referencing.

There are 23 ac (9 ha) of newly designated critical habitat on privately owned land within this section. That portion of the section that falls within previously designated critical habitat is within Critical Habitat Unit 4 of 50 CFR 17.99(a)(1), Map 5a. The newly designated portion of the section comprises Critical Habitat Unit 19 of 50 CFR 17.99(a)(1), Map 217b. This section is occupied by the plant *Cyrtandra paliku*, and includes the wet cliffs, the moisture regime, and subcanopy and understory plant species identified as PCEs in the wet cliff ecosystem (Table 3). Although Wet Cliff—Section 3 is not known to be occupied by the plants *Chamaesyce remyi* var. *kauaiensis*, *C. remyi* var. *remyi*, *Cyanea dolichopoda*, *Cyrtandra oenobarbara*, *Dubautia plantaginea* ssp. *magnifolia*, *Lysimachia iniki*, *L. pendens*, *L. venosa*, and *Platydesma rostrata*, we have determined this area to be essential for the conservation and recovery of these wet cliff species because it provides the physical and biological features necessary for the reestablishment of wild populations within their historic range. Due to the small numbers of individuals or low population sizes of each of these species, each requires suitable habitat and space for expansion or reintroduction to achieve recovery.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of listed species or destroy or adversely modify critical habitat. Decisions by the Fifth and Ninth Circuit Court of Appeals have invalidated our definition of “destruction or adverse modification” (50 CFR 402.02) (see *Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club v. U.S. Fish and Wildlife Service*, et al., 245 F.3d 434, 442F (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain those physical and biological features that relate to the ability of the area to support the species) to serve its intended conservation role for the species.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, we issue either:

- (1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or
- (2) A biological opinion for Federal actions that may affect, and are likely to adversely affect listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define “reasonable and prudent alternatives” at 50 CFR 402.02 as alternative actions identified during consultation that:

- (1) Can be implemented in a manner consistent with the intended purposes of the action,
- (2) Can be implemented consistent with the scope of the Federal agency’s legal authority and jurisdiction,
- (3) Are economically and technologically feasible, and
- (4) Would, in the Director’s opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinstate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency’s discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect

subsequently listed species or designated critical habitat.

Federal activities that may affect the species included in this final rule or their designated critical habitat require section 7(a)(2) consultation under the Act. Activities on State, local government, or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from us under section 10 of the Act) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, local government, or private lands that are not federally funded, authorized, or permitted, do not require section 7 consultations.

Application of the “Adverse Modification” Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or retain those PCEs that relate to the ability of the area to support the species. The role of critical habitat is to support the life history needs of the 47 species identified in this final rule and provide for their conservation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that, when carried out, funded, or authorized by a Federal agency, may destroy or adversely modify critical habitat for the 47 species, and therefore should result in consultation include, but are not limited to:

- (1) Activities that may affect the primary constituent elements for the species, such as: grazing; maintaining or increasing feral ungulate levels; clearing or cutting native live trees and shrubs (e.g., woodcutting, bulldozing, construction, road building, mining, herbicide application); and taking actions that present a risk of fire.

(2) Activities that may alter watershed characteristics in ways that would affect groundwater recharge or alter natural, wetland, or vegetative communities, such as: New water diversions or impoundments, groundwater pumping,

and manipulation of vegetation through activities such as the ones mentioned above.

(3) Recreational activities that may affect vegetation.

(4) Mining sand or other minerals.

(5) Introducing or encouraging the spread of nonnative plant species.

(6) Importing nonnative species for research, agriculture, and aquaculture, and releasing biological control agents.

Please see “Special Management Considerations or Protections” section for a more detailed discussion on the impacts of these actions to the listed species.

Exemptions and Exclusions

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

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

There are no Department of Defense lands within the critical habitat designation. Therefore, no lands have been exempted from this critical habitat designation under section 4(a)(3) of the Act.

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

Background

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat. In considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If, based on this analysis, we make a determination that the benefits

of exclusion would outweigh the benefits of inclusion of an area, we can exclude the area only if such exclusion would not result in the extinction of the species.

Under section 4(b)(2) of the Act, we must consider all relevant impacts. In addition to economic impacts, we consider a number of factors in a section 4(b)(2) analysis. For example, we consider whether there are lands owned by the Department of Defense (DOD) where a national security impact might exist. We also consider whether landowners have developed any conservation plans for the area, or whether there are existing or potential conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. We also consider any social or other impacts that might occur because of the designation.

In developing this final rule, we have determined that the lands within the designation of critical habitat for the 47 species are not managed by the Department of Defense, and there are currently no habitat conservation plans (HCPs) for these species. As such, we do not anticipate any impacts to national security or HCPs from this final critical habitat designation.

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

Benefits of Designating Critical Habitat

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

The identification of areas that contain the features essential to the conservation of the species, or are otherwise essential for the conservation of the species if outside the geographical area occupied by the species at the time of listing, is a benefit resulting from the designation. The critical habitat designation process includes peer

review and public comment on the identified physical and biological features and areas, and provides a mechanism to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This helps focus and promote conservation efforts by other parties by clearly delineating areas of high conservation value for the species, and is valuable to land owners and managers in developing conservation management plans by describing the PCEs and special management actions or protections that are needed for identified areas. Including lands in critical habitat also informs State agencies and local governments about areas that could be conserved under State laws or local ordinances.

The consultation provisions under section 7(a)(2) of the Act constitute the regulatory benefits of critical habitat. As discussed above, Federal agencies must consult with the Service on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Federal agencies must also consult with us on actions that may affect a listed species and refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. For some species, and in some locations, the outcome of these analyses will be similar because effects on habitat will often result in effects on the species. However, the regulatory standard is different, as the jeopardy analysis looks at the action's impact on survival and recovery of the species, while the adverse modification analysis looks at the action's effects to the designated habitat's contribution to the species' conservation. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may provide greater benefits to the recovery of a species than would listing alone.

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

modification is designed to ensure that the conservation role and function of those areas identified as critical habitat are not appreciably reduced as a result of a Federal action. Critical habitat designation alone, however, does not require property owners to undertake specific steps toward recovery of the species.

Once an agency determines that consultation under section 7(a)(2) of the Act is necessary, the process may conclude informally when the Service concurs in writing that the proposed Federal action is not likely to adversely affect the species or critical habitat. However, if we determine through informal consultation that adverse impacts are likely to occur, then formal consultation is initiated. Formal consultation concludes with a biological opinion issued by the Service on whether the proposed Federal action is likely to jeopardize the continued existence of listed species or result in destruction or adverse modification of critical habitat.

For critical habitat, a biological opinion that concludes in a determination of no destruction or adverse modification may recommend additional conservation measures to minimize adverse effects to primary constituent elements, but such measures would be discretionary on the part of the Federal agency. A biological opinion that concludes in a determination of no destruction or adverse modification would not suggest the implementation of any reasonable and prudent alternative, as we suggest reasonable and prudent alternatives to the proposed Federal action only when our biological opinion results in a jeopardy finding or an adverse modification conclusion.

As stated above, the designation of critical habitat does not require that any management or recovery actions take place on the lands included in the designation. Even in cases where consultation has been initiated under section 7(a)(2) of the Act, the end result of consultation is to avoid jeopardy to the species or adverse modification of its critical habitat, but not necessarily to manage critical habitat or institute recovery actions on critical habitat. On the other hand, voluntary conservation efforts implemented through management plans can remove or reduce known threats to a species or its habitat by implementing recovery actions. We believe that in many instances the regulatory benefit of critical habitat is minimal when compared to the conservation benefit that can be achieved through implementing HCPs under section 10 of

the Act, or other voluntary conservation efforts or management plans. The conservation achieved through implementing HCPs or other habitat management plans can be greater than what we achieve through multiple site-by-site, project-by-project, section 7(a)(2) consultations involving consideration of critical habitat. Management plans commit resources to implement long-term management and protection to particular habitat for at least one and possibly other listed or sensitive species. Section 7(a)(2) consultations commit Federal agencies to preventing adverse modification of critical habitat caused by the particular project; consultation does not require Federal agencies to provide for conservation or long-term benefits to areas not affected by the proposed project. Thus, implementation of any HCP or management plan that incorporates enhancement or recovery as the management standard may often provide as much or more benefit than a consultation for critical habitat designation.

Conservation Partnerships on Non-Federal Lands

Section 4(b)(2) of the Act allows the Secretary to exclude areas from critical habitat for other relevant impacts if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. As discussed below, we believe that in some cases designation can negatively affect the working relationships and conservation partnerships formed with private landowners, and may serve as a disincentive for the formation of future partnerships that would have the potential to provide conservation benefits. The Service recognizes that most federally listed species in the United States will not recover without the cooperation of non-Federal landowners. More than 60 percent of the United States is privately owned (US Department of Agriculture 2002), and at least 80 percent of endangered or threatened species occur either partially or solely on private lands (Crouse *et al.* 2002, p. 720). Eighty-eight percent of the State of Hawaii is made up of non-Federal lands. Stein *et al.* (1995, p. 400) found that only about 12 percent of listed species in the United States were found almost exclusively on Federal lands (90 to 100 percent of their known occurrences restricted to Federal lands) and that 50 percent of listed species are

not known to occur on Federal lands at all.

Given the distribution of listed species with respect to land ownership, conservation of listed species in many parts of the United States is dependent upon working partnerships with a wide variety of entities and the voluntary cooperation of many non-Federal landowners (Wilcove and Chen 1998, p. 1407; Crouse *et al.* 2002, p. 720; James 2002, p. 271). Building partnerships and promoting voluntary cooperation of landowners is essential to understanding the status of species on non-Federal lands and is necessary to implement recovery actions such as reintroducing listed species, habitat restoration, and habitat protection.

Many non-Federal landowners derive satisfaction in contributing to endangered species recovery. However, private landowners are often wary of the possible consequences of encouraging endangered species conservation on their property, and of regulatory action by the Federal government under the Endangered Species Act (Act). Social research has demonstrated that for many private landowners, government regulation under the Act is perceived as a loss of individual freedoms, regardless of whether that regulation may in fact result in any actual impact to the landowner (Brook *et al.* 2003, pp. 1644–1648; Conley *et al.* 2007, p. 141). The magnitude of this negative outcome is greatly amplified in situations where active management measures (such as reintroduction, fire management, and the control of invasive species) are necessary for species conservation (Bean 2002, pp. 3–4). Furthermore, in a recent study of private landowners who have experience with regulation under the Act, only 2 percent of respondents believed the Federal government rewards private landowners for good management of their lands and resources (Conley *et al.* 2007, p. 141, 144).

As described above, the Service recognizes that in many cases, building partnerships and promoting the voluntary cooperation of private landowners will be essential to the successful conservation and recovery of threatened and endangered species. Since government actions such as the designation of critical habitat on private lands may be perceived as an infringement of private property rights, and may reduce the likelihood that landowners will support and carry out conservation actions for the benefit of listed species, we believe that the judicious exclusion of specific areas of non-federally owned lands from critical habitat designations can contribute to

species recovery and provide a greater level of species conservation than critical habitat designation alone. Although we believe that the potentially positive contribution of private landowners with a demonstrated record of conservation management should be an important consideration when designating critical habitat, we wish to emphasize that we will continue to be discriminating in our evaluation of potential exclusions, and private lands will only be excluded should we determine that the benefits of exclusion outweigh the benefits of inclusion following a rigorous examination of the record on a case-by-case basis.

The purpose of designating critical habitat is to contribute to the conservation of threatened and endangered species and the ecosystems upon which they depend. The outcome of the designation, triggering regulatory requirements for actions funded, authorized, or carried out by Federal agencies under section 7(a)(2) of the Act, can sometimes be counterproductive to its intended purpose on non-Federal lands when it causes private landowners to avoid taking conservation actions they might otherwise do. Thus the benefits of excluding areas that are covered by partnerships or voluntary conservation commitments can often be high.

A related benefit of our willingness to exclude, in appropriate situations, lands under active conservation management from a critical habitat designation is that it creates an incentive for the establishment of new partnerships in future conservation efforts with States, counties, local jurisdictions, conservation organizations, and private landowners. In our experience and as advised by various researchers on the subject, we can greatly strengthen the effective implementation of the Act through such partnerships to achieve conservation on non-Federal lands (Bean and Wilcove 1992, pp. 1-2; Bean 2002, pp. 419-420; Crouse *et al.* 2002, p. 270; James 2002, p. 271; Brook *et al.* 2003, pp. 8-9; Conley *et al.* 2007, p. 145). Together with our partners, we can implement conservation actions that we would be unable to accomplish otherwise. By excluding these lands, we not only preserve our current partnerships, but further encourage additional conservation actions in the future.

Even if lands are excluded from a critical habitat designation, if listed species are present and may be affected by actions with Federal involvement (including actions funded, permitted, or otherwise carried out by the Federal government), those actions will still

require consultation under section 7 to review the effects of those actions under a jeopardy standard. This assessment includes effects from habitat modification regardless of whether it is designated critical habitat.

Economic Analysis

Ninety-eight percent (25,988 out of 26,582 ac (10,517 out of 10,757 ha)) of the critical habitat designated in this final rule occurs within critical habitat units that were designated for 83 Kauai plants (68 FR 9116, February 27, 2003), and for which a contracted economic analysis was completed. Designated ecosystem sections Lowland Mesic 1, 2, 3, 4, 5; Lowland Wet 1, 2, 3, 4, 5, 6; Montane Mesic 1, 2; Montane Wet 1, 2, 3; Dry Cliff 1, 2; and Wet Cliff 1, 2, 3 overlap in whole or in part with critical habitat units designated in the 2003 final rule. Montane Mesic – Section 3 is the only critical habitat unit being designated in this final rule that does not overlap previously designated critical habitat (see Table 5 for cross-reference of ecosystem section numbers with critical habitat unit numbers in the CFR). We evaluated the potential economic impacts of the proposed designation, finalized here, in an internal economic impact analysis (“Economic Impact Analysis, Proposed Listing and Critical Habitat Designation for 48 Species on the Island of Kauai, Hawaii,” USFWS 2008). Due to the extensive overlap of the proposed designation with recently designated critical habitat, we used the economic analysis developed for the 2003 Kauai plants rule to inform our economic impact analysis and this final designation of critical habitat for 47 species on Kauai.

In addition, the final rule designating critical habitat for the Newcomb’s snail (*Erinna newcombi*) (67 FR 54026, August 20, 2002), designated 609 ac (246 ha) under State ownership that partially overlap with three of the critical habitat areas designated in this final rule (Dry Cliff – Section 2, Lowland Mesic – Section 2, and Lowland Mesic – Section 4; see Table 5 for cross-reference with critical habitat unit numbers in the CFR). In our economic impact analysis of the proposed designation for 47 Kauai species, we estimate a total of \$3,570 in projected costs resulting from critical habitat designation could be attributable to this overlapping area, based on the contracted economic analysis that was prepared for the Newcomb’s snail proposed rule (USFWS 2008, p. 12). The economic analysis developed for the Newcomb’s snail final rule was also used to inform this final designation of

critical habitat for 47 species on Kauai. Specific information on the previous economic analyses follows.

On March 29, 2002, we published a notice in the **Federal Register** (67 FR 15159), announcing the availability of a draft economic analysis for the proposed designation of 16.3 mi (26.3 km) of main stream channel in nine critical habitat units for Newcomb’s snail (*Erinna newcombi*) on Kauai. The draft economic analysis covered the 10-year timeframe from 2002–2012, and identified the total section 7 consultation costs and incremental costs attributable to critical habitat (DEA ES–7). On August 20, 2002, the final rule (67 FR 54026) designated eight stream segments and associated tributaries, springs and seeps, and adjacent riparian areas on the island of Kauai, which included 12.3 mi (19.7 km) of stream channel and 4,479 ac (1,813 ha) as critical habitat for Newcomb’s snail. It was determined that the designation could result in potential economic effects of \$28,500 over the 10-year period, with \$19,500 of this cost attributable to critical habitat. No critical habitat units in the proposed rule were excluded or modified in the final rule as a result of economic impacts. Of the \$19,500 in potential costs identified in the Newcomb’s snail final critical habitat designation, in our current economic impact analysis we estimate that \$3,570 could be attributable to the area overlapping this final rule (USFWS 2008, p. 12). The three Newcomb’s snail critical habitat areas identified above also overlap with areas that were designated as critical habitat in the 2003 final rule for 83 Kauai plants (see below).

On May 28, 2002, we published a notice in the **Federal Register** announcing the availability of the draft economic analysis (DEA) for the proposed designation of 99,206 ac (40,147 ha) of critical habitat on Kauai for 83 Kauai plants (67 FR 36851). The draft economic analysis covered the 10-year timeframe from 2002–2012, and characterized both the total section 7 consultation cost, and the costs attributable to critical habitat (DEA VI–1). On February 27, 2003, the final rule (2003 rule) designated 52,549 ac (21,266 ha) as critical habitat on Kauai and 357 ac (145 ha) on Niihau, in 217 critical habitat units (68 FR 9116). The final economic analysis addendum was adjusted to delete costs related to units that were excluded or modified for biological reasons and to respond to public comments. No critical habitat units in the final rule were excluded or modified in the final rule as a result of economic impacts.

The final economic analysis for the 2003 rule estimated that the listing of the 83 plants and the designation of critical habitat could result in potential direct economic effects ranging from approximately \$170,000 to \$520,000. Of that, we estimate that \$37,388 to \$293,030 could be attributable to critical habitat in the units that overlap with the areas designated in this final rule. These projected costs were associated with section 7 consultations related to: (1) game management and project modifications; (2) National Tropical Botanical Garden lands; (3) communications facilities and project modifications; (4) water systems; and (5) FEMA disaster response activities (USFWS 2008, p. 8). However, the best available information indicates that none of these projected costs have been realized; to the best of our knowledge, to date there have been no incremental costs incurred as the result of the 2003 critical habitat designation.

The PCEs described in the 2003 Kauai plants rule and those for the 47 species for which critical habitat is designated here are similar. Because of this similarity, our economic impact analysis (USFWS 2008) did not identify any additional economic costs for the 25,988 ac (10,517 ha) of designated critical habitat that overlap with the 2003 rule beyond those identified in the previous economic analyses. Any management actions that may be necessary to avoid adverse modification of the existing critical habitat and PCEs in the 25,988 overlapping ac (10,517 ha) would likely be adequate to avoid adverse modification of critical habitat designated for the additional species in this final rule. Furthermore, both of the prior economic analyses used an adverse modification standard that considered both the conservation and recovery of the species as the goal of critical habitat. We are unaware of any new potential impacts in these overlap areas that were not considered in the previous economic analyses, and we received no comments regarding the economic impact analysis presented in the October 21, 2008, proposed rule (73 FR 62592).

In this final rule, we are designating approximately 594 ac (240 ha) in six ecosystem areas that do not completely overlap with areas already designated as critical habitat in the 83 Kauai species and Newcomb's snail final rules described above. The remaining areas overlap with previously designated critical habitat. Of the non-overlap areas, Montane Mesic – Section 2 includes 7.8 ac (3.16 ha) classified as State Parks and Recreation lands; Montane Mesic – Section 3 includes

138.5 ac (55.8 ha) classified as State Forest Reserve lands; Montane Wet – Section 1 includes 64 ac (26 ha) classified as State Forest Reserve lands; Wet Cliff – Section 2 includes 296 ac (119.8 ha) classified as State Forest Reserve lands; Lowland Wet – Section 1 includes 65 ac (26.3) in the Limahuli Garden and Preserve, which is owned by NTBG; and Wet Cliff – Section 3 includes 23 ac (9.3 ha) of privately owned land (see Table 5 for cross-reference with critical habitat unit numbers in the CFR). There is no history of section 7 consultation in these areas, nor are we aware of any planned activities in any of these areas that would require section 7 consultation in the future. To the extent there may be consultations in the future (e.g., Federal grants to assist the NTBG in managing its lands or maintenance of an existing power transmission line on the private land in Wet Cliff – Section 3), any additional costs are expected to be minimal.

In summary, the areas we are designating as critical habitat are remote, lack development potential, and overlap with existing critical habitat units by approximately 98 percent. The economic analyses for the 83 Kauai plants and the Newcomb's snail final critical habitat rules took into account the potential economic costs of critical habitat designation over a 10-year timeframe (2002–2012). In the economic impact analysis for this designation, we have determined that over that timeframe, \$38,862 to \$294,604 in costs could be attributable to critical habitat designation in the units that overlap with the critical habitat areas designated in this rule. It is important to note, however, that although these possible costs were projected in the earlier economic analyses, since these designations in 2002 and 2003 we have had no section 7 consultations for any of those overlapping lands. The management actions that may be necessary to avoid adverse modification in existing critical habitat units would likely also be adequate to avoid adverse modification of critical habitat we are designating for the 47 Kauai species in this rule because of the similar PCEs, and in both cases the consideration of possible adverse modification similarly holds to the standard of species recovery. The remaining 2 percent (594 ac, 240 ha) of land we are designating as critical habitat in this rule that does not overlap with existing critical habitat is managed as State Parks and Recreation Land, State Forest Reserve, or is owned by private individuals. We have no section 7 consultation history

in these areas and are unaware of any planned activities that would require consultation.

We do not anticipate more than minimal (if any) economic or other impacts that would be additive to those already identified above. To ensure that our final critical habitat determination was based on the best available data, we requested updated information on potential effects of this additional designation in overlap areas, as well as information on potential impacts from critical habitat designation on lands not currently designated (e.g., the non-overlap areas), during the comment period. We received no comments regarding our economic impact analysis as presented in the October 21, 2008 proposed rule (73 FR 62592).

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

Areas Considered for Exclusion Under Section 4(b)(2) of the Act: Alexander and Baldwin, Inc.'s Lands in the Upper Wainiha Valley

In making exclusions, we evaluate the benefits of designating non-Federal lands while considering the conservation benefits to the relevant species in this final rule and the physical and biological features essential to their conservation resulting from the existing management plan and underlying partnerships. As discussed in the section *Conservation Partnerships on Non-Federal Lands* above, conservation partnerships resulting in implementation of management actions that focus on enhancement or recovery as the management standard may provide as much or more benefit than consultation for adverse modification of critical habitat (the primary benefit of a designation). However, we must evaluate each potential exclusion on a case-by-case basis to determine whether the benefits of exclusion may outweigh the benefits of inclusion with regard to the conservation and recovery of the listed species in question.

In considering the benefits of including lands in a designation that are covered by a current management plan, we evaluate a number of factors to help us determine if the plan provides greater conservation benefits compared to those that would likely result from consultation on a critical habitat designation. Under section 4(b)(2) of the Act, we evaluate the effectiveness of management plans that address the enhancement or recovery of listed species when we weigh and balance the benefits of inclusion or exclusion of a particular area from critical habitat

designation. We consider the following guidelines in evaluating the management and protection provided by such plans:

(1) Whether the plan is complete and provides management and protection of the features essential to the conservation of the species for which critical habitat is being designated;

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

(3) Whether the plan provides conservation strategies and measures consistent with currently accepted principles of conservation biology and that there are provisions for adaptive management.

We balance the benefits of inclusion against the benefits of exclusion by considering the benefits of preserving partnerships and encouraging development of additional conservation plans in the future.

A portion of Montane Wet Section 1 (Kauai Plants Critical Habitat Unit 18—Montane Wet; *Loxops caeruleirostris* Unit 4—Montane Wet; *Oreomystis bairdi* Unit 1—Montane Wet; *Drosophila attigua* Unit 4—Montane Wet, as described in the proposed rule) on private land owned by Alexander and Baldwin, Inc. (A & B) is occupied habitat for *Astelia waialealae*, *Keyseria erici*, *K. helenae*, and *Labordia pumila*, and unoccupied habitat for akikiki, akekee, *Drosophila sharpi*, and 14 plant species (*Chamaesyce remyi* var. *remyi*, *Dryopteris crinalis* var. *podosorus*, *Dubautia kalalauensis*, *Dubautia waialealae*, *Geranium kauaiense*, *Labordia helleri*, *Lysimachia daphnoides*, *Melicope degeneri*, *Melicope puberula*, *Myrsine mezii*, *Phyllostegia renovans*, *Platydesma rostrata*, *Psychotria grandiflora*, and *Tetraplasandra flynnii*). This triangular-shaped area of 1,052 ac (426 ha), bordering the Wainiha Preserve, is located at the head of Wainiha Valley, abutting the Alakai plateau to the west, and the precipitous cliffs between Wainiha Valley and Lumahai Valley to the east. This area is not designated critical habitat for other species and is characterized as boggy with dwarfed native trees, shrubs, and herbs. Access to this steeply remote area is primarily by helicopter, rarely by foot, as there are no marked trails. The closest road is a four-wheel-drive-vehicle-only dirt road leading to a picnic area approximately 7.5 mi (11 km) northwest of the Mt. Waialeale summit. In 2007, A & B entered into a 10-year conservation agreement with The Nature

Conservancy to create the State's third largest private nature preserve at Wainiha Valley (Wainiha Preserve) on Kauai. The 7,050 ac (2,853 ha) preserve includes one of Kauai's largest river systems, mountain cliffs, and portions of the Alakai wilderness and Mt. Waialeale summit region. The Nature Conservancy is coordinating all management actions within the Wainiha Preserve, most of which is in steep, remote areas that are accessible only by helicopter. In support of the Wainiha Preserve and the upper Wainiha Valley, which includes 1,052 ac of A & B lands included in the proposed critical habitat designation, TNC is implementing the East Alakai Protective Fencing Project Management Plan (TNC 2008), with support of the Service's Partners for Fish and Wildlife program, and is undertaking the following management actions to protect and preserve approximately 2,000 ac (809 ha) of Kauai's watershed and the species it supports (including 18 of the 44 plant species with critical habitat designated in this final rule, the akikiki, the akekee, *Drosophila sharpi*, and numerous other listed species) located within a portion of the eastern Alakai plateau between Wainiha Valley and Mt. Waialeale: (1) Construction of approximately 4.48 mi (7.2 km) of strategically placed fencing (using natural barriers and steep cliffs) to enclose approximately 595 ac (241 ha) of the Alakai Wilderness Preserve and approximately 1,405 ac (569 ha) of MacBryde Sugar Co. land (subsidiary of A & B) to exclude feral pigs (TNC 2008, p. 3); (2) remote sensing of Wainiha Valley to produce distribution maps of the highly invasive nonnative Australian tree fern (*Sphaeropteris cooperi*) and other weed species (A. Ballinger, 2008, p. 2) and (3) on-the-ground control of Australian tree fern and other nonnative highly invasive weeds in Wainiha Valley (A. Ballinger, 2008, p. 2; M. Clark, USFWS, 2009a). Construction of the fence is expected to begin in late summer 2009 and will be completed within 12 months (TNC 2008, p. 33). After the fence is constructed, management activities will include monitoring for feral pig sign and disturbance, removal of feral pigs and goats from the Alakai plateau and upper Wainiha Valley, monitoring for and removal of invasive weeds along the fence line, and monitoring and maintenance of the fence itself (TNC 2008, pp. 28, 34). In addition to the fencing project, A & B's program to remove invasive nonnative plant species, particularly the Australian tree fern, has also been supported by funding from the Service through

private stewardship grants. These threat management actions are the highest priority actions identified in the management plan for this area and will create a stable ecosystem environment for future restoration activities (e.g., reintroduction of individuals of rare native species) (M. Clark, 2009b, p. 5). These management actions will further reduce the primary threats identified for the 21 Kauai species identified in this rule that occur on these lands, thus resulting in a significant conservation benefit to these species.

The Nature Conservancy also launched The Forest Recovery Project in 2007. This is a series of concentrated actions to evaluate methods for effective progress in native ecosystem preservation by focusing efforts on reducing and controlling nonnative plants and animals (TNC in Hawaii—Forest Recovery Project 2007b). Initially, research was conducted to evaluate the effectiveness of conservation fencing in preventing feral ungulate impacts to native forest ecosystems and watershed on Kauai, Maui, and Molokai, and to study animal behavior and movement patterns. The results of this work are not yet available. Other management activities, scheduled to begin in 2009, include trapping of feral pigs, and control of priority nonnative plants (Kauai Watershed Alliance (KWA) 2009).

McBryde Sugar Co., Ltd., A & B's subsidiary, is one of 10 official members of the Kauai Watershed Alliance (KWA). Established in 2003, the KWA is a voluntary partnership of most of the major public and private landowners in the forest reserve boundary, and is committed to the long term protection of Kauai's upper watershed areas (KWA 2009). The Nature Conservancy and the Service, although not official members, work closely with the members of the KWA to achieve their conservation goals. The KWA is pursuing three management programs (for ungulates, weeds, and watershed monitoring) with the aim of protecting Kauai's watershed from invasive nonnative animals, plants, and other threats (Kauai Watershed Management Plan (Plan) 2005, pp. 11, 17, 22–24). The Plan identifies the upper valley of Wainiha, portions of which we proposed as critical habitat, as a highest priority area for management actions (KWA 2005, p. 6).

The primary goal of the ungulate management program is to maintain or improve the structure and composition of the watershed's forest by intensively reducing ungulates in the highest priority management areas and managing ungulates in the other priority

areas. Feral pigs are identified as the greatest threat to wet forested areas, including portions of the upper Wainiha Valley, and are the highest ungulate management priority in the ungulate management program (KWA 2005, p. 12). The Plan identifies the four essential components of a successful ungulate management program: barrier construction using strategic fences, ungulate population reduction, barrier maintenance and inspection, and monitoring for the presence of ungulates. The construction of the east Alakai protective fence (see above), an essential component of KWA's ungulate management program, will benefit 18 of the 44 plant species with critical habitat designated in this rule, the akikiki and akekee, *Drosophila sharpi*, and numerous other listed species. Once the fence is completed management actions to control feral ungulates in the fenced area will include monitoring for and removal of feral ungulates, and fence monitoring and maintenance (TNC 2008, p. 34).

The primary goal of the weed management program is to maintain or improve the structure and composition of the watershed's forest by containing, eradicating, and excluding priority habitat-modifying weeds. The weed management priorities identified in the Plan are Australian tree fern, kahili ginger (*Hedychium gardnerianum*), strawberry guava (*Psidium cattleianum*), miconia (*Miconia calvescens*), and Koster's curse (*Clidemia hirta*). For upper Wainiha Valley, the weed management program goal is weed exclusion (by conducting surveys in 3-year intervals to detect and eradicate incipient patches of priority weeds) and prevention (KWA 2005, p. 19). In 2008, TNC, in collaboration with Dr. James Leary at the University of Hawaii, began field testing aerial treatments of Australian tree fern, and conducting on-the-ground weed surveys in Wainiha Valley (A. Ballinger, 2008, p. 2). The aerial treatments consisted of a custom fabricated aerial sprayball attached to an herbicide reservoir on the underside of a helicopter that could be directed to the growing tips of individual Australian tree ferns without any measurable overspray onto surrounding, nontarget vegetation. The results of the initial field tests were very successful and aerial control of Australian tree fern in Wainiha Valley is currently underway. As of May 15, 2009, TNC had treated 1,431 Australian tree ferns, on over more than 4,000 ac (1,619 ha) in Wainiha Valley, including the area proposed as critical habitat in the upper valley (M. Clark, 2009a). The Nature

Conservancy estimates that the aerial control treatments have treated over one-third of all known Australian tree ferns in the upper valley of Wainiha, including the area proposed as critical habitat (M. Clark, 2009a). Over the past year, TNC has continued to survey for and control nonnative kahili ginger, strawberry guava, and common guava (*Psidium guajava*) in the Wainiha priority management area (M. Clark, 2009a).

The primary goal of the watershed monitoring program is to measure the efficacy of the management actions outlined in the Plan and determine if these actions are improving the hydrological and ecological integrity of the watershed. This program includes monitoring for threat abatement, vegetation, and stream turbidity (KWA 2005, p. 22). Threat abatement monitoring includes annual monitoring for presence or absence of feral pigs along transects located in the priority management areas of the KWA watershed. Weed monitoring is also a component of this program. Initially, aerial baseline surveys will be conducted to measure the effectiveness of weed management actions in the KWA watershed. Aerial surveys along selected transects will be conducted at 5 to 10 year intervals, starting in the central Alakai plateau in 2010 (KWA 2005, p. 23). In addition, field personnel will conduct ground-based weed monitoring in priority management areas of the KWA watershed, including the 1,052 ac (426 ha) of A & B land at the head of Wainiha Valley. Changes in vegetation cover indicate trends in ecosystem integrity over long periods of time. Vegetation monitoring will be conducted in permanent plots throughout KWA's priority management areas every 5 to 10 years, as well as using high-resolution aerial imagery to detect changes in canopy cover over long time periods (KWA 2005, p. 23). According to the Plan, improvements in vegetation cover and declines in ground disturbance by ungulates will result in reduced or low stream turbidity indicating the success of the feral ungulate and weed management programs and lead to improved infiltration and aquifer recharge (KWA 2005, p. 24). While there is currently no watershed-scale system to assess stream turbidity on Kauai, the University of Hawaii has received funding from the National Science Foundation to develop and deploy environmental sensors, including stream turbidity sensors, on Kauai (KWA 2005, p. 24). Currently the development of the environmental monitoring techniques is limited to the

north shore of Kauai but there is a potential to expand the network of sensors to the Alakai plateau and other KWA priority management areas, including the head of Wainiha Valley (KWA 2005, p. 24).

Benefits of Inclusion

The benefits of including lands in critical habitat can be regulatory or educational, which can aid in promoting the recovery of species. The principal regulatory benefit of designating critical habitat in this area would be that Federal actions affecting the critical habitat of akikiki, akekee, *Astelia waialealae*, *Chamaesyce remyi* var. *remyi*, *Drosophila sharpi*, *Dryopteris crinalis* var. *podosorus*, *Dubautia kalalauensis*, *Dubautia waialealae*, *Geranium kauaiense*, *Keysseria erici*, *K. helenae*, *Labordia helleri*, *Labordia pumila*, *Lysimachia daphnoides*, *Melicope degeneri*, *Melicope puberula*, *Myrsine mezii*, *Phyllostegia renovans*, *Platydesma rostrata*, *Psychotria grandiflora*, and *Tetraplasandra flynnii* would require consultation under section 7 of the Act. Consultation would ensure that a proposed Federal action does not result in the destruction or adverse modification of critical habitat. The most likely Federal nexus would be associated with Service funding for management activities to control invasive species (e.g., construction of fences to exclude ungulate access; removal of ungulates; activities to control weeds, rats, and wasps). Potential outcomes of section 7 consultations would be conservation recommendations to avoid degradation and destruction of stands of native canopy and understory plants, destruction of native arthropods, and destruction of larval host plants (i.e., *Cheirodendron* and *Tetraplasandra* spp.) of *Drosophila sharpi* when, for example, constructing a new fence or applying herbicides. However, these conservation recommendations would still be included within the KWA Plan's ungulate and weed management programs and the East Alakai Protective Fencing Project Management Plan even in the absence of critical habitat designation. Accordingly, since the recommendations resulting from any section 7 consultation with respect to critical habitat would most likely be redundant with the conservation actions already in place under current management, we believe that few additional regulatory benefits would be derived from including A & B's land in the upper Wainiha Valley within the area designated as critical habitat for akikiki, akekee, *Astelia waialealae*,

Chamaesyce remyi var. *remyi*, *Drosophila sharpi*, *Dryopteris crinalis* var. *podosorus*, *Dubautia kalalauensis*, *Dubautia waialealae*, *Geranium kauaiense*, *Keysseria erici*, *K. helenae*, *Labordia helleri*, *Labordia pumila*, *Lysimachia daphnoides*, *Melicope degeneri*, *Melicope puberula*, *Mysine mezii*, *Phyllostegia renovans*, *Platydesma rostrata*, *Psychotria grandiflora*, and *Tetraplasandra flynnii* beyond those conservation benefits already being achieved through the implementation of the KWA Plan (2005) and the East Alakai Protective Fencing Project Management Plan (2008).

In addition, we conclude that few regulatory benefits would be gained from a designation of critical habitat on these lands because the consultations conducted under both the jeopardy and adverse modification standards for these 21 species would not be likely to result in materially different outcomes in this particular instance. The area is occupied by *Astelia waialealae*, *Keysseria erici*, *K. helenae*, and *Labordia pumila*, and unoccupied by 17 species (akekee, akikiki, *Chamaesyce remyi* var. *remyi*, *Drosophila sharpi*, *Dryopteris crinalis* var. *podosorus*, *Dubautia kalalauensis*, *Dubautia waialealae*, *Geranium kauaiense*, *Labordia helleri*, *Lysimachia daphnoides*, *Melicope degeneri*, *Melicope puberula*, *Myrsine mezii*, *Phyllostegia renovans*, *Platydesma rostrata*, *Psychotria grandiflora*, and *Tetraplasandra flynnii*). The most likely Federal nexuses would be management activities funded in part through (1) the Service's Partners for Fish and Wildlife program, and the Recovery programs, and (2) the Natural Resources Conservation Service's (NRCS) Environmental Quality Incentives Program, water resources program and easement programs. These programs have historically contributed funds toward the construction of fences to exclude feral ungulates and control weeds on KWA lands on Kauai. Service funds may also be provided for new surveys and control of invasive, nonnative weeds, and rats on KWA lands. While we acknowledge that the legal standards for jeopardy and adverse modification differ, with the latter

focused on effects to recovery, the outcome of consultation is likely to be the same because the actions likely to be subject to consultation would have habitat conservation as their primary objective.

There have been no section 7 consultations with Federal agencies to date for any previously listed species or designated critical habitat on A & B lands, nor any section 7 conference actions involving any of the species addressed in this final rule on their lands. We do not anticipate any consultations beyond those that would be initiated for conservation-related actions (e.g., funding for fence construction, control of nonnative plant and animal species) with us and other Federal agencies such as NRCS, and conclude that the section 7 consultation process for critical habitat would be unlikely to result in any additional protections for the 21 species for the reasons discussed above. The probability of any actions associated with activities such as development is very low, due to the extremely remote and rugged nature of this area, which is accessible only by foot or helicopter. Furthermore, we note that the low probability of any future section 7 consultations remains constant beyond the potential expiration date of the current management agreement with TNC in the Wainiha Valley. Consequently, we conclude there is little if any regulatory benefit of designating critical habitat on the 1,052 ac (426 ha) of A & B lands in upper Wainiha Valley within Montane Wet Section 1 (Kauai Plants Critical Habitat Unit 18—Montane Wet; *Loxops caeruleirostris* Unit 4—Montane Wet; *Oreomystis bairdi* Unit 1—Montane Wet; *Drosophila attigua* Unit 4—Montane Wet, as described in the proposed rule).

As discussed above, a benefit of critical habitat is its potential to serve as a mechanism to educate landowners, State and local governments, and the public regarding the potential conservation value of an area, which may aid the conservation of the species by clearly delineating areas of high conservation value and by describing

the PCEs and special management actions or protections needed for identified areas. Here we have attempted to contribute to the educational intent of critical habitat by publishing a map of the excluded area (Figure 7), thereby informing the public, State and local governments, and other landowners of the conservation value of the excluded area. In addition, a map identifying the excluded area will be maintained on the website of the Pacific Islands Fish and Wildlife Office (<http://www.fws.gov/pacificislands/>) to alert the public, State and local governments, and other landowners of the conservation value of this area. The PCEs for the species occupying this area and the special management required are similarly described in this final rule. In addition, the specific landowners, Alexander and Baldwin, Inc., are aware of the importance of this 1,052-ac area (426 ha), and are implementing conservation actions to benefit native species through the KWA Plan and the East Alakai Protective Fencing Project Management Plan (KWA 2005, pp. 1–29; TNC 2008, pp. 1–38; M. Clark, 2009b, pp. 5, 8). Because of this proactive approach, and due to the extremely remote location of these lands, we believe that any additional educational benefits for the public at large resulting from the designation of critical habitat on these lands would be minimal. Although the designation of critical habitat may provide benefits to the recovery of a species, in this case A & B is already committed to implementing conservation actions on their lands under the existing KWA Plan (2005) and the East Alakai Protective Fencing Project Management Plan (TNC 2008), both of which are supported by the Service. Accordingly, any additional benefits to the recovery of the 21 species beyond those already being accrued would be limited. In addition, the educational benefit of informing the public, State and local governments, and other parties as to the high conservation value of this area has largely been achieved through the publication of this final rule and the map of the excluded area.

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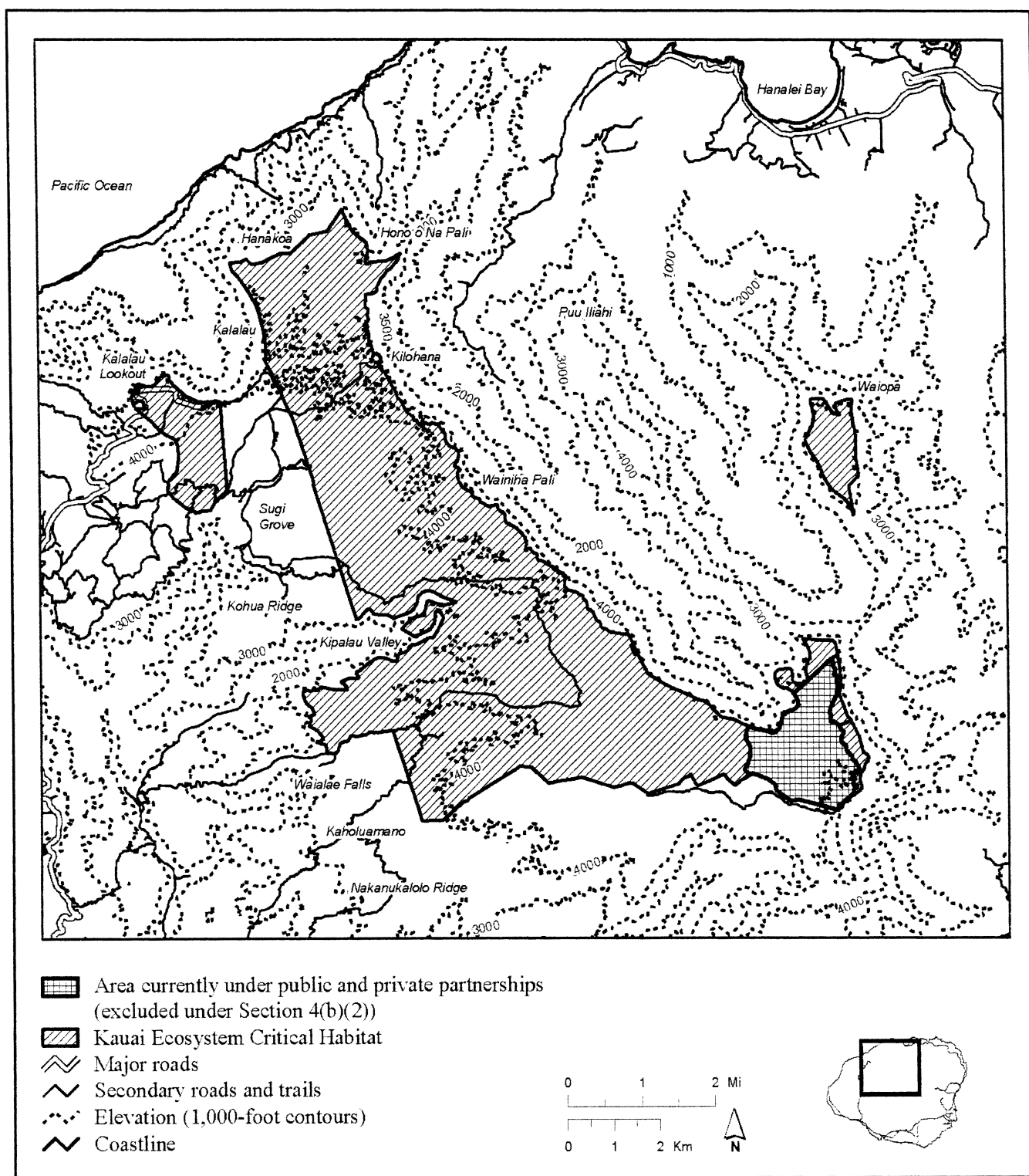


Figure 7. Alexander and Baldwin lands in the Wainiha Valley (cross-hatch) excluded from critical habitat designation under section 4(b)(2) of the Act.

Benefits of Exclusion

Existing A & B conservation agreements with Federal and State agencies, their voluntary partnership in the KWA, their ongoing work with the Service's Partners for Fish and Wildlife program, and their conservation agreement with TNC establishing and managing the Wainiha Preserve demonstrate their commitment to prudent stewardship of their land and water resources to ensure the protection of large areas of forested watersheds for water recharge and other benefits of intact forested ecosystems. A & B's continued voluntary participation in the KWA and implementation of the KWA Plan, implementation of the East Alakai Protective Fencing Project Management Plan, and voluntary conservation agreement with TNC for management of the Wainiha Preserve will specifically benefit akekee, akikiki, *Astelias waialealae*, *Chamaesyce remyi* var. *remyi*, *Drosophila sharpi*, *Dryopteris crinalis* var. *podosorus*, *Dubautia kalalauensis*, *Dubautia waialealae*, *Geranium kauaiense*, *Keysseria erici*, *K. helenae*, *Labordia helleri*, *Labordia pumila*, *Lysimachia daphnoides*, *Melicope degeneri*, *Melicope puberula*, *Mysine mezii*, *Phyllostegia renovans*, *Platydesma rostrata*, *Psychotria grandiflora*, and *Tetraplasandra flynnii* through actions that manage and reduce the primary threats to these species (feral ungulates and invasive plant species) and restore native species habitat and ecosystem function. The KWA Plan provides a significant conservation benefit to these 21 species, and we have a reasonable expectation that the strategies and measures will be effective. In response to the proposed designation of critical habitat for the 47 Kauai species, A & B informed us that the conservation management activities supported by the agreement to establish Wainiha Preserve will substantially and directly benefit endangered species and their habitat in the valley (A & B 2008, p. 1); A & B further stated that they believe the designation of critical habitat is unnecessary and will result in little if any additional benefit to the species (A & B 2008, p. 2). In addition, A & B stated that designation of critical habitat in areas where the objective of designation is already being met by voluntary landowner efforts may discourage other landowners from pursuing similar conservation agreements, since the Service is imposing a layer of federal regulation that is unnecessary to achieve the intended conservation goals, thereby resulting in an overall negative impact on species conservation (A & B 2008, p.

2). A & B went on to state that excluding such areas from designation can serve as an acknowledgement of positive contributions to conservation and provide a strong incentive to other landowners to undertake voluntary conservation efforts on their lands.

In 2002, the Service excluded from designation of critical habitat for the Newcomb's snail a 566-acre parcel of land owned by A & B in the Wainiha River Valley. This exclusion was based upon the Service's determination that designation of critical habitat would have a negative effect on the voluntary landowner conservation activities in the Valley, both ongoing and in development, including a possible future introduction of the species as an experimental population on A & B lands (67 FR 54048-54049). Specifically, A & B had informed the Service they were in the process of negotiating a voluntary conservation easement with TNC to provide more active management of the valley for watershed protection and that those negotiations, which would benefit the Newcomb's snail by protecting its habitat, could be negatively affected if critical habitat were designated on their land. The Service concluded in its 4(b)(2) analysis that the benefits of exclusion of the A & B parcel outweighed the benefits of inclusion in the critical habitat designation. The Service's conclusion was based on, among other things, A & B's current conservation activities and those in development, the need for A & B's cooperation and good will for future conservation efforts for the Newcomb's snail, and the likelihood that A & B would curtail voluntary conservation efforts if critical habitat was designated on their lands.

Subsequent events have validated the Service's determination to exclude A & B's parcel from the Newcomb's snail designation. No regulatory benefits appear to have been foregone, as there have been no projects with a federal nexus that would have triggered consultation under the adverse-modification standard had critical habitat been designated. Moreover, A & B granted TNC the conservation easement, and has continued to work proactively with the Service and its conservation partners. Native species, including 21 species covered by this final rule, are benefiting substantially from A & B's voluntary participation in the KWA and support of the KWA's management actions; A & B's establishment of the Wainiha Preserve and support of the management actions in Wainiha Valley, including the A & B lands at the head of Wainiha Valley proposed as critical habitat; and

voluntary support and implementation of the East Alakai Protective Fencing Project Management Plan. The Service has actively supported all of these conservation efforts. All of these management actions are intended to reduce ungulate browsing and habitat conversion, reduce competition with nonnative weeds, and preserve overall ecosystem integrity; these actions will thus address primary threats to the species, and are consistent with the ecosystem-based approach to conservation envisioned in this final rule.

A & B has demonstrated a strong history of voluntary conservation efforts that directly benefit threatened and endangered species, both on Kauai and other Hawaiian islands. Past conservation actions by A & B and its subsidiaries have ranged from allowing access on their lands for surveys and site visits to the provision of staff and funding for active collaborative conservation partnerships. In addition to the examples specific to the Wainiha Valley described above, A & B has allowed access to survey and monitor endangered cave species in the Koloa area of Kauai, including surveys for the blind cave spider and amphipod; worked in partnership with TNC to fence Kanaele Bog in Kauai on their lands and protect the native bog community of plants and invertebrates from habitat degradation and fragmentation; has donated land and supported or participated in numerous conservation activities at or around Kealia Pond National Wildlife Refuge on Maui, which itself was established in 1992 as a perpetual conservation easement from A & B; and has actively participated in the East Maui Watershed Partnership, a collaborative multi-party organization leading the conservation of land and water resources in the east Maui mountains. Some other A & B conservation efforts include: protecting coastal habitat by assisting Kealia Pond NWR with installation of recycled fence to prevent off-road vehicles from accessing Ma'alaea flats; donating coastal land to accommodate the Kealia Coastal Boardwalk parking area and cooperation with construction of the boardwalk; allowing FWS to install a fence to benefit endangered turtles on their lands along North Kihei Road; working with the refuge, Maui County, and Kihei Canoe Club to clean up their coastal strip along North Kihei Road; and working with the refuge and local community to install boulders and concrete posts to prevent erosion and access to dunes along North Kihei Road. A & B's subsidiary HC&S assisted with

the installation of a 2000 ft water distribution line for Kealia Pond. In addition, an HC&S representative has been a member of the Mokulele Highway Beautification Committee and involved with the Maui West Nile Virus Team. A & B continues to work cooperatively with the Service and other Federal and State agencies as well as nongovernmental organizations on various conservation agreements, thus ongoing conservation partnerships with A & B have a proven conservation benefit for threatened and endangered species and other resources. Based on A & B's demonstrated commitment to conservation, under current conditions the Service has a high degree of confidence that the conservation management actions currently benefiting the 21 Kauai species on A & B lands in the Upper Wainiha Valley will continue to be implemented.

We believe that exclusion of approximately 1,052 ac (426 ha) within A & B's portion of Section 1 (Kauai Plants Critical Habitat Unit 18—Montane Wet; *Loxops caeruleirostris* Unit 4—Montane Wet; *Oreomystis bairdi* Unit 1—Montane Wet; *Drosophila attigua* Unit 4—Montane Wet, as described in the proposed rule) will acknowledge A & B's conservation commitment and facilitate their continued cooperation and partnership with the Service. This area has been actively managed by the KWA since 2005 and the Wainiha Preserve was established in 2007 under a 10-year conservation agreement with TNC. Based on A & B's strong history of conservation in the islands, we expect the conservation management strategies and actions will continue to be implemented for the benefit of 21 species covered in this final rule. There is a risk that designating critical habitat on these A & B lands in the Wainiha Valley could undermine A & B's conservation partnership with the KWA and TNC, remove A & B's incentive to accept the additional time and expense of management planning, strain the positive working relationship we share, and hinder future cooperative conservation projects with A & B and other potential partners. Because the Federal government owns relatively little land in the State of Hawaii, and because large tracts of land suitable for the conservation of threatened and endangered species are often owned by private landowners, the successful recovery of listed species in Hawaii is particularly dependent upon effective working partnerships and the voluntary cooperation of non-Federal landowners. Preserving the successful conservation partnership we currently hold with A &

B is likely to provide substantial conservation benefits to the 48 Kauai species, and will additionally support continued cooperative conservation efforts for the benefit of numerous listed and native species and ecosystems in other areas of the Hawaiian Islands as well.

We are unaware of any incremental economic impacts of designating critical habitat in Section 1 (Kauai Plants Critical Habitat Unit 18—Montane Wet; *Loxops caeruleirostris* Unit 4—Montane Wet; *Oreomystis bairdi* Unit 1—Montane Wet; *Drosophila attigua* Unit 4—Montane Wet, as described in the proposed rule) (USFWS 2008, pp. 18, 21). Our economic impact analysis concluded there would be no incremental costs of designation in the Wainiha Valley, since section 7 consultation costs for any conservation projects funded by the Service and others on A & B lands in this area would have occurred anyway because of the presence of listed plants in the potentially affected area (USFWS 2008, pp. 18, 21). In their comments on the proposed designation, A & B informed us that critical habitat designation on private lands can have unintended negative consequences for landowners, particularly with regard to private property rights and land values, and can serve as a disincentive for landowners to participate in voluntary conservation efforts (S. O'Keefe, A & B 2008, p. 1). This claim, that private landowners may often perceive regulatory actions by the Federal government in such a way as to have a negative impact on conservation, is supported by the best available science on this topic (e.g., Main *et al.* 1999, pp. 1264-1265; Bean 2002, pp. 2-3; Brook *et al.* 2003, pp. 1639-1648; Conley *et al.* 2007, pp. 141, 144). With specific regard to land values, however, A & B provided no information demonstrating that the designation of critical habitat on Kauai has had negative impacts on land values, and we are unaware that land values have declined there or elsewhere in the State solely due to a critical habitat designation. Therefore, we have examined the economic impacts of critical habitat designation on 1,052 ac (426 ha) of A & B lands and conclude that there is likely no economic benefit to excluding these lands from critical habitat because of economic impacts. However, as described above, in an area where the preservation of partnerships is so important to accomplishing conservation (Crouse *et al.* 2002, p. 720), the potentially negative perception of critical habitat designation on private lands may serve as a real disincentive to

continued cooperation with A & B or to the formation of new working partnerships with other private landowners in the islands, thus resulting in a net loss of conservation benefit.

We believe that excluding 1,052 ac (426 ha) of A & B lands at the head of Wainiha Valley from critical habitat on the basis of other considerations (e.g., other relevant impacts) will help maintain and improve our partnership relationship with this landowner by acknowledging their positive contribution to conservation on Kauai, and will result in the greatest net conservation benefit to the 21 Kauai species considered on these lands in this final rule. In addition, we believe this recognition may provide other landowners with a positive incentive to undertake voluntary conservation activities on their lands, particularly where there is no regulatory requirement to implement such actions.

Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the above considerations and consistent with the direction provided in section 4(b)(2) of the Act, the Service has determined that the benefits of excluding Wainiha Valley as critical habitat for the 21 Kauai species that occupy this unit outweigh the benefits of including it as critical habitat. This conclusion is based on the following factors:

1. We believe the proactive management of habitat for akekee, akikiki, *Astelia waialealae*, *Chamaesyce remyi* var. *remyi*, *Drosophila sharpi*, *Dryopteris crinalis* var. *podosorus*, *Dubautia kalalauensis*, *Dubautia waialealae*, *Geranium kauaiense*, *Keysseria erici*, *K. helenae*, *Labordia helleri*, *Labordia pumila*, *Lysimachia daphnoides*, *Melicope degeneri*, *Melicope puberula*, *Mysine mezii*, *Phyllostegia renovans*, *Platydesma rostrata*, *Psychotria grandiflora*, and *Tetraplasandra flynnii* provided under KWA's Plan (2005), the East Alakai Protective Fencing Project Management Plan, and the 10-year conservation agreement with TNC for management of the Wainiha Preserve will achieve important conservation goals supported by the Service and provide significant benefits to these species. The voluntary conservation efforts taking place on A & B lands in the Wainiha Valley serve to manage and reduce the primary threats (feral ungulates and invasive plant species) to these 21 species and restore native species habitat and ecosystem function; these actions are vitally important for achieving recovery of these listed species. In the past, A & B

has cooperated with the Service, the State, and other organizations to implement voluntary conservation activities on their lands that have resulted in tangible conservation benefits. Based on their demonstrated past commitment to conservation, we believe it is reasonable to expect these positive conservation management actions to continue in the Wainiha Valley.

2. Excluding this area from critical habitat will help maintain and improve our partnership relationship with this landowner. A & B has commented that the designation of critical habitat in Wainiha Valley as originally proposed (73 FR 62592; October 21, 2008) will likely have a negative impact on ongoing and future voluntary conservation efforts by A & B, and that other private landowners may be dissuaded from entering into such voluntary agreements as well. We believe that designating critical habitat on these lands over the objections of the landowner, our proven conservation partner A & B, could create a disincentive for other landowners who might otherwise considering partnering with the Service to achieve conservation goals, but who desire to avoid possible Federal regulation under the Act. Given the importance of such cooperative partnerships in achieving the conservation and recovery of listed species in Hawaii, and considering the voluntary actions of A & B are currently contributing to the management and reduction of the primary threats to the listed species, namely feral ungulates and invasive nonnative plants, the designation of critical habitat in Wainiha Valley may result in a net loss of conservation benefit.

3. Given the current beneficial management of A & B lands in the Wainiha Valley and the likelihood that this beneficial conservation management will continue, the benefits of including the 1,052 ac (426 ha) of A & B lands as critical habitat would likely be minor. This determination is based on the fact that: (a) There have been no section 7 conference actions in the area for these 21 species since we published the October 21, 2008 proposed rule (73 FR 62592); (b) we anticipate few if any future section 7 consultations in this remote, largely inaccessible area, apart from those beneficial actions related to federal conservation funding; (c) any future Federal actions affecting listed species in this area would be subject to section 7 consultation since the area is occupied by 4 of the 21 species; (d) future Federal actions in this area are expected to be beneficial to the species; (e) we believe that we have largely

achieved the educational intent of critical habitat through the publication of this final rule and mapping of the excluded area to identify its conservation value; and (f) given the extremely remote location of the area, the educational value of critical habitat in terms of informing the public or other entities of the conservation worth of this area is likely minimal.

In conclusion, we find that the designation of critical habitat on A & B lands in the upper Wainiha Valley would most likely have a net negative conservation effect on the listed species as well as on other conservation activities. The overall benefits of a critical habitat designation for the listed species would be small, and we believe there is a greater probability of positive conservation activities continuing in the Wainiha Valley without designated critical habitat than there would be with critical habitat. The landowner has stated that they are more likely to continue and increase their ongoing voluntary conservation efforts absent a critical habitat designation. They have furthermore indicated that other private landowners are unlikely to enter into similar cooperative agreements if critical habitat is designated, a supposition supported by the literature. Furthermore, we agree that designating critical habitat in this area, over the publicly-stated objections of a partner with a strong track record of consistently providing positive contributions to conservation, may well serve as a deterrent to other landowners who might otherwise consider entering into voluntary management agreements. We believe the continued implementation of the KWA's ongoing management programs and the East Alakai Protective Fencing Project Management Plan, programs actively supported by the Service due to their significant conservation benefits for numerous listed species as well as the ecosystem as a whole, will provide comparable or greater net conservation benefits than those that would result from critical habitat designation. The exclusion of these lands would accrue significant conservation benefits resulting from A & B's voluntary participation in the KWA; the conservation agreement with TNC for Wainiha Preserve; implementation of the East Alakai Protective Fencing Project Management Plan; A & B's ongoing and continued actions to monitor and control invasive species, protect and restore plant habitat, monitor native species, and monitor watershed integrity; and the maintenance of a strong working

partnership between A & B and the Service in the Wainiha Valley and in other important conservation areas in the islands. In addition, we believe there is a significant conservation benefit to be gained for the 21 Kauai species that are the subject of this exclusion as well as other listed species throughout the islands by acknowledging partners who have made significant contributions to conservation, thus serving as a model and incentive for other private landowners to develop similar conservation partnerships. We, therefore, are excluding 1,052 ac (426 ha) of A & B lands in the upper Wainiha Valley that are within Section 1 (Kauai Plants Critical Habitat Unit 18 – Montane Wet; *Loxops caeruleirostris* Unit 4 – Montane Wet; *Oreomystis bairdi* Unit 1 – Montane Wet; *Drosophila attigua* Unit 4 – Montane Wet, as described in the proposed rule) from the critical habitat designation under section 4(b)(2) of the Act. We will reevaluate our determination to exclude 1,052 ac (426 ha) of A & B lands in the upper Wainiha Valley if, in the future, A & B withdraws from voluntary participation in any of the beneficial conservation actions described above, or if the ownership of this area should change.

Exclusion Will Not Result in Extinction of the Species

We have determined that the exclusion of A & B's portion of Section 1 (Kauai Critical Habitat Unit 18 – Montane Wet; *Loxops caeruleirostris* Unit 4 – Montane Wet; *Oreomystis bairdi* Unit 1 – Montane Wet; *Drosophila attigua* Unit 4 – Montane Wet, as described in the proposed rule) from the final designation of critical habitat will not result in the extinction of akekee, akikiki, *Astelia waialealae*, *Chamaesyce remyi* var. *remyi*, *Drosophila sharpi*, *Dryopteris crinalis* var. *podosorus*, *Dubautia kalalauensis*, *Dubautia waialealae*, *Geranium kauaiense*, *Keysseria erici*, *K. helenae*, *Labordia helleri*, *Labordia pumila*, *Lysimachia daphnoides*, *Melicope degeneri*, *Melicope puberula*, *Mysine mezii*, *Phyllostegia renovans*, *Platydesma rostrata*, *Psychotria grandiflora*, and *Tetraplasandra flynnii*. A & B's voluntary participation in the KWA and support of the KWA's management actions, A & B's establishment of the Wainiha Preserve and support of the management actions in Wainiha Valley, including the A & B lands in the upper Wainiha Valley proposed as critical habitat, and voluntary support and implementation of the East Alakai Protective Fencing

Project Management Plan provide tangible conservation benefits that reduce the likelihood of extinction for these 21 species and increase these species' recovery potential. We are unaware of any threats on these lands associated with Federal actions that would require section 7 consultations. In addition, since this area is occupied by 4 of the 21 species, consultations under section 7 of the Act would be required, and any Federal actions that may affect the species would be evaluated under the jeopardy standard of section 7 of the Act. This evaluation provides assurances that the species would not become extinct as a result of exclusion of these lands from designation as critical habitat. Based on all of these considerations, we therefore conclude that excluding this area will not result in the extinction of any of the 21 species.

With regard to other protections, section 195D–4 of Hawaii Revised Statutes (endangered species and threatened species) stipulates that species determined to be endangered or threatened under the Federal Act shall be deemed endangered or threatened under the State law. Under the State law, it is unlawful, with some exceptions, to “take” such species, or to possess, sell, carry or transport them. The statutory protections for this species under State law provide additional assurances that exclusion of this area from critical habitat will not result in extinction of one or more of the 21 species in this final rule that currently occupy, or potentially could occupy, these lands.

Required Determinations

Regulatory Planning and Review (Executive Order 12866)

The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of \$100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

Small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term “significant economic impact” is meant to apply to a typical small business firm's business operations.

To determine if a designation of critical habitat could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting). We apply the “substantial number” test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define “substantial number” or “significant economic impact.”

Consequently, to assess whether a “substantial number” of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities carried out, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. If there is a Federal nexus, Federal agencies will be required to consult with us under section 7 of the Act on activities they fund, permit, or carry out that may affect critical habitat. If we conclude, in a biological opinion, that a proposed action is likely to destroy or adversely modify critical habitat, we can offer “reasonable and prudent alternatives.” Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid destroying or adversely modifying critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Within this critical habitat designation, the types of actions or authorized activities that we have identified as potential concerns and that are subject to consultation under section 7 if there is a Federal nexus include:

- Activities that might affect the primary constituent elements for the species including, but not limited to, the following: grazing; maintaining or increasing feral ungulate levels; clearing or cutting native live trees and shrubs (e.g., woodcutting, bulldozing, construction, road building, mining, herbicide application); and taking actions that pose a risk of fire.
- Activities that may alter watershed characteristics in ways that would reduce groundwater recharge or alter natural, wetland, or vegetative communities. Such activities include new water diversion or impoundment, groundwater pumping, and manipulation of vegetation through activities such as the ones mentioned above.
- Recreational activities that may degrade vegetation.
- Mining sand or other minerals.
- Introducing or encouraging the spread of nonnative plant species.
- Importing nonnative species for research, agriculture, and aquaculture, and releasing biological control agents.

None of the critical habitat units contain significant residential, commercial, industrial, or golf-course projects; crop farming; or intensive livestock operations. Few projects are planned for locations in the designated critical habitat. This situation reflects the fact that (1) most of the land is unsuitable for development, farming, or other economic activities due to the rugged mountain terrain, lack of access, and remote locations; and (2) existing land-use controls severely limit development and most other economic activities in the mountainous interior of Kauai. Although some existing and continuing activities involve the operation and maintenance of existing manmade features and structures in certain areas, these areas do not contain the primary constituent elements for the species, and would not be impacted by the designation. Any existing and planned projects, land uses, and activities that could affect the designated critical habitat but have no Federal involvement would not require section 7 consultation with the Service, so they are not restricted by the requirements of the Act. Finally, for the anticipated projects and activities that will have Federal involvement, many are conservation efforts that will not negatively impact the species or their habitat, so they will be subject to a minimal level of informal section 7 consultation. We anticipate that a developer or other project proponent could modify a project or take measures

to protect the 47 Kauai species. The kinds of actions that may be included if future reasonable and prudent alternatives become necessary include conservation set-asides, management of competing nonnative species, restoration of degraded habitat, and regular monitoring. These measures are not likely to result in a significant economic impact to project proponents.

In addition, Federal agencies may also need to reinitiate a previous consultation if discretionary involvement or control over the Federal action has been retained or is authorized by law and the activities may affect critical habitat. However, between 2002 and 2007, there were no formal consultations and 55 informal consultations on Kauai, in addition to consultations on Federal grants to State wildlife programs (which would not affect small entities). The majority of the consultations were related to project effects on seabird flyways, nesting by endangered water birds, or roosting by the endangered Hawaiian hoary bat (*Oopeapea*). Several consultations were conducted with the U.S. Department of Agriculture (Natural Resources Conservation Service (NRCS)) for proposed funding for habitat restoration projects under the Wildlife Habitat Incentives Program (WHIP), and one was conducted with the Navy for weed removal at the Pacific Missile Range Facility (PMRF). Five of the 55 informal consultations concerned designated critical habitat, and we concurred with each agency's determination that the project, as proposed, was not likely to adversely affect critical habitat. In this final rule, we are designating critical habitat on a total of 26,582 ac (10,757 ha) of land. Ninety-eight percent (25,988 ac (10,517 ha)) of this designated critical habitat designation is already critical habitat for one or more species, and two percent (594 ac (240 ha)) of the designation is on lands newly designated as critical habitat. However, none of the Federal actions that were subject to previous section 7 consultation are on the lands we are designating as critical habitat in this final rule. Therefore, there is no requirement to reinitiate consultation for any ongoing Federal projects.

In the 2001 economic analysis of the designation of critical habitat for 83 species of plants from the islands of Kauai and Niihau, we evaluated the potential economic effects on small business entities resulting from the protection of these plant species and their habitat related to the designation of critical habitat and determined that it would not have a significant economic impact on a substantial number of small

entities. The RFA/SBREFA defines "small governmental jurisdiction" as the government of a city, county, town, school district, or special district with a population of less than 50,000. By this definition, Kauai County is not a small governmental jurisdiction because its population was 58,463 in 2000. Certain State agencies may be affected by the critical habitat designation—, such as the Department of Land and Natural Resources and the State Department of Transportation, may be affected by the critical habitat designation.. However, for the purposes of the RFA, State governments are considered independent sovereigns, not small governments. Because of Federal involvement, TNC and NTBG could be affected by the critical habitat designation and would possibly be considered to be small organizations. The SBREFA defines "small organization" as any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. We determined that TNC and NTBG are both large organizations that are dominant in Kauai County in their respective fields. The significant overlap between the critical habitat designation for the 83 species and this critical habitat designation is further evidence that this designation will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether this designation would result in a significant economic effect on a substantial number of small entities. For the above reasons and based on currently available information, we certify that the designation of critical habitat for the 47 species will not have a significant effect on a substantial number of small entities. Federal involvement, and thus section 7 consultations, would be limited to a subset of the area designated. The most likely Federal involvement could include funding provided by NRCS and the Service for habitat restoration projects. A regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) This designation of critical habitat will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and

"Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)-(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

We do not believe that this rule will significantly or uniquely affect small governments. The lands we are designating as critical habitat are owned

by the State of Hawaii and private citizens. None of these entities fit the definition of "small governmental jurisdiction." Therefore, a Small Government Agency Plan is not required.

Takings

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designation of critical habitat for each of the 47 species in a takings implications assessment. The takings implications assessment concludes that this designation of critical habitat for each of these species does not pose significant takings implications for lands within or affected by the designation.

Federalism

In accordance with E.O. 13132 (Federalism), this final rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this final critical habitat designation with appropriate State resource agencies in Hawaii. The designation of critical habitat for each of these species (excluding *Pritchardia hardyi* for which no critical habitat has been designated) imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. This final rule uses standard property descriptions and identifies the physical and biological

features essential to the conservation of the species within the designated areas to assist the public in understanding the habitat needs of each of the 47 species for which critical habitat is designated in this final rule.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA)

It is our position that, outside the jurisdiction of the United States Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 et seq.) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld by the United States Court of Appeals for the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We have determined that there are no recognized Federal tribes in the State of Hawaii, and there are no tribal lands essential for the

conservation of the 47 Kauai species for which we are designating critical habitat. Therefore, this final designation of critical habitat does not involve any tribal lands.

Energy Supply, Distribution, or Use

On May 18, 2001, the President issued an Executive Order (E.O. 13211; Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This final rule to designate critical habitat for 47 of the 48 species is not a significant regulatory action under E.O. 12866. We do not expect it to significantly affect energy supplies, distribution, or use because these areas are not presently used for energy production, and we are unaware of any future plans in this regard. Therefore, this action is not a significant

energy action, and no Statement of Energy Effects is required.

References Cited

A complete list of references cited in this rule is available upon request from the Field Supervisor, Pacific Islands Fish and Wildlife Office (see **ADDRESSES**).

Authors

The authors of this document are the staff members of the Pacific Islands Fish and Wildlife Office, Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the

Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h), the List of Endangered and Threatened Wildlife, as follows:

■ a. By adding entries for “Akekee (honeycreeper)” and “Akikiki (honeycreeper)” in alphabetical order under BIRDS; and

■ b. By adding an entry for “Fly, Hawaiian picture-wing” (*Drosophila sharpi*) in alphabetical order under INSECTS, to read as set forth below.

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* * *	* * *						
BIRDS							
Akekee(honeycreeper)	<i>Loxopscaeruleirostris</i>	U.S.A. (HI)	Entire	E	765	17.95(b)	NA
* * *	* * *						
Akikiki (honeycreeper)	<i>Oreomystis bairdi</i>	U.S.A. (HI)	Entire	E	765	17.95(b)	NA
* * *	* * *						
INSECTS							
* * *	* * *						
Fly, Hawaiian picture-wing	<i>Drosophila sharpi</i>	U.S.A. (HI)	NA	E	765	17.95(i)	NA
* * *	* * *						

■ 3. Amend § 17.12(h), the List of Endangered and Threatened Plants, as follows:

■ a. By adding entries for *Astelia waialealae*, *Canavalia napaliensis*, *Chamaesyce eleanoriae*, *Chamaesyce remyi* var. *kauaiensis*, *Chamaesyce remyi* var. *remyi*, *Charpentiera densiflora*, *Cyanea dolichopoda*, *Cyanea eleleensis*, *Cyanea kolekoleensis*, *Cyanea kuhihewa*, *Cyrtandra oenobarba*, *Cyrtandra paliku*, *Dubautia imbricata* ssp. *imbricata*, *Dubautia kalalauensis*, *Dubautia kenwoodii*, *Dubautia plantaginea* ssp. *magnifolia*,

Dubautia waialealae, *Geranium kauaiense*, *Keysseria erici*, *Keysseria helenae*, *Labordia helleri*, *Labordia pumila*, *Lysimachia daphnoides*, *Lysimachia iniki*, *Lysimachia pendens*, *Lysimachia scopulensis*, *Lysimachia venosa*, *Melicope degeneri*, *Melicope paniculata*, *Melicope puberula*, *Myrsine knudsenii*, *Myrsine mezii*, *Phyllostegia renovans*, *Pittosporum napaliense*, *Platydesma rostrata*, *Pritchardia hardyi*, *Psychotria grandiflora*, *Psychotria hobdyi*, *Schiedea attenuata*, *Stenogyne kealiae*, *Tetraplasandra bisattenuata*, and *Tetraplasandra flynnii* in

alphabetical order under FLOWERING PLANTS; and

■ b. By adding entries for *Diellia mannii*, *Doryopteris angelica*, and *Dryopteris crinalis* var. *podosorus* in alphabetical order under FERNS AND ALLIES, to read as set forth below.

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habi- tat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	*
<i>Astelia waialealae</i>	Painiu	U.S.A. (HI)	Asteliaceae	E	765	17.99(a)	NA
*	*	*	*	*	*	*	*
<i>Canavalia napaliensis</i>	Awikiwiki	U.S.A. (HI)	Fabaceae	E	765	17.99(a)	NA
*	*	*	*	*	*	*	*
<i>Chamaesyce eleanoriae</i>	Akoko	U.S.A. (HI)	Euphorbiaceae	E	765	17.99(a)	NA
*	*	*	*	*	*	*	*
<i>Chamaesyce remyi</i> var. <i>kauaiensis</i>	Akoko	U.S.A. (HI)	Euphorbiaceae	E	765	17.99(a)	NA
<i>Chamaesyce remyi</i> var. <i>remyi</i>	Akoko	U.S.A. (HI)	Euphorbiaceae	E	765	17.99(a)	NA
*	*	*	*	*	*	*	*
<i>Charpentiera densiflora</i>	Papala	U.S.A. (HI)	Amaranathaceae	E	765	17.99(a)	NA
*	*	*	*	*	*	*	*
<i>Cyanea dolichopoda</i>	Haha	U.S.A. (HI)	Campanulaceae	E	765	17.99(a)	NA
*	*	*	*	*	*	*	*
<i>Cyanea eleeleensis</i>	Haha	U.S.A. (HI)	Campanulaceae	E	765	17.99(a)	NA
*	*	*	*	*	*	*	*
<i>Cyanea kolekoleensis</i>	Haha	U.S.A. (HI)	Campanulaceae	E	765	17.99(a)	NA
*	*	*	*	*	*	*	*
<i>Cyanea kuhihewa</i>	Haha	U.S.A. (HI)	Campanulaceae	E	765	17.99(a)	NA
*	*	*	*	*	*	*	*
<i>Cyrtandra oenobarba</i>	Haiwale	U.S.A. (HI)	Gesneriaceae	E	765	17.99(a)	NA
<i>Cyrtandra paliku</i>	Haiwale	U.S.A. (HI)	Gesneriaceae	E	765	17.99(a)	NA
*	*	*	*	*	*	*	*
<i>Dubautia imbricata</i> ssp. <i>imbricata</i>	Naenae	U.S.A. (HI)	Asteraceae	E	765	17.99(a)	NA
<i>Dubautia kalalauensis</i>	Naenae	U.S.A. (HI)	Asteraceae	E	765	17.99(a)	NA
<i>Dubautia kenwoodii</i>	Naenae	U.S.A. (HI)	Asteraceae	E	765	17.99(a)	NA
*	*	*	*	*	*	*	*
<i>Dubautia plantaginea</i> ssp. <i>magnifolia</i>	Naenae	U.S.A. (HI)	Asteraceae	E	765	17.99(a)	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
<i>Dubautia waialealae</i>	Naenae	U.S.A. (HI)	Asteraceae	E	765	17.99(a)	NA
*	*	*	*	*	*	*	*
<i>Geranium kauaiense</i>	Nohoanu	U.S.A. (HI)	Geraniaceae	E	765	17.99(a)	NA
*	*	*	*	*	*	*	*
<i>Keysseria erici</i>	No common name	U.S.A. (HI)	Asteraceae	E	765	17.99(a)	NA
<i>Keysseria helenae</i>	No common name	U.S.A. (HI)	Asteraceae	E	765	17.99(a)	NA
*	*	*	*	*	*	*	*
<i>Labordia helleri</i>	Kamakahala	U.S.A. (HI)	Loganiaceae	E	765	17.99(a)	NA
*	*	*	*	*	*	*	*
<i>Labordia pumila</i>	Kamakahala	U.S.A. (HI)	Loganiaceae	E	765	17.99(a)	NA
*	*	*	*	*	*	*	*
<i>Lysimachia daphnoides</i>	Lehua makanoë	U.S.A. (HI)	Myrsinaceae	E	765	17.99(a)	NA
*	*	*	*	*	*	*	*
<i>Lysimachia iniki</i>	No common name	U.S.A. (HI)	Myrsinaceae	E	765	17.99(a)	NA
*	*	*	*	*	*	*	*
<i>Lysimachia pendens</i>	No common name	U.S.A. (HI)	Myrsinaceae	E	765	17.99(a)	NA
<i>Lysimachia scopulensis</i>	No common name	U.S.A. (HI)	Myrsinaceae	E	765	17.99(a)	NA
<i>Lysimachia venosa</i>	No common name	U.S.A. (HI)	Myrsinaceae	E	765	17.99(a)	NA
*	*	*	*	*	*	*	*
<i>Melicope degeneri</i>	Alani	U.S.A. (HI)	Rutaceae	E	765	17.99(a)	NA
*	*	*	*	*	*	*	*
<i>Melicope paniculata</i>	Alani	U.S.A. (HI)	Rutaceae	E	765	17.99(a)	NA
<i>Melicope puberula</i>	Alani	U.S.A. (HI)	Rutaceae	E	765	17.99(a)	NA
*	*	*	*	*	*	*	*
<i>Myrsine knudsenii</i>	Kolea	U.S.A. (HI)	Myrsinaceae	E	765	17.99(a)	NA
*	*	*	*	*	*	*	*
<i>Myrsine mezii</i>	Kolea	U.S.A. (HI)	Myrsinaceae	E	765	17.99(a)	NA
*	*	*	*	*	*	*	*
<i>Phyllostegia renovans</i>	No common name	U.S.A. (HI)	Lamiaceae	E	765	17.99(a)	NA
*	*	*	*	*	*	*	*

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
<i>Pittosporum napaliense</i>	Hoawa	U.S.A. (HI)	Pittosporaceae	E	765	17.99(a)	NA
*	*	*	*	*	*	*	*
<i>Platydesma rostrata</i>	Pilo kea lau lili	U.S.A. (HI)	Rutaceae	E	765	17.99(a)	NA
*	*	*	*	*	*	*	*
<i>Pritchardia hardyi</i>	Loulu	U.S.A. (HI)	Arecaceae	E	765	NA	NA
*	*	*	*	*	*	*	*
<i>Psychotria grandiflora</i>	Kopiko	U.S.A. (HI)	Rubiaceae	E	765	17.99(a)	NA
<i>Psychotria hobydi</i>	Kopiko	U.S.A. (HI)	Rubiaceae	E	765	17.99(a)	NA
*	*	*	*	*	*	*	*
<i>Schiedea attenuata</i>	No common name	U.S.A. (HI)	Caryophyllaceae	E	765	17.99(a)	NA
*	*	*	*	*	*	*	*
<i>Stenogyne kealiae</i>	No common name	U.S.A. (HI)	Lamiaceae	E	765	17.99(a)	NA
*	*	*	*	*	*	*	*
<i>Tetraplasandra bisattenuata</i>	No common name	U.S.A. (HI)	Araliaceae	E	765	17.99(a)	NA
<i>Tetraplasandra flynnii</i>	No common name	U.S.A. (HI)	Araliaceae	E	765	17.99(a)	NA
*	*	*	*	*	*	*	*
FERNS AND ALLIES							
*	*	*	*	*	*	*	*
<i>Diellia mannii</i>	No common name	U.S.A. (HI)	Aspleniaceae	E	765	17.99(a)	NA
*	*	*	*	*	*	*	*
<i>Doryopteris angelica</i>	No common name	U.S.A. (HI)	Pteridaceae	E	765	17.99(a)	NA
<i>Dryopteris crinalis</i> var. <i>podosorus</i>	Palapalai aumakua	U.S.A. (HI)	Dryopteridaceae	E	765	17.99(a)	NA
*	*	*	*	*	*	*	*

■ 4. Amend § 17.95 as follows:

■ a. In paragraph (b), by adding critical habitat for “Akekee (*Loxops caeruleirostris*)” and “Akikiki (*Oreomystis bairdi*)” in the same alphabetical order as these species occur in the table at § 17.11(h); and

■ b. In paragraph (i), by adding critical habitat for “Hawaiian picture-wing fly (*Drosophila sharpi*)” in the same alphabetical order as this species occurs in the table at § 17.11(h), to read as set forth below.

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) *Birds.*

Akekee (*Loxops caeruleirostris*)

(1) Critical habitat units are depicted for Kauai County, Hawaii, on the maps below.

(2) Primary constituent elements.

(i) In units 1, 2, and 3, the primary constituent elements of critical habitat for Akekee (*Loxops caeruleirostris*) are:

(A) Elevation: 3,000 to 5,243 ft (914 to 1,598 m).

(B) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).

(C) Substrate: Weathered aa lava flows, rocky mucks, thin silty loams, deep volcanic ash soils.

(D) Canopy: *Acacia*, *Metrosideros*, *Psychotria*, *Tetraplasandra*, *Zanthoxylum*.

(E) Subcanopy: *Cheirodendron*, *Coprosma*, *Kadua*, *Ilex*, *Myoporum*, *Myrsine*.

(F) Understory: *Bidens*, *Dryopteris*, *Leptecophylla*, *Poa*, *Scaevola*, *Sophora*.

(G) Arthropod prey.

(ii) In units 4, 5, and 6, the primary constituent elements of critical habitat for Akekee (*Loxops caeruleirostris*) are:

(A) Elevation: 3,000 to 5,243 ft (914 to 1,598 m).

(B) Annual precipitation: Greater than 75 inches (190 centimeters).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia*, *Charpentiera*, *Cheirodendron*, *Metrosideros*.

(E) Subcanopy: *Broussaisia*, *Cibotium*, *Eurya*, *Ilex*, *Myrsine*.

(F) Understory: Ferns, *Carex*, *Coprosma*, *Leptecophylla*, *Oreobolus*, *Rhynchospora*, *Vaccinium*.

(G) Arthropod prey.

(3) Manmade features and structures, such as buildings, roads, railroads, airports, runways, other paved areas, lawns, and other urban landscaped

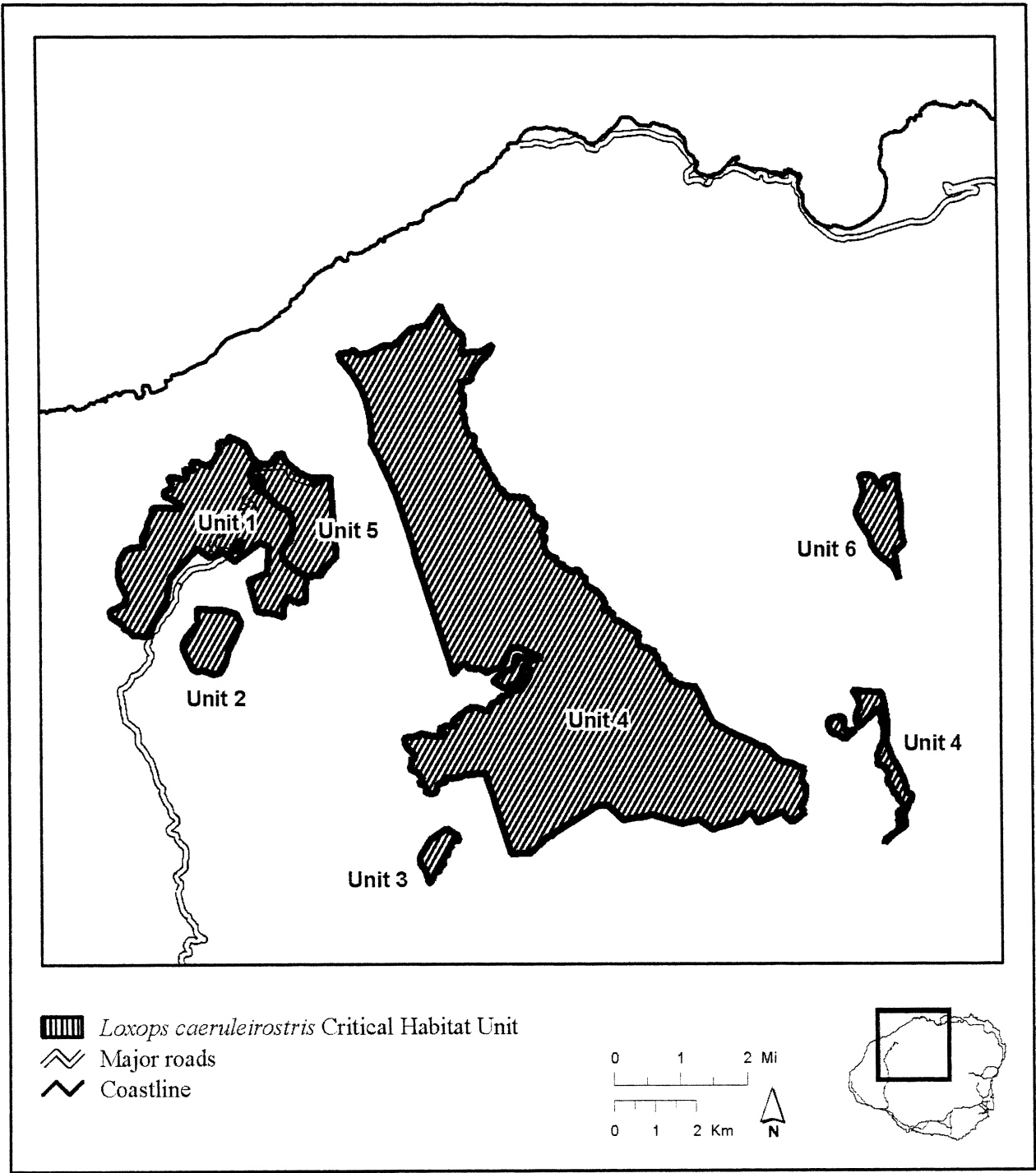
areas, existing on the effective date of this rule do not contain one or more of the primary constituent elements.

(4) Critical habitat maps. Maps were created in GIS, with coordinates in UTM Zone 4, units in meters using North American datum of 1983 (NAD 83).

(5) Index map of critical habitat units for Akekee (*Loxops caeruleirostris*) follows:

BILLING CODE 4310-55-S

Map 1
Loxops caeruleirostris—Index Map



(6) Unit 1—Montane Mesic, Kauai County, Hawaii.

(i) Unit 1—Montane Mesic consists of 2,422.6 ac (980.4 ha) and includes land bounded by the following UTM Zone 4, NAD 83 coordinates (E, N): 430107, 2447429; 430242, 2447664; 430073, 2447126; 430793, 2448310; 430124, 2446907; 430393, 2447748; 430690, 2447765; 430671, 2447997; 430764, 2448188; 430886, 2448507; 430903, 2448664; 430985, 2448705; 431560, 2448675; 431414, 2448890; 430291, 2446570; 431058, 2446300; 431200, 2449070; 431362, 2449169; 431171, 2448699; 430854, 2445930; 432530, 2450196; 431391, 2449273; 431323, 2447013; 431211, 2446394; 431101, 2446447; 431112, 2446394; 431069, 2446331; 431007, 2446203; 430944, 2446145; 430902, 2445976; 430191, 2446386; 430826, 2445805; 430857, 2445727; 430824, 2445631; 430442, 2445640; 430323, 2445779; 430204, 2445809; 430191, 2445898; 429898, 2446100; 429871, 2446234; 430939, 2446061; 432796, 2450365; 432504, 2449961; 432579, 2450036; 432552, 2450080; 432551, 2450083; 432001, 2447726; 432534, 2450174; 431629, 2448739; 432565, 2450262; 432531, 2450116; 432740, 2450249; 432441,

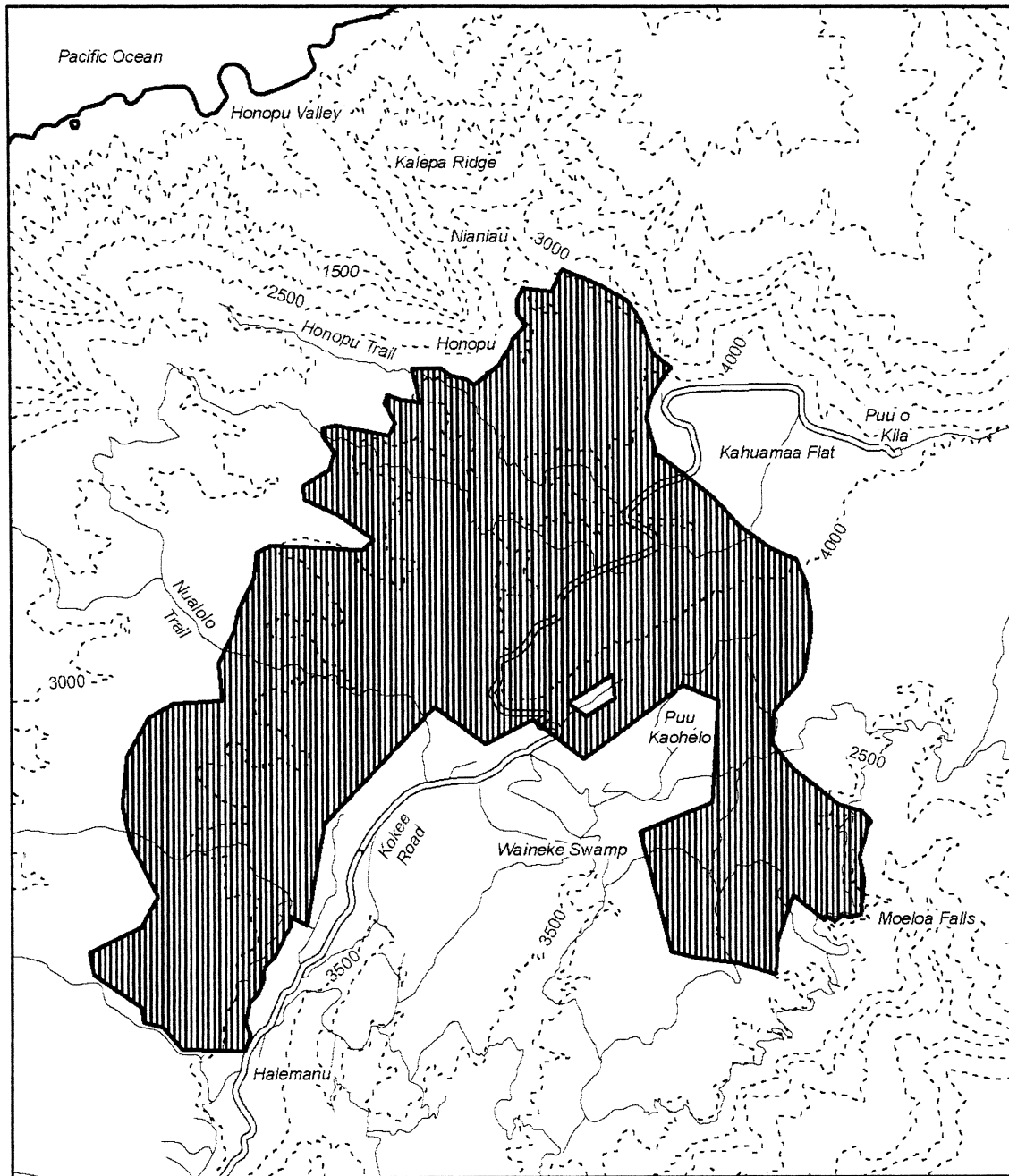
2449848; 432808, 2450383; 432882, 2450351; 432904, 2450341; 432827, 2447751; 432932, 2447668; 433014, 2447717; 433109, 2447775; 433094, 2447922; 432560, 2450267; 431875, 2449780; 431322, 2449418; 431403, 2449436; 431727, 2449372; 431769, 2449447; 431705, 2449569; 431720, 2449620; 431805, 2449591; 431919, 2449578; 432498, 2449952; 431904, 2449665; 432486, 2449909; 432046, 2449781; 432052, 2449783; 432113, 2449740; 432217, 2449712; 432251, 2449685; 432259, 2449679; 432344, 2449744; 432419, 2449806; 431322, 2449372; 431905, 2449660; 434486, 2447126; 434073, 2448685; 434228, 2448620; 434292, 2448479; 434318, 2448298; 434279, 2447951; 434163, 2447783; 434086, 2447693; 434073, 2447500; 434623, 2446526; 434357, 2447229; 433545, 2449136; 434627, 2447088; 434686, 2447020; 434682, 2447017; 434657, 2446977; 434652, 2446933; 434612, 2446807; 434641, 2446663; 434631, 2446528; 434202, 2447345; 433399, 2449709; 431205, 2448983; 432073, 2447674; 433046, 2450280; 433196, 2450196; 433287, 2450063; 433353, 2449880; 433467, 2449787; 433429, 2449741; 433880,

2448827; 433407, 2449708; 433725, 2448994; 433401, 2449697; 433339, 2449600; 433313, 2449484; 433339, 2449381; 433368, 2449293; 433368, 2449292; 433369, 2449255; 433389, 2449256; 434254, 2447886; 433408, 2449708; 433527, 2447856; 434086, 2446095; 433862, 2446165; 433606, 2446193; 433449, 2446235; 433397, 2446440; 433257, 2446958; 433577, 2447086; 433706, 2447138; 434090, 2446098; 433562, 2447841; 432639, 2447624; 432918, 2447407; 432672, 2447598; 434620, 2446512; 432609, 2447647; 434318, 2448182; 432195, 2447587; 432136, 2447629; 432133, 2447631; 432081, 2447668; 433746, 2447766; 434500, 2446448; 432320, 2447497; 434103, 2446297; 434618, 2446459; 434582, 2446443; 434558, 2446439; 434514, 2446449; 434471, 2446422; 434457, 2446416; 434447, 2446420; 434392, 2446421; 434423, 2446441; 434416, 2446441; 434625, 2446467; 434201, 2446573; 434403, 2446435; 434628, 2446479; 434400, 2446429; 434434, 2446428; 434386, 2446429; 434533, 2446441.

(ii) Map of Unit 1—Montane Mesic for Akekee (*Loxops caeruleirostris*) follows:

BILLING CODE 4310-55-S

Loxops caeruleirostris
Unit 1 - Montane Mesic



 *Loxops caeruleirostris* - Unit 1 - Montane Mesic

 Major roads

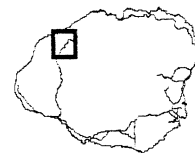
 Secondary roads and trails

 Elevation (500-foot contours)

 Coastline

0 0.25 0.5 Mi

0 0.25 0.5 Km



(7) Unit 2—Montane Mesic, Kauai County, Hawaii.

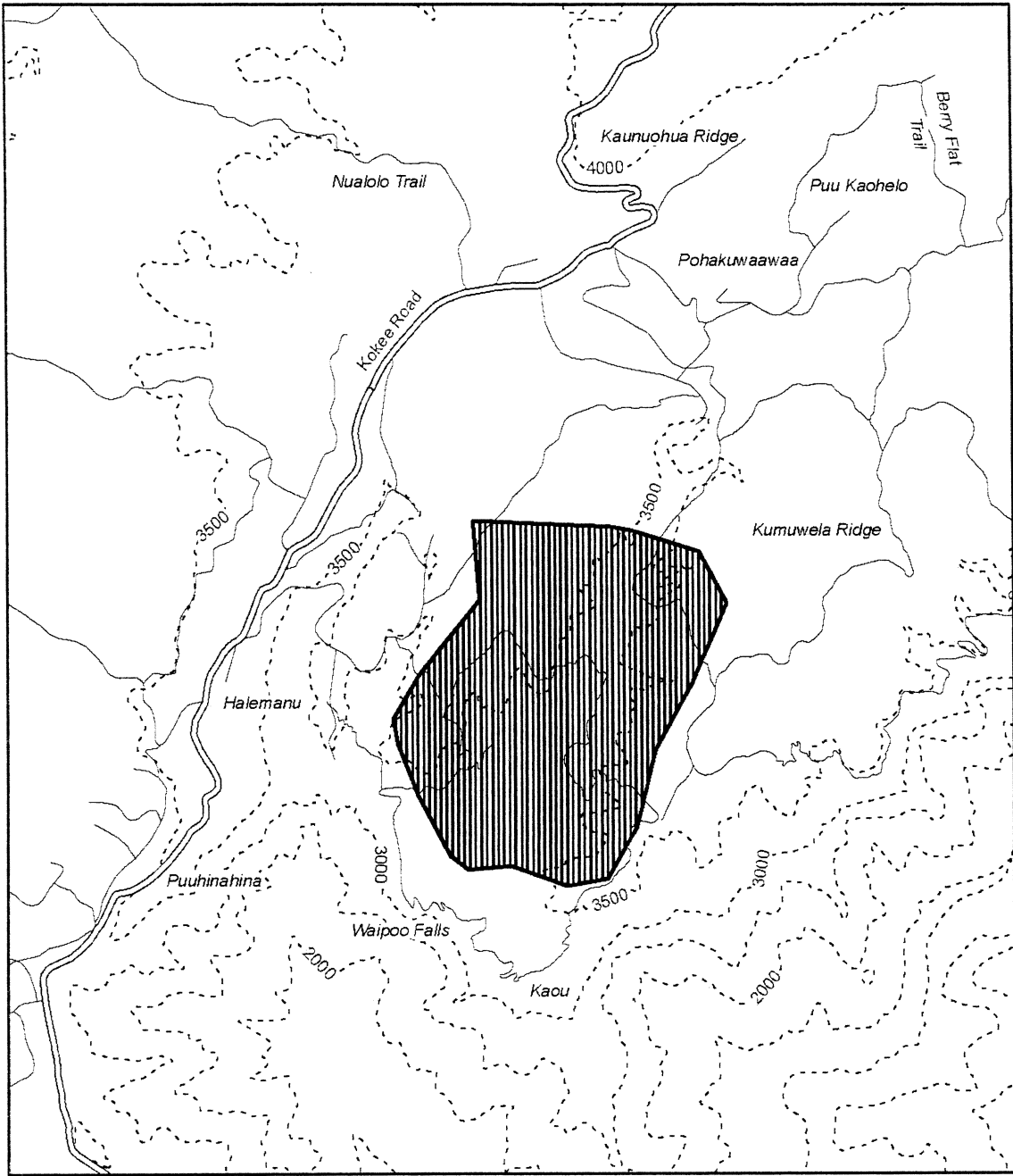
(i) Montane Mesic – Unit 2 consists of 375.6 ac (152.0 ha) and includes land bounded by the following UTM Zone 4, NAD 83 coordinates (E, N): 431975,

2446280; 432559, 2446255; 432659, 2446240; 432948, 2446150; 433067, 2445928; 432758, 2445304; 432001, 2445941; 431873, 2444849; 432912, 2445580; 432674, 2444970; 431626, 2445435; 431730, 2445114; 431950,

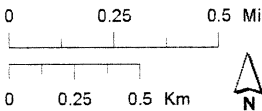
2444792; 432135, 2444807; 432377, 2444722; 432548, 2444752; 431645, 2445326; 431736, 2445617.

(ii) Map of Unit 2—Montane Mesic for Akekee (*Loxops caeruleirostris*) follows:

Loxops caeruleirostris
Unit 2 - Montane Mesic



-  *Loxops caeruleirostris* - Unit 2 - Montane Mesic
-  Major roads
-  Secondary roads and trails
-  Elevation (500-foot contours)



(8) Unit 3—Montane Mesic, Kauai County, Hawaii.

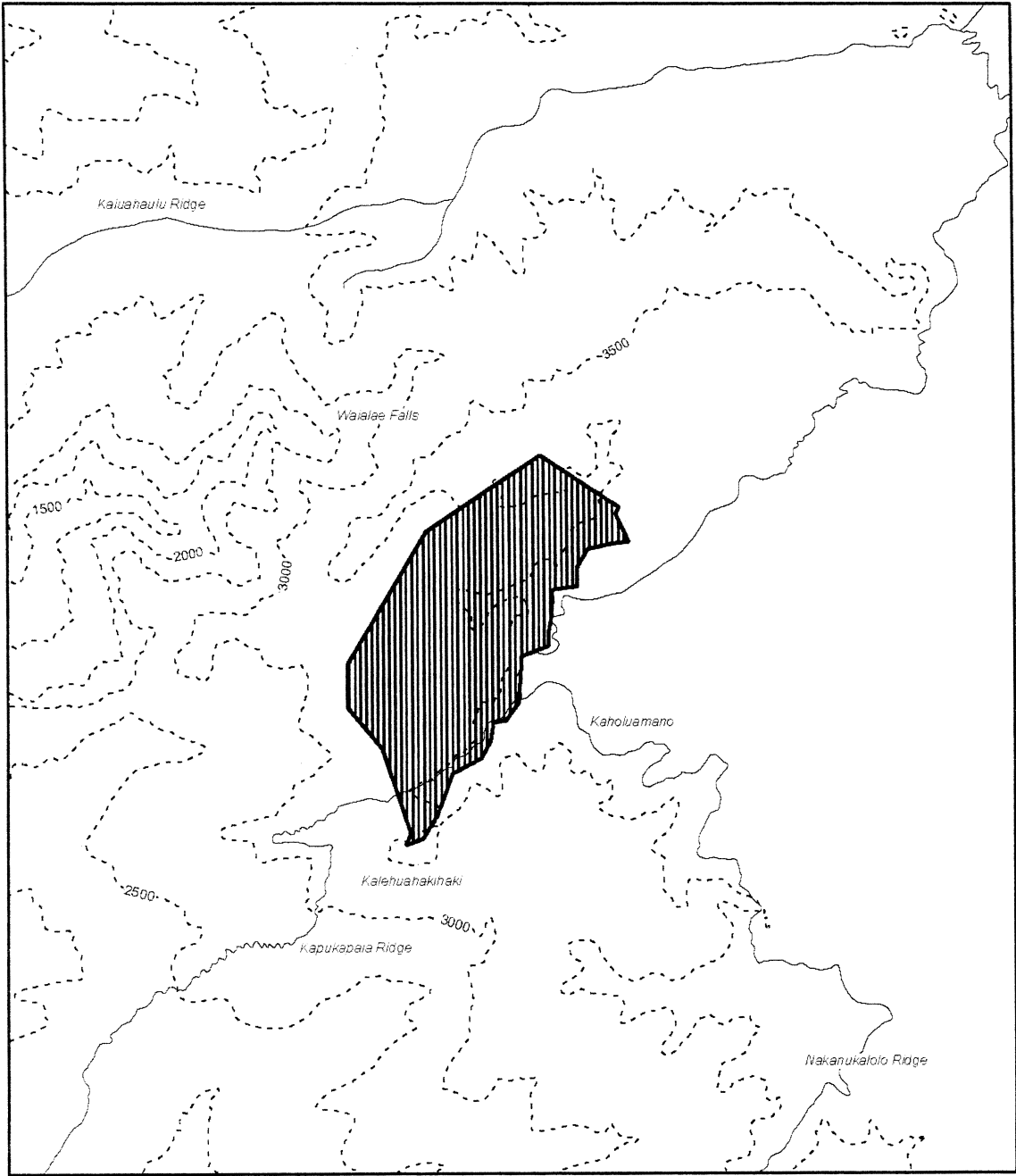
(i) Unit 3—Montane Mesic consists of 138.5 ac (56.0 ha) and includes land bounded by the following UTM Zone 4, NAD 83 coordinates (E, N): 438012, 2440389; 438014, 2440437; 438023, 2440484; 438111, 2440652; 438112,

2440588; 437817, 2440071; 438028, 2440577; 437922, 2440355; 437336, 2440335; 437912, 2440201; 437827, 2440132; 437785, 2440013; 437687, 2439960; 437636, 2439819; 437870, 2440140; 437545, 2439761; 438149, 2440714; 437529, 2439721; 437987, 2441027; 437450, 2440047; 437335,

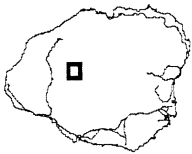
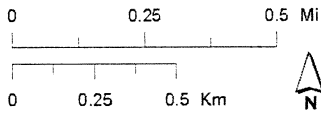
2440180; 437335, 2440329; 438159, 2440914; 438249, 2440857; 438253, 2440854; 438243, 2440830; 438287, 2440738; 437602, 2440771; 438227, 2440730; 437586, 2439743.

(ii) Map of Unit 3—Montane Mesic for Akekee (*Loxops caeruleirostris*) follows:

Loxops caeruleirostris
Unit 3 - Montane Mesic



-  *Loxops caeruleirostris* - Unit 3 - Montane Mesic
-  Secondary roads and trails
-  Elevation (500-foot contours)



(9) Unit 4—Montane Wet, Kauai County, Hawaii.

(i) Montane Wet—Unit 1 consists of 13,055.0 ac (5,283.2 ha) and includes land bounded by the following UTM Zone 4, NAD 83 coordinates (E,N):

448638, 2440764; 448601, 2440679;
448606, 2440704; 448612, 2440722;
448615, 2440731; 448619, 2440740;
448630, 2440759; 448650, 2440769;
448600, 2440668; 448622, 2440749;
448599, 2440647; 448601, 2440652;
448678, 2440741; 448777, 2440842;
448663, 2440773; 449006, 2441012;
448764, 2440857; 449068, 2441051;
449121, 2441114; 449121, 2441114;
448887, 2440934; 448811, 2440896;
448954, 2441097; 448943, 2441063;
448943, 2441053; 448943, 2441044;
448941, 2441024; 448940, 2441006;
448918, 2440982; 448877, 2440939;
448861, 2440927; 448735, 2440829;
448837, 2440912; 448678, 2440780;
448802, 2440889; 448788, 2440878;
449115, 2442038; 448745, 2440841;
449111, 2441196; 448727, 2440820;
448720, 2440813; 448711, 2440806;
448691, 2440790; 448841, 2440914;
447374, 2443275; 449244, 2441819;
447623, 2443445; 447616, 2443588;
447603, 2443646; 447556, 2443686;
447325, 2443651; 447295, 2443639;
447247, 2443586; 448634, 2443800;
447287, 2443339; 448657, 2443629;
447481, 2443262; 447636, 2443160;
447645, 2443143; 447645, 2443146;
447894, 2443371; 447865, 2443358;
447712, 2443351; 447631, 2443389;
448948, 2441084; 447249, 2443451;
448917, 2442504; 449106, 2441435;
449173, 2441529; 449201, 2441638;
449249, 2441697; 449275, 2441773;
449148, 2441893; 449090, 2442135;
449064, 2442221; 448614, 2443950;
448983, 2442384; 449078, 2441297;
448880, 2442563; 448861, 2442593;
448805, 2442677; 448765, 2442787;
448696, 2442955; 448653, 2443075;
448651, 2443187; 448674, 2443301;
448669, 2443477; 449024, 2442290;
444824, 2443350; 444161, 2444181;
445808, 2442898; 445681, 2442977;
445559, 2443010; 445437, 2443077;
446100, 2442628; 445045, 2443240;
446256, 2442602; 444659, 2443447;
444532, 2443516; 444456, 2443572;
444423, 2443638; 444334, 2443811;
446499, 2441271; 445254, 2443156;
446686, 2441764; 441856, 2446328;
446673, 2441408; 446651, 2441424;
446641, 2441436; 446587, 2441501;
445966, 2442725; 446640, 2441627;
444075, 2444349; 446694, 2442007;
446591, 2442195; 446650, 2442430;
446675, 2442432; 446482, 2442513;
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443497, 2444548; 444237, 2444013;
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443447, 2444608; 443534, 2444543;
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443598, 2444493; 443732, 2444458;
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440110, 2440524; 441650, 2441573;
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441727, 2441586; 441774, 2441575;
441900, 2441576; 441968, 2441515;
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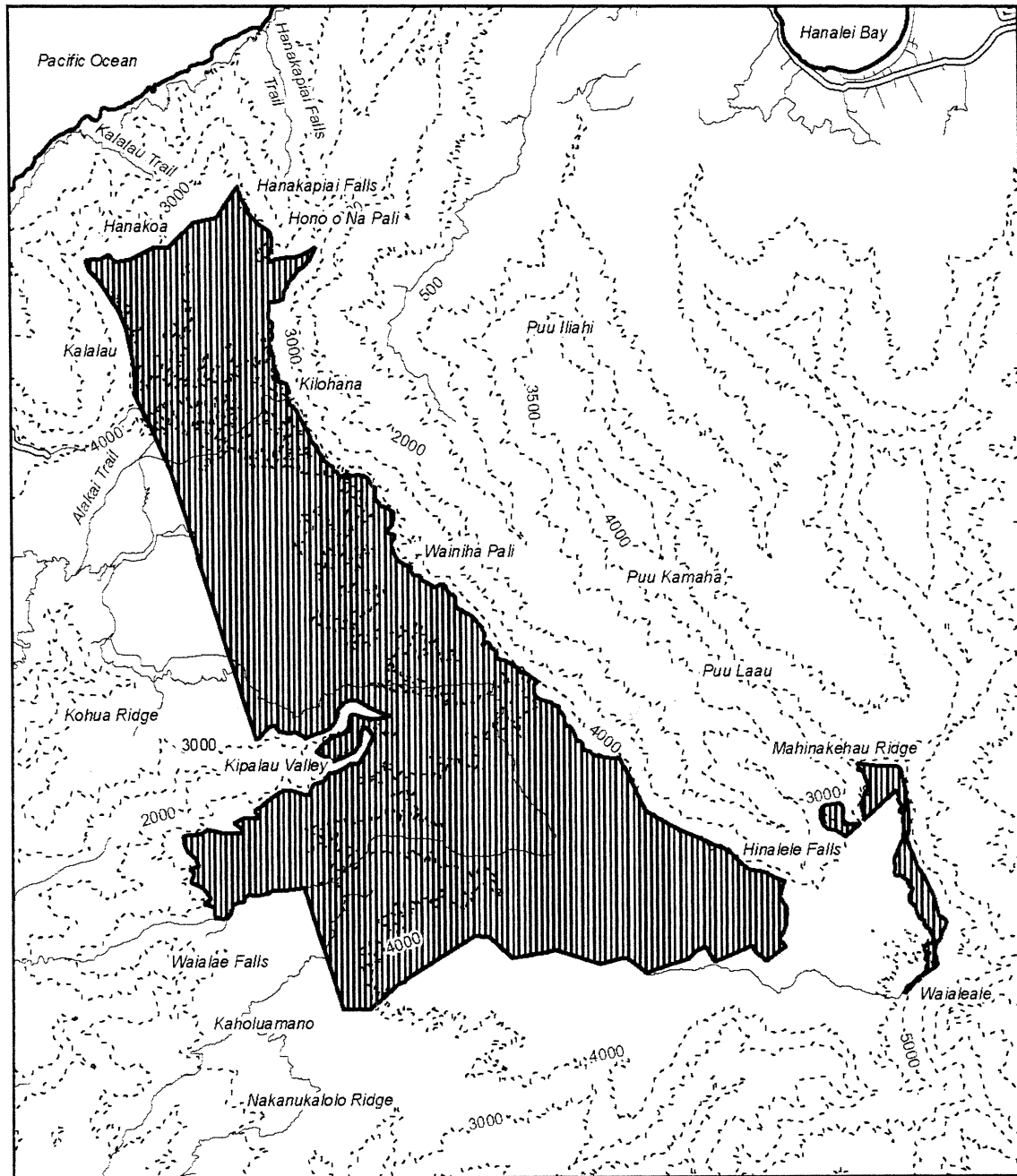
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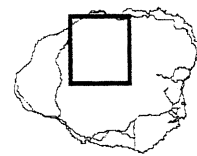
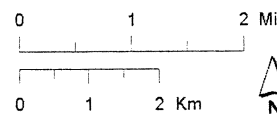
(ii) Map of Unit 4—Montane Wet for Akekee (*Loxops caeruleirostris*) follows:

BILLING CODE 4310--55-S

Loxops caeruleirostris
Unit 4 - Montane Wet



-  *Loxops caeruleirostris* - Unit 4 - Montane Wet
-  Major roads
-  Secondary roads and trails
-  Elevation (500-foot contours)
-  Coastline



(10) Unit 5—Montane Wet, Kauai County, Hawaii.

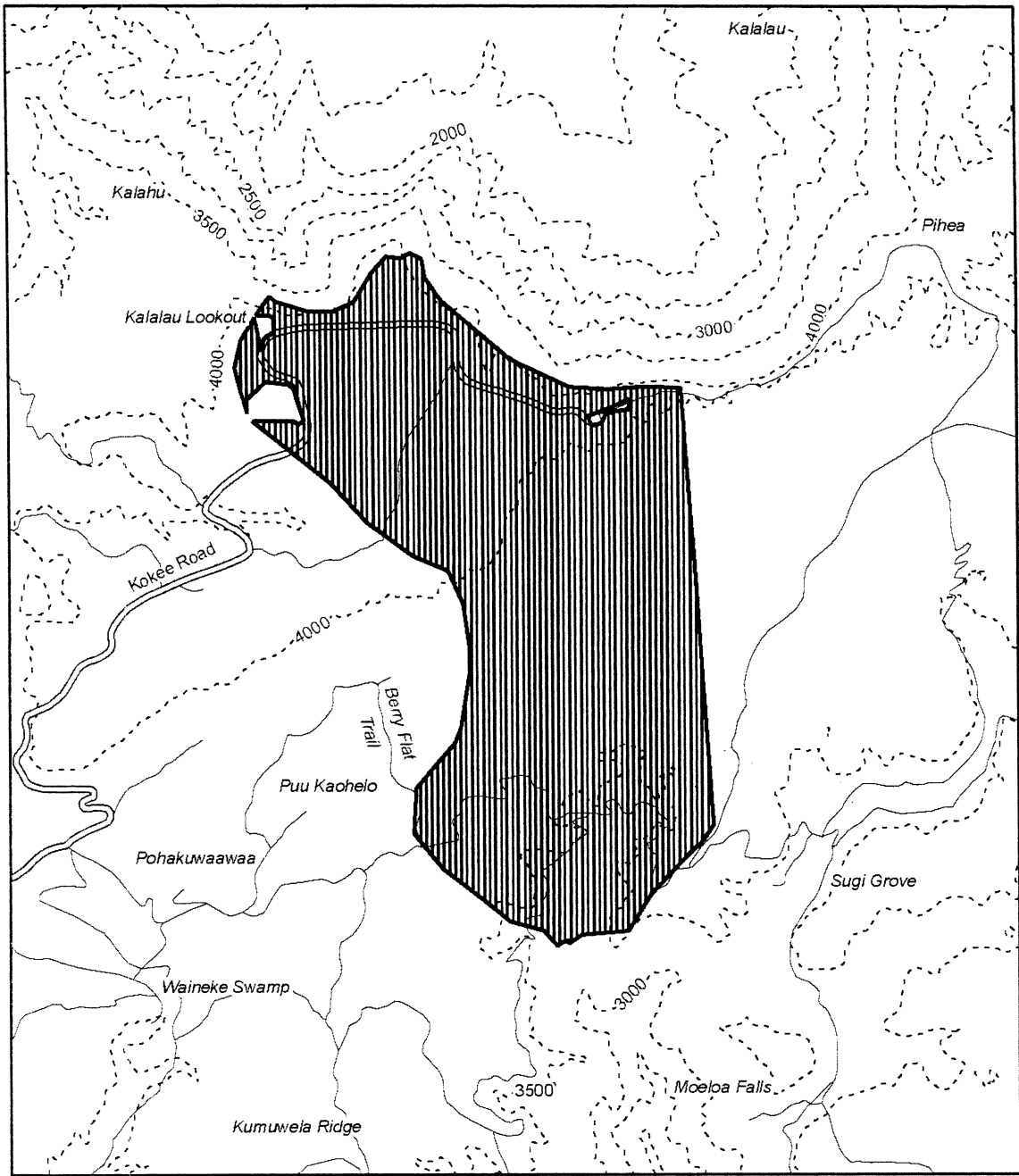
(i) Unit 5—Montane Wet consists of 789.9 ac (319.7 ha) and includes land bounded by the following UTM Zone 4, NAD83 coordinates (E, N): 433436, 2449707; 433445, 2449707; 433444, 2449707; 433443, 2449707; 433458, 2449707; 433436, 2449707; 433426, 2449707; 433408, 2449708; 433429, 2449741; 433493, 2449765; 433633, 2449724; 433742, 2449724; 433467, 2449787; 433460, 2449707; 433468, 2449706; 433484, 2449694; 433414, 2449628; 433461, 2449623; 433457, 2449622; 433339, 2449600; 433440, 2449604; 433437, 2449592; 433426, 2449556; 433419, 2449599; 433831, 2449767; 434991, 2449344; 433401, 2449697; 433480, 2449629; 434938, 2449321; 433313, 2449484; 433455, 2449620; 434842, 2449253; 434839, 2449258; 434834, 2449277; 434833,

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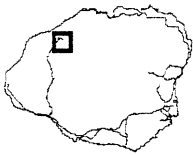
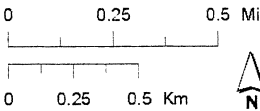
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(ii) Map of Unit 5—Montane Wet for Akekee (*Loxops caeruleirostris*) follows:

Loxops caeruleirostris
Unit 5 - Montane Wet



- Loxops caeruleirostris* - Unit 5 - Montane Wet
- Major roads
- Secondary roads and trails
- Elevation (500-foot contours)



(11) Unit 6—Montane Wet, Kauai County, Hawaii.

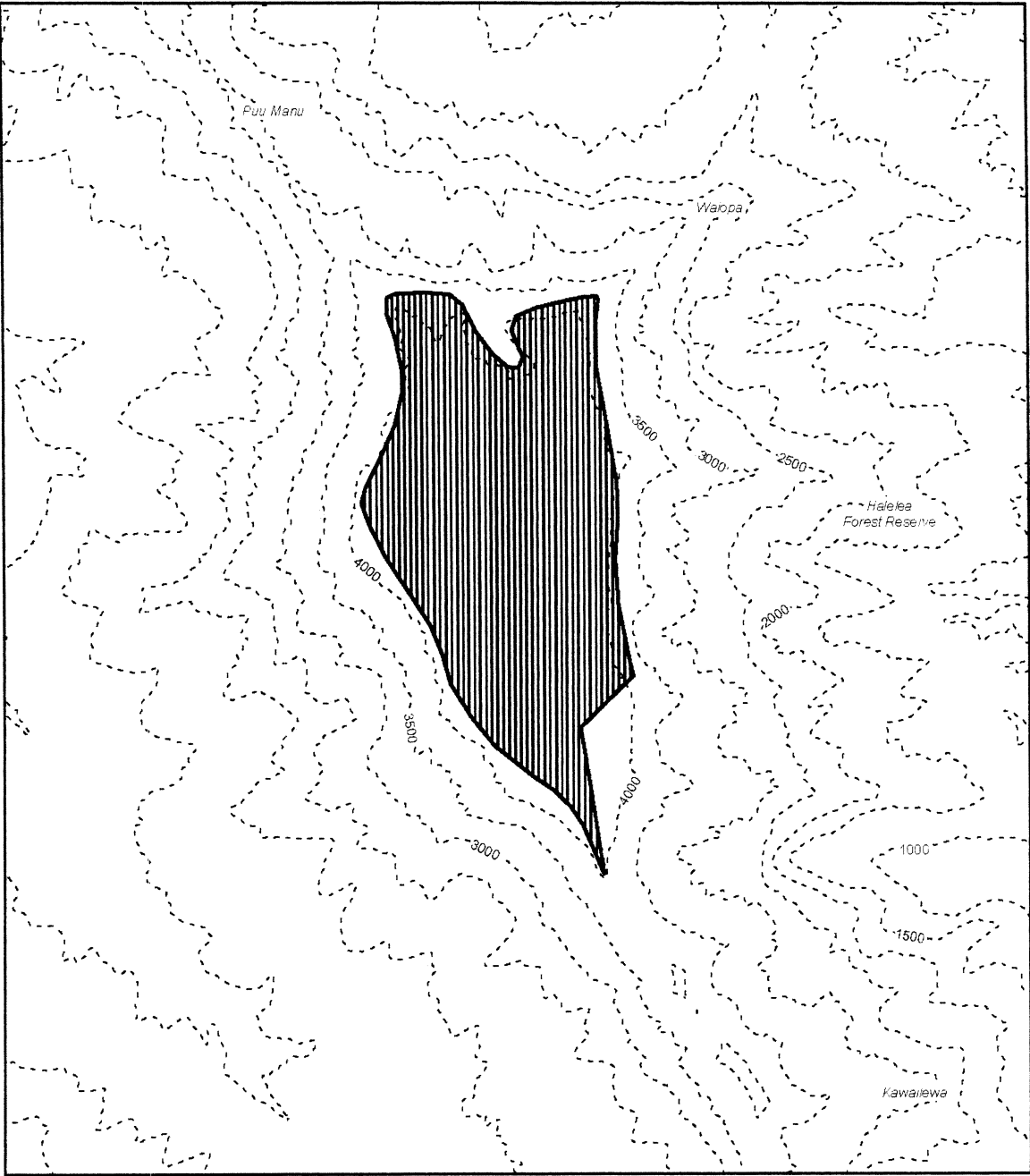
(i) Unit 6—Montane Wet consists of 413.5 ac (167.3 ha) and includes land bounded by the following UTM Zone 4, NAD83 coordinates (E, N): 448516, 2447525; 447976, 2448470; 448042, 2448338; 448133, 2448200; 448235, 2448042; 448834, 2447273; 448288, 2447915; 448412, 2447653; 448669, 2447406; 447943, 2448562; 448763, 2447342; 448059, 2449434; 448321,

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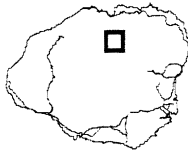
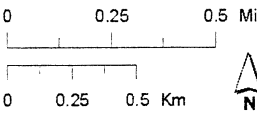
2449443; 448964, 2449425; 448952, 2449316; 448954, 2449143; 448881, 2447609; 448987, 2448959; 448980, 2446980; 448979, 2446983; 448577, 2449143; 448980, 2446982; 448981, 2446981; 449105, 2447827; 449087, 2447916; 449044, 2448132; 449032, 2448326; 449045, 2448506; 449040, 2448659; 449012, 2448822.

(ii) Map of Unit 6—Montane Wet for Akekee (*Loxops caeruleirostris*) follows:

Loxops caeruleirostris
Unit 6 - Montane Wet



 *Loxops caeruleirostris* - Unit 6 - Montane Wet
 Elevation (500-foot contours)



Akikiki (*Oreomystis bairdi*)

(1) Critical habitat units are depicted for Kauai County, Hawaii, on the map below.

(2) Primary constituent elements.

(i) In units 1, 2, and 3, the primary constituent elements of critical habitat for Akikiki (*Oreomystis bairdi*) are:

(A) Elevation: 3,000 to 5,243 ft (914 to 1,598 m).

(B) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).

(C) Substrate: Weathered aa lava flows, rocky mucks, thin silty loams, deep volcanic ash soils.

(D) Canopy: *Acacia*, *Metrosideros*, *Psychotria*, *Tetraplasandra*, *Zanthoxylum*.

(E) Subcanopy: *Cheirodendron*, *Coprosma*, *Kadua*, *Ilex*, *Myoporum*, *Myrsine*.

(F) Understory: *Bidens*, *Dryopteris*, *Leptecophylla*, *Poa*, *Scaevola*, *Sophora*.

(G) Arthropod prey.

(ii) In units 4, 5, and 6, the primary constituent elements of critical habitat for Akikiki (*Oreomystis bairdi*) are:

(A) Elevation: 3,000 to 5,243 ft (914 to 1,598 m).

(B) Annual precipitation: Greater than 75 inches (190 centimeters).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia*, *Charpentiera*, *Cheirodendron*, *Metrosideros*.

(E) Subcanopy: *Broussaisia*, *Cibotium*, *Eurya*, *Ilex*, *Myrsine*.

(F) Understory: Ferns, *Carex*, *Coprosma*, *Leptecophylla*, *Oreobolus*, *Rhynchospora*, *Vaccinium*.

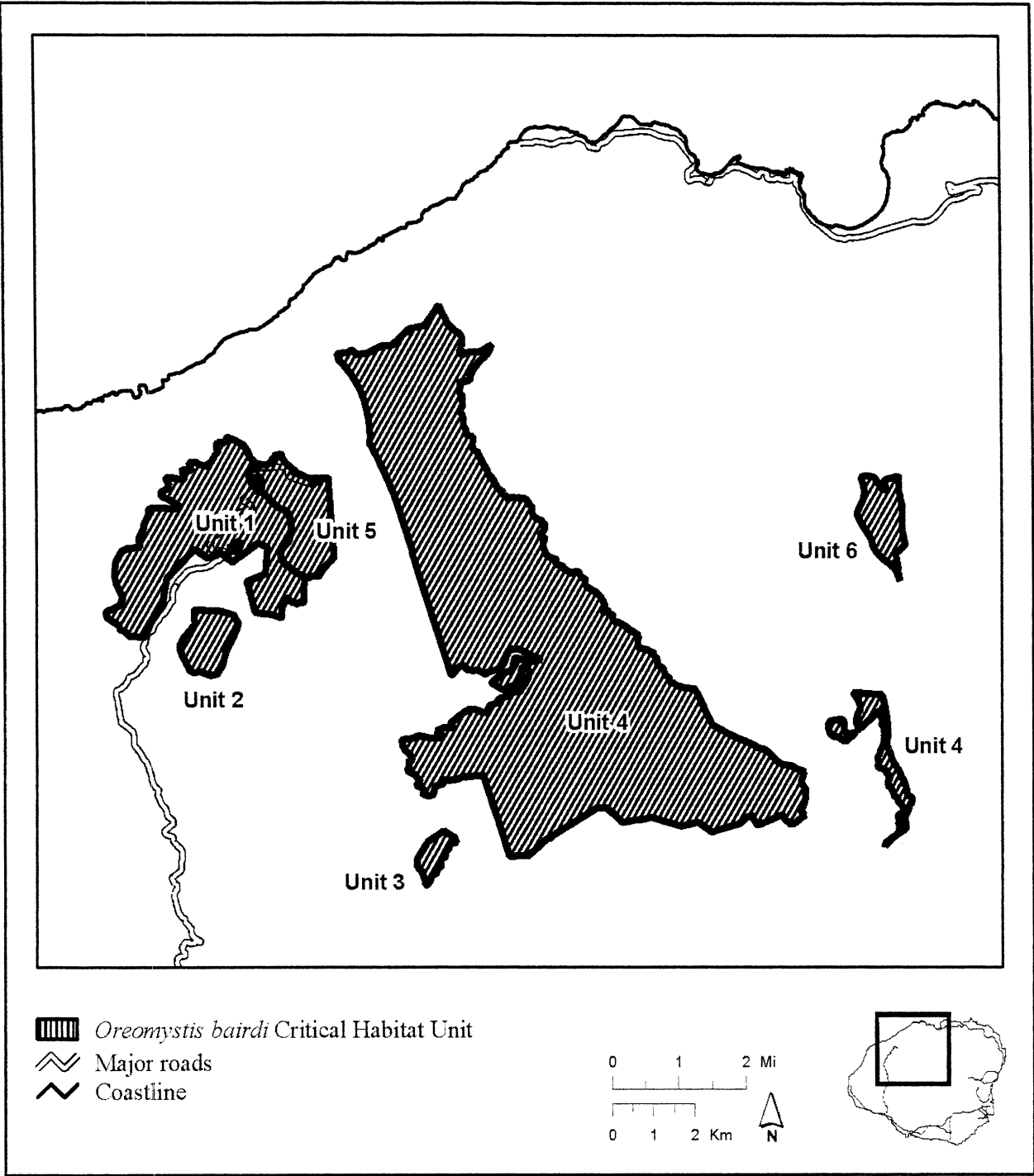
(G) Arthropod prey.

(3) Manmade features and structures, such as buildings, roads, railroads, airports, runways, other paved areas, lawns, and other urban landscaped areas, existing on the effective date of this rule do not contain one or more of the primary constituent elements.

(4) Critical habitat maps. Maps were created in GIS, with coordinates in UTM Zone 4, units in meters using North American datum of 1983 (NAD 83).

(5) Index map of critical habitat units for Akikiki (*Oreomystis bairdi*) follows:

Map 1
Oreomystis bairdi—Index Map



(6) Unit 1—Montane Mesic, Kauai County, Hawaii.

(i) Unit 1—Montane Mesic consists of 2,422.6 ac (980.4 ha) and includes land bounded by the following UTM Zone 4, NAD 83 coordinates (E,N): 430107, 2447429; 430242, 2447664; 430073, 2447126; 430793, 2448310; 430124, 2446907; 430393, 2447748; 430690, 2447765; 430671, 2447997; 430764, 2448188; 430886, 2448507; 430903, 2448664; 430985, 2448705; 431560, 2448675; 431414, 2448890; 430291, 2446570; 431058, 2446300; 431200, 2449070; 431362, 2449169; 431171, 2448699; 430854, 2445930; 432530, 2450196; 431391, 2449273; 431323, 2447013; 431211, 2446394; 431101, 2446447; 431112, 2446394; 431069, 2446331; 431007, 2446203; 430944, 2446145; 430902, 2445976; 430191, 2446386; 430826, 2445805; 430857, 2445727; 430824, 2445631; 430442, 2445640; 430323, 2445779; 430204, 2445809; 430191, 2445898; 429898, 2446100; 429871, 2446234; 430939, 2446061; 432796, 2450365; 432504, 2449961; 432579, 2450036; 432552, 2450080; 432551, 2450083; 432001, 2447726; 432534, 2450174; 431629, 2448739; 432565, 2450262; 432531, 2450116; 432740, 2450249; 432441,

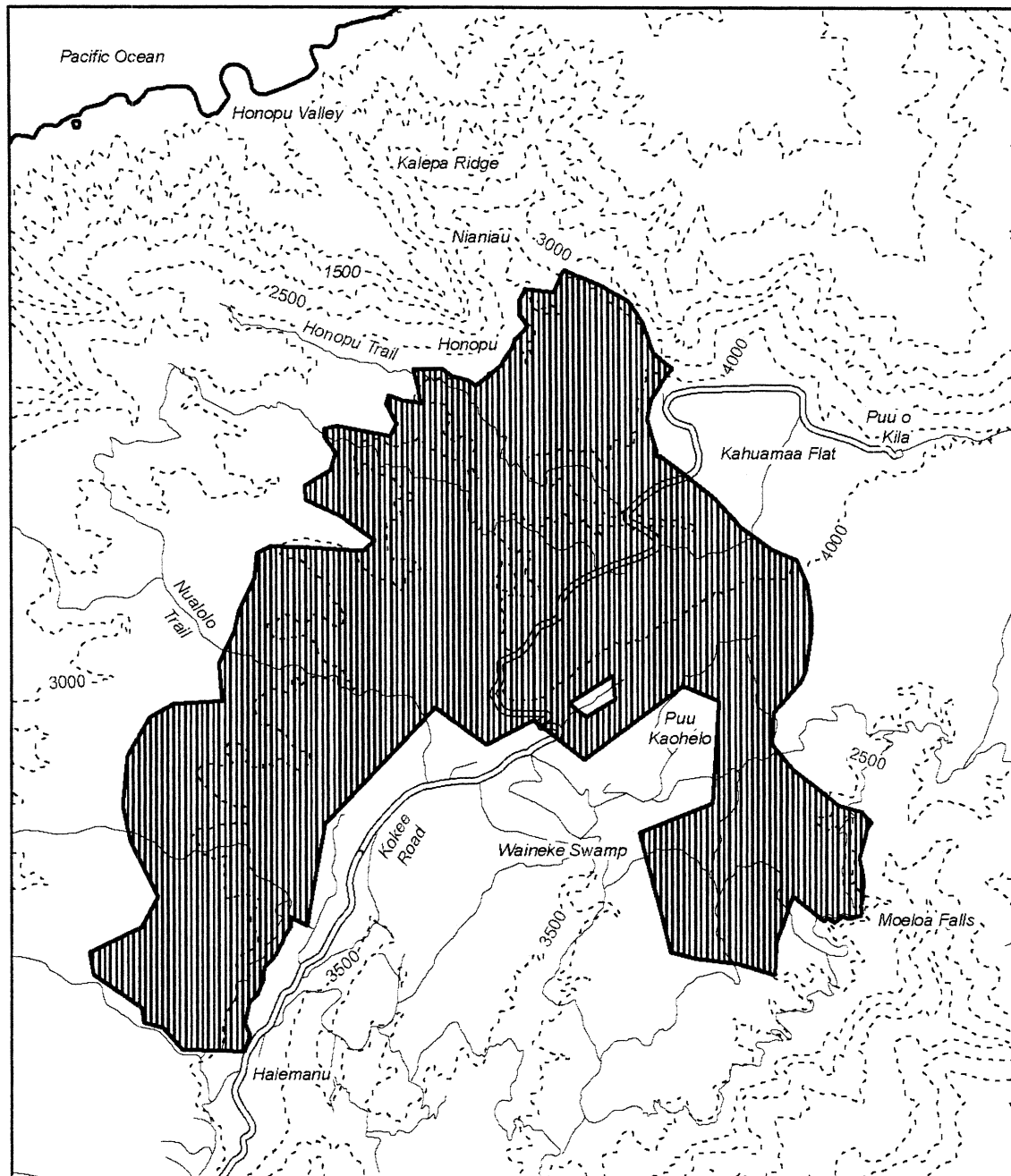
2449848; 432808, 2450383; 432882, 2450351; 432904, 2450341; 432827, 2447751; 432932, 2447668; 433014, 2447717; 433109, 2447775; 433094, 2447922; 432560, 2450267; 431875, 2449780; 431322, 2449418; 431403, 2449436; 431727, 2449372; 431769, 2449447; 431705, 2449569; 431720, 2449620; 431805, 2449591; 431919, 2449578; 432498, 2449952; 431904, 2449665; 432486, 2449909; 432046, 2449781; 432052, 2449783; 432113, 2449740; 432217, 2449712; 432251, 2449685; 432259, 2449679; 432344, 2449744; 432419, 2449806; 431322, 2449372; 431905, 2449660; 434486, 2447126; 434073, 2448685; 434228, 2448620; 434292, 2448479; 434318, 2448298; 434279, 2447951; 434163, 2447783; 434086, 2447693; 434073, 2447500; 434623, 2446526; 434357, 2447229; 433545, 2449136; 434627, 2447088; 434686, 2447020; 434682, 2447017; 434657, 2446977; 434652, 2446933; 434612, 2446807; 434641, 2446663; 434631, 2446528; 434202, 2447345; 433399, 2449709; 431205, 2448983; 432073, 2447674; 433046, 2450280; 433196, 2450196; 433287, 2450063; 433353, 2449880; 433467, 2449787; 433429, 2449741; 433880,

2448827; 433407, 2449708; 433725, 2448994; 433401, 2449697; 433339, 2449600; 433313, 2449484; 433339, 2449381; 433368, 2449293; 433368, 2449292; 433369, 2449255; 433389, 2449256; 434254, 2447886; 433408, 2449708; 433527, 2447856; 434086, 2446095; 433862, 2446165; 433606, 2446193; 433449, 2446235; 433397, 2446440; 433257, 2446958; 433577, 2447086; 433706, 2447138; 434090, 2446098; 433562, 2447841; 432639, 2447624; 432918, 2447407; 432672, 2447598; 434620, 2446512; 432609, 2447647; 434318, 2448182; 432195, 2447587; 432136, 2447629; 432133, 2447631; 432081, 2447668; 433746, 2447766; 434500, 2446448; 432320, 2447497; 434103, 2446297; 434618, 2446459; 434582, 2446443; 434558, 2446439; 434514, 2446449; 434471, 2446422; 434457, 2446416; 434447, 2446420; 434392, 2446421; 434423, 2446441; 434416, 2446441; 434625, 2446467; 434201, 2446573; 434403, 2446435; 434628, 2446479; 434400, 2446429; 434434, 2446428; 434386, 2446429; 434533, 2446441.

(ii) Map of Unit 1—Montane Mesic for Akikiki (*Oreomystis bairdi*) follows:

BILLING CODE 4310-55-S

Oreomystis bairdi
Unit 1 - Montane Mesic



 *Oreomystis bairdi* - Unit 1 - Montane Mesic

 Major roads

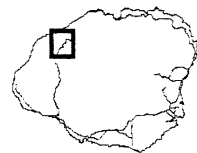
 Secondary roads and trails

 Elevation (500-foot contours)

 Coastline

0 0.25 0.5 Mi

0 0.25 0.5 Km



(7) Unit 2—Montane Mesic, Kauai County, Hawaii.

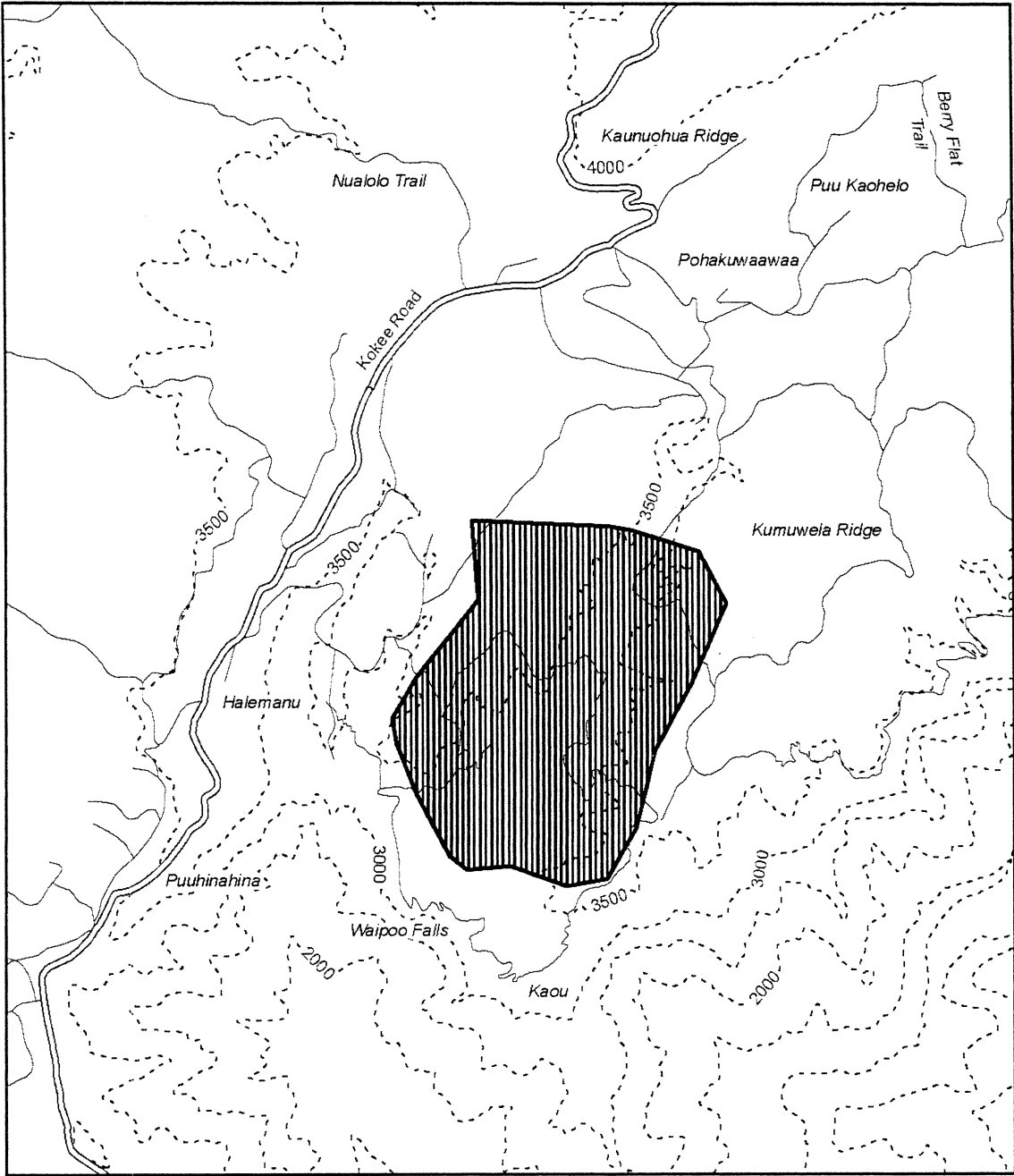
(i) Unit 2—Montane Mesic consists of 375.6 ac (152.0 ha) and includes land bounded by the following UTM Zone 4, NAD 83 coordinates (E, N): 431975,

2446280; 432559, 2446255; 432659, 2446240; 432948, 2446150; 433067, 2445928; 432758, 2445304; 432001, 2445941; 431873, 2444849; 432912, 2445580; 432674, 2444970; 431626, 2445435; 431730, 2445114; 431950,

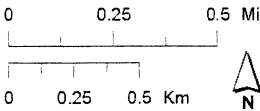
2444792; 432135, 2444807; 432377, 2444722; 432548, 2444752; 431645, 2445326; 431736, 2445617.

(ii) Map of Unit 2—Montane Mesic for Akikiki (*Oreomystis bairdi*) follows:

Oreomystis bairdi
Unit 2 - Montane Mesic



- Oreomystis bairdi* - Unit 2 - Montane Mesic
- Major roads
- Secondary roads and trails
- Elevation (500-foot contours)



(8) Unit 3—Montane Mesic, Kauai County, Hawaii.

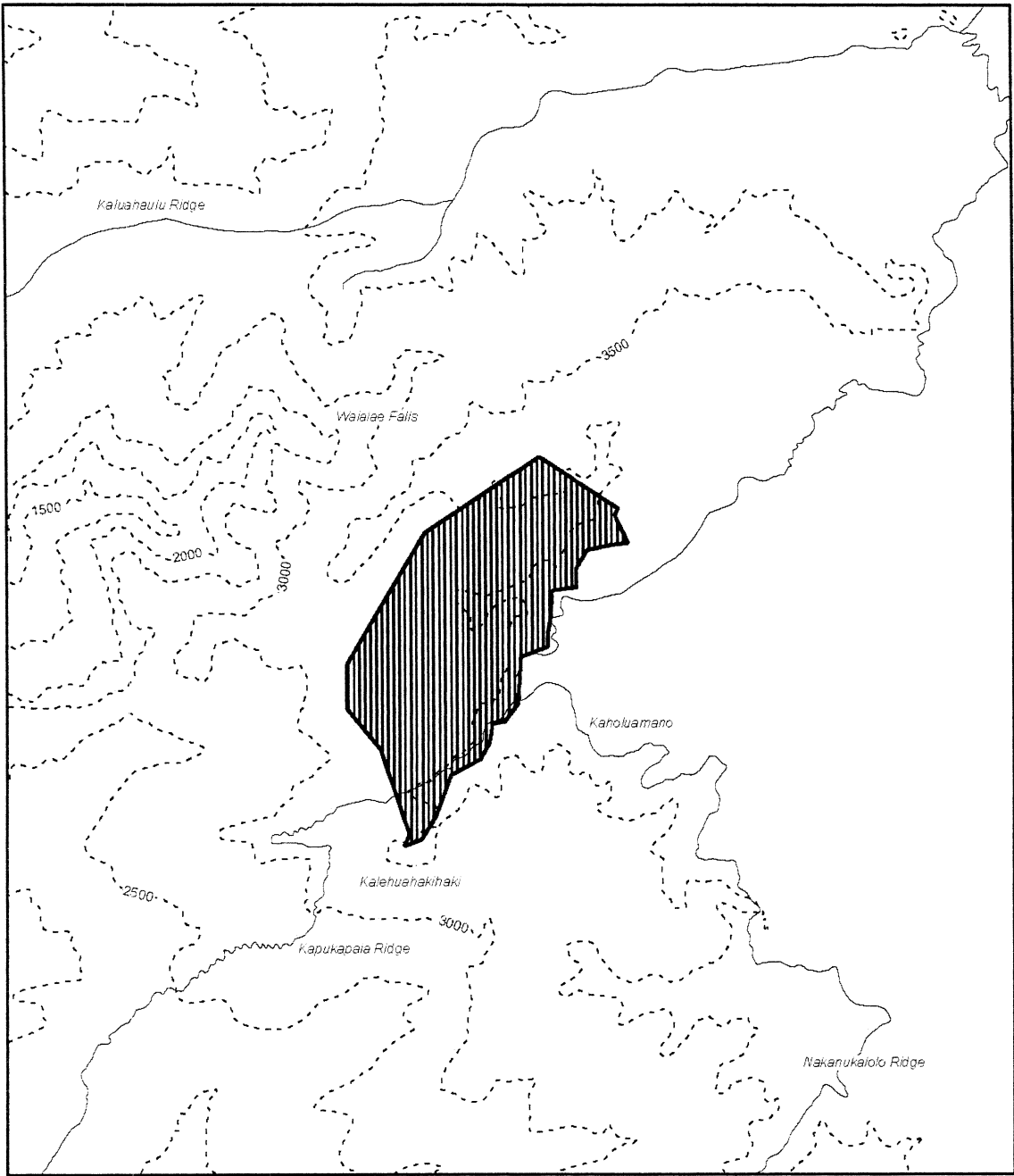
(i) Unit 3—Montane Mesic consists of 138.5 ac (56.0 ha) and includes land bounded by the following UTM Zone 4, NAD 83 coordinates (E, N): 438012, 2440389; 438014, 2440437; 438023, 2440484; 438111, 2440652; 438112,

2440588; 437817, 2440071; 438028, 2440577; 437922, 2440355; 437336, 2440335; 437912, 2440201; 437827, 2440132; 437785, 2440013; 437687, 2439960; 437636, 2439819; 437870, 2440140; 437545, 2439761; 438149, 2440714; 437529, 2439721; 437987, 2441027; 437450, 2440047; 437335,

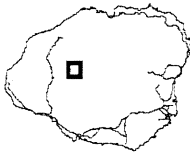
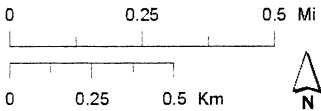
2440180; 437335, 2440329; 438159, 2440914; 438249, 2440857; 438253, 2440854; 438243, 2440830; 438287, 2440738; 437602, 2440771; 438227, 2440730; 437586, 2439743.

(ii) Map of Unit 3—Montane Mesic for Akikiki (*Oreomystis bairdi*) follows:

Oreomystis bairdi
Unit 3 - Montane Mesic



-  *Oreomystis bairdi* - Unit 3 - Montane Mesic
-  Secondary roads and trails
-  Elevation (500-foot contours)



(9) Unit 4—Montane Wet, Kauai County, Hawaii.

(i) Unit 4—Montane Wet consists of 13,055.0 ac (5,283.2 ha) and includes land bounded by the following UTM Zone 4, NAD 83 coordinates (E, N):

448638, 2440764; 448601, 2440679;
448606, 2440704; 448612, 2440722;
448615, 2440731; 448619, 2440740;
448630, 2440759; 448650, 2440769;
448600, 2440668; 448622, 2440749;
448599, 2440647; 448601, 2440652;
448678, 2440741; 448777, 2440842;
448663, 2440773; 449006, 2441012;
448764, 2440857; 449068, 2441051;
449121, 2441114; 449121, 2441114;
448887, 2440934; 448811, 2440896;
448954, 2441097; 448943, 2441063;
448943, 2441053; 448943, 2441044;
448941, 2441024; 448940, 2441006;
448918, 2440982; 448877, 2440939;
448861, 2440927; 448735, 2440829;
448837, 2440912; 448678, 2440780;
448802, 2440889; 448788, 2440878;
449115, 2442038; 448745, 2440841;
449111, 2441196; 448727, 2440820;
448720, 2440813; 448711, 2440806;
448691, 2440790; 448841, 2440914;
447374, 2443275; 449244, 2441819;
447623, 2443445; 447616, 2443588;
447603, 2443646; 447556, 2443686;
447325, 2443651; 447295, 2443639;
447247, 2443586; 448634, 2443800;
447287, 2443339; 448657, 2443629;
447481, 2443262; 447636, 2443160;
447645, 2443143; 447645, 2443146;
447894, 2443371; 447865, 2443358;
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448948, 2441084; 447249, 2443451;
448917, 2442504; 449106, 2441435;
449173, 2441529; 449201, 2441638;
449249, 2441697; 449275, 2441773;
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449064, 2442221; 448614, 2443950;
448983, 2442384; 449078, 2441297;
448880, 2442563; 448861, 2442593;
448805, 2442677; 448765, 2442787;
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444423, 2443638; 444334, 2443811;
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443722, 2444464; 444016, 2444444;
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440110, 2440524; 441650, 2441573;
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440216, 2445150; 440347, 2445106;
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440124, 2445056; 439994, 2445245;
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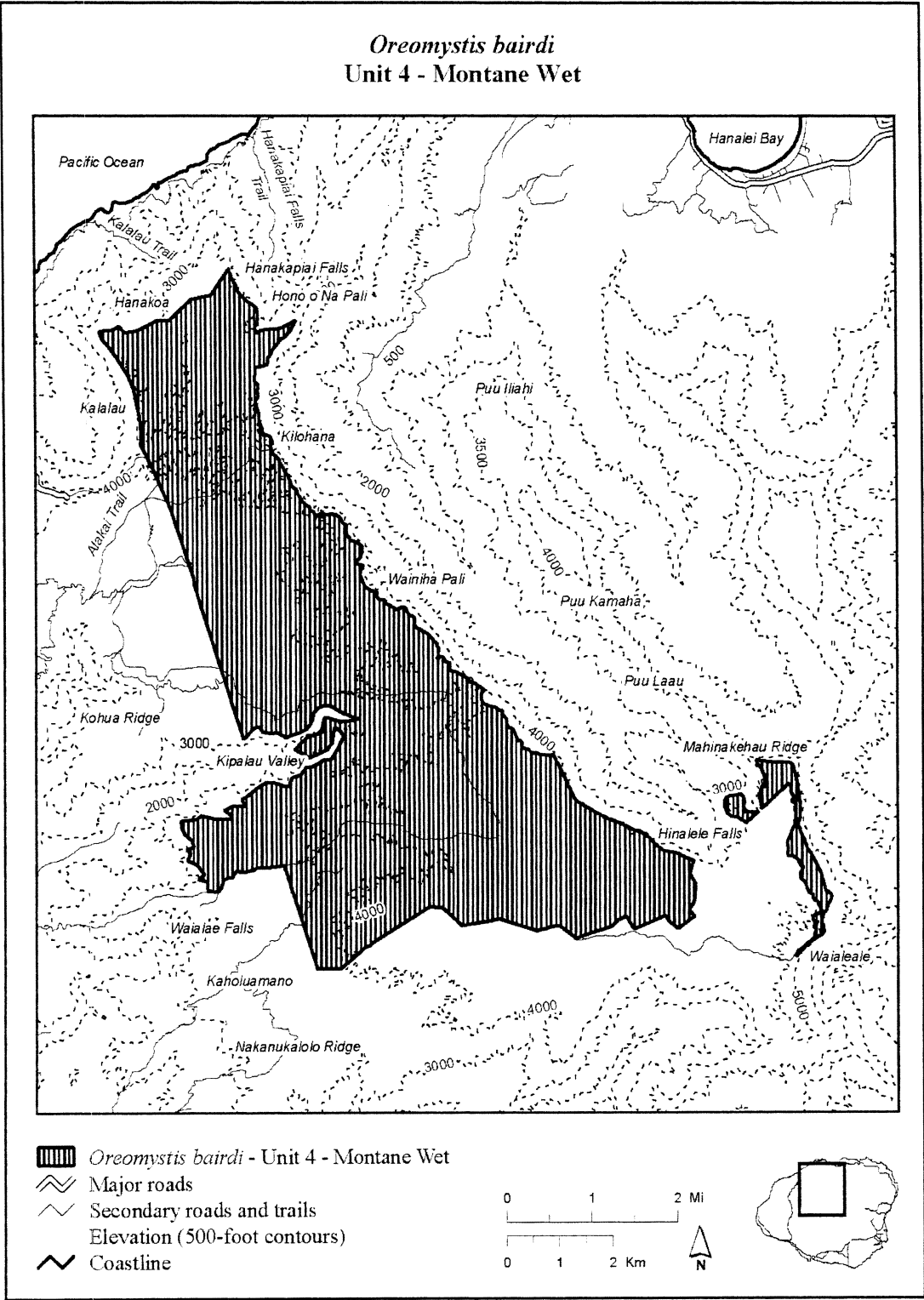
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(ii) Map of Unit 4—Montane Wet for Akikiki (*Oreomystis bairdi*) follows:

BILLING CODE 4310-55-S



(10) Unit 5—Montane Wet, Kauai County, Hawaii.

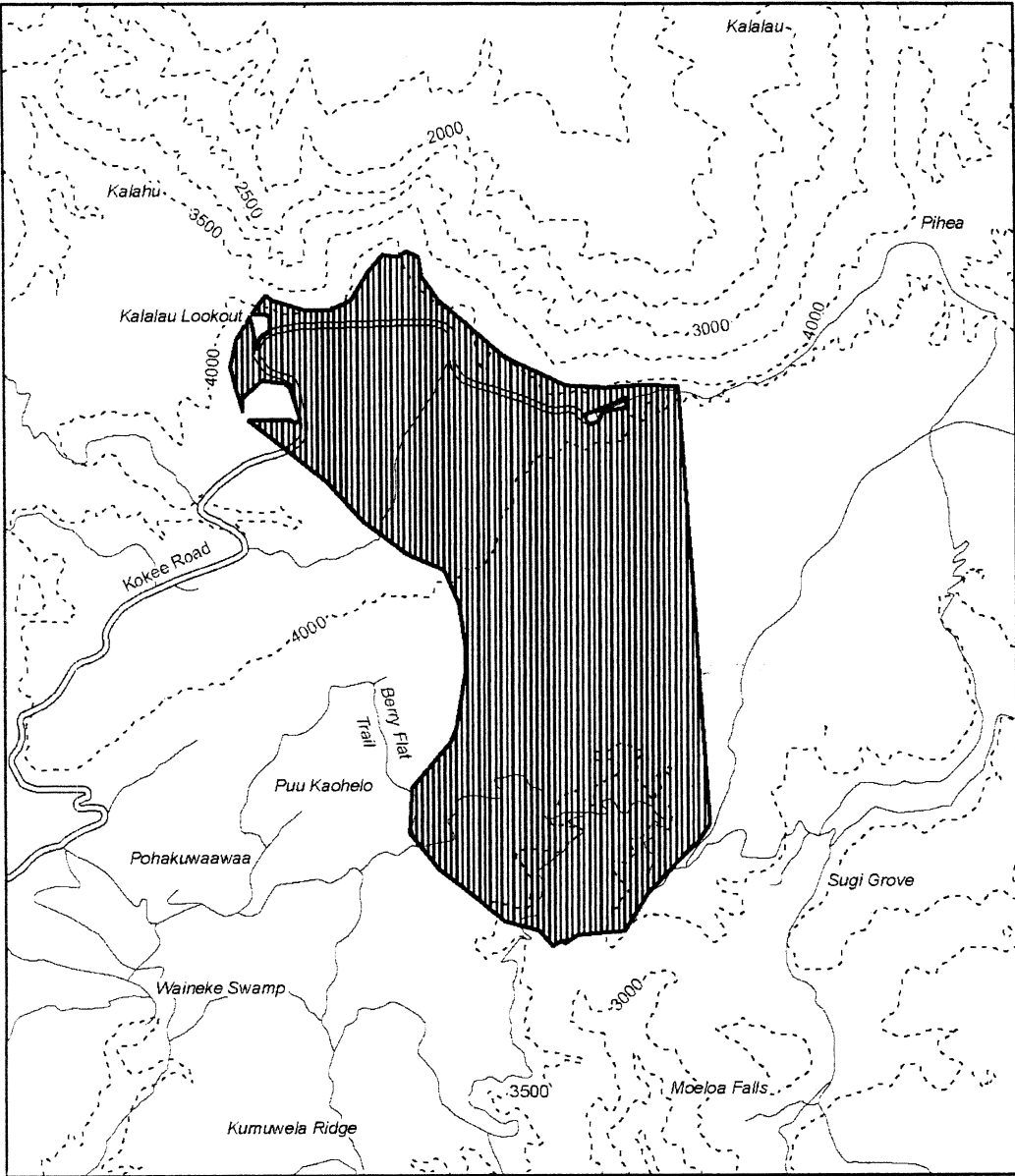
(i) Unit 5—Montane Wet consists of 789.9 ac (319.7 ha) and includes land bounded by the following UTM Zone 4, NAD 83 coordinates (E, N): 433436, 2449707; 433445, 2449707; 433444, 2449707; 433443, 2449707; 433458, 2449707; 433436, 2449707; 433426, 2449707; 433408, 2449708; 433429, 2449741; 433493, 2449765; 433633, 2449724; 433742, 2449724; 433467, 2449787; 433460, 2449707; 433468, 2449706; 433484, 2449694; 433414, 2449628; 433461, 2449623; 433457, 2449622; 433339, 2449600; 433440, 2449604; 433437, 2449592; 433426, 2449556; 433419, 2449599; 433831, 2449767; 434991, 2449344; 433401, 2449697; 433480, 2449629; 434938, 2449321; 433313, 2449484; 433455, 2449620; 434842, 2449253; 434839, 2449258; 434834, 2449277; 434833,

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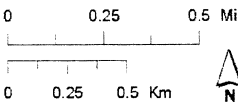
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(ii) Map of Unit 5—Montane Wet for Akikiki (*Oreomystis bairdi*) follows:

Oreomystis bairdi
Unit 5 - Montane Wet



- Oreomystis bairdi* - Unit 5 - Montane Wet
- Major roads
- Secondary roads and trails
- Elevation (500-foot contours)



(11) Unit 6—Montane Wet, Kauai County, Hawaii.

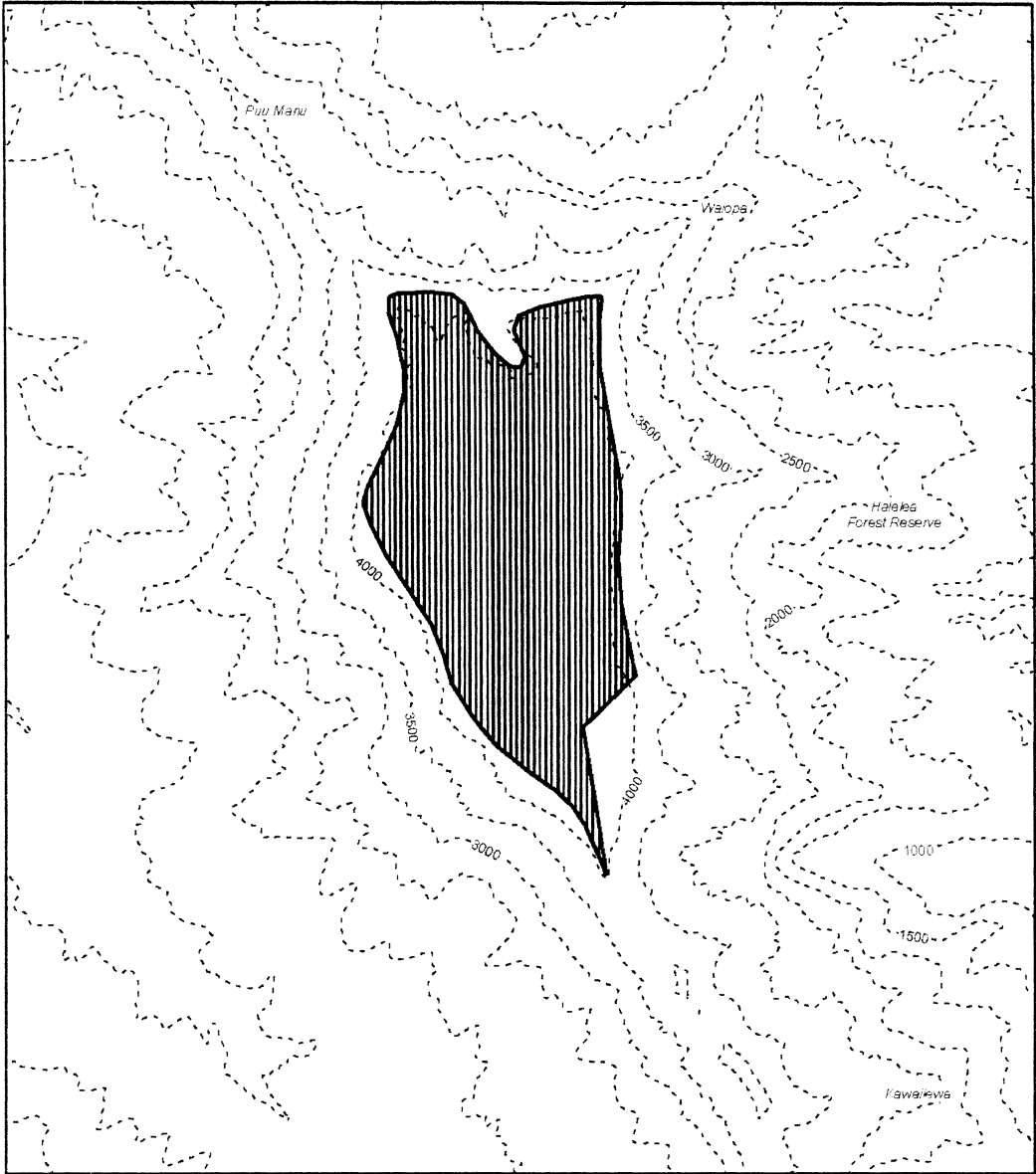
(i) Unit 6—Montane Wet consists of 413.5 ac (167.3 ha) and includes land bounded by the following UTM Zone 4, NAD 83 coordinates (E, N): 448516, 2447525; 447976, 2448470; 448042, 2448338; 448133, 2448200; 448235, 2448042; 448834, 2447273; 448288, 2447915; 448412, 2447653; 448669, 2447406; 447943, 2448562; 448763, 2447342; 448059, 2449434; 448321,

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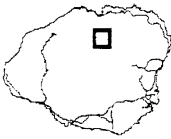
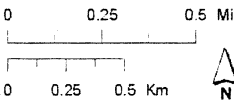
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(ii) Map of Unit 6—Montane Wet for Akikiki (*Oreomystis bairdi*) follows:

Oreomystis bairdi
Unit 6 - Montane Wet



 *Oreomystis bairdi* - Unit 6 - Montane Wet
 Elevation (500-foot contours)



* * * * *

(i) Insects.

* * * * *

Hawaiian picture-wing fly (*Drosophila sharpi*)

(1) Critical habitat units are depicted for Kauai County, Hawaii, on the maps below.

(2) Primary constituent elements.

(i) In units 1, 2, and 3, the primary constituent elements of critical habitat for Hawaiian picture-wing fly (*Drosophila sharpi*) are:

(A) Elevation: 3,000 to 5,243 ft (914 to 1,598 m).

(B) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).

(C) Substrate: Weathered aa lava flows, rocky mucks, thin silty loams, deep volcanic ash soils.

(D) Canopy: *Acacia*, *Metrosideros*, *Psychotria*, *Tetraplasandra*, *Zanthoxylum*.

(E) Subcanopy: *Cheirodendron*, *Coprosma*, *Kadua*, *Ilex*, *Myoporum*, *Myrsine*.

(F) Understory: *Bidens*, *Dryopteris*, *Leptecophylla*, *Poa*, *Scaevola*, *Sophora*.

(G) Larval host plants (*Cheirodendron* sp., *Tetraplasandra* sp.).

(ii) In units 4, 5, and 6, the primary constituent elements of critical habitat for Hawaiian picture-wing fly (*Drosophila sharpi*) are:

(A) Elevation: 3,000 to 5,243 ft (914 to 1,598 m).

(B) Annual precipitation: Greater than 75 inches (190 centimeters).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia*, *Charpentiera*, *Cheirodendron*, *Metrosideros*.

(E) Subcanopy: *Broussaisia*, *Cibotium*, *Eurya*, *Ilex*, *Myrsine*.

(F) Understory: Ferns, *Carex*, *Coprosma*, *Leptecophylla*, *Oreobolus*, *Rhynchospora*, *Vaccinium*.

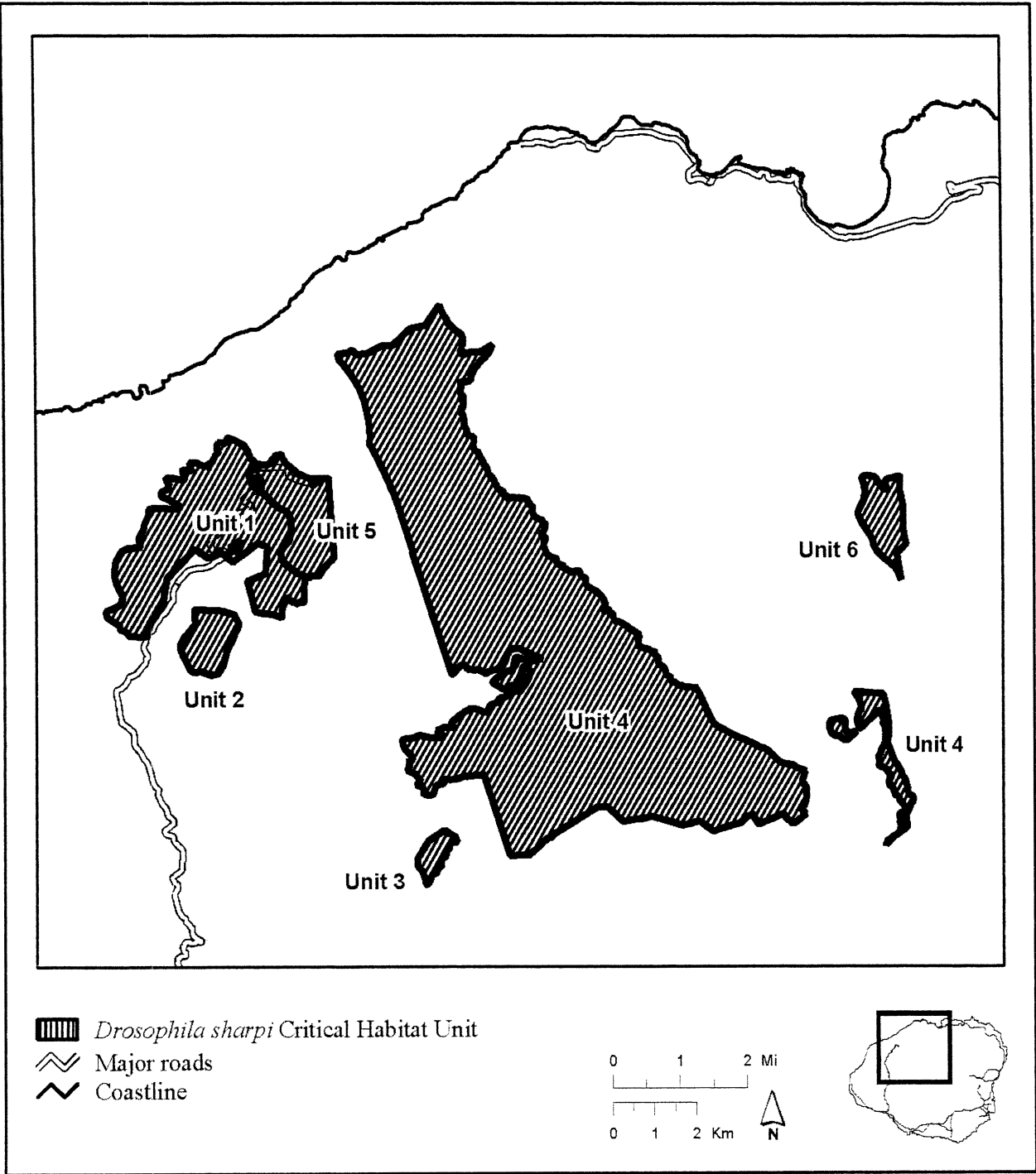
(G) Larval host plants (*Cheirodendron* sp., *Tetraplasandra* sp.).

(3) Manmade features and structures, such as buildings, roads, railroads, airports, runways, other paved areas, lawns, and other urban landscaped areas, existing on the effective date of this rule do not contain one or more of the primary constituent elements.

(4) Critical habitat maps. Maps were created in GIS, with coordinates in UTM Zone 4 with units in meters using North American datum of 1983 (NAD 83).

(5) Index map of critical habitat units for Hawaiian picture-wing fly (*Drosophila sharpi*) follows:

Map 1
Drosophila sharpi—Index Map



(6) Unit 1—Montane Mesic, Kauai County, Hawaii.

(i) Unit 1—Montane Mesic consists of 2,422.6 ac (980.4 ha) and includes land bounded by the following UTM Zone 4, NAD83 coordinates (E, N): 430107, 2447429; 430242, 2447664; 430073, 2447126; 430793, 2448310; 430124, 2446907; 430393, 2447748; 430690, 2447765; 430671, 2447997; 430764, 2448188; 430886, 2448507; 430903, 2448664; 430985, 2448705; 431560, 2448675; 431414, 2448890; 430291, 2446570; 431058, 2446300; 431200, 2449070; 431362, 2449169; 431171, 2448699; 430854, 2445930; 432530, 2450196; 431391, 2449273; 431323, 2447013; 431211, 2446394; 431101, 2446447; 431112, 2446394; 431069, 2446331; 431007, 2446203; 430944, 2446145; 430902, 2445976; 430191, 2446386; 430826, 2445805; 430857, 2445727; 430824, 2445631; 430442, 2445640; 430323, 2445779; 430204, 2445809; 430191, 2445898; 429898, 2446100; 429871, 2446234; 430939, 2446061; 432796, 2450365; 432504, 2449961; 432579, 2450036; 432552, 2450080; 432551, 2450083; 432001, 2447726; 432534, 2450174; 431629, 2448739; 432565, 2450262; 432531, 2450116; 432740, 2450249; 432441,

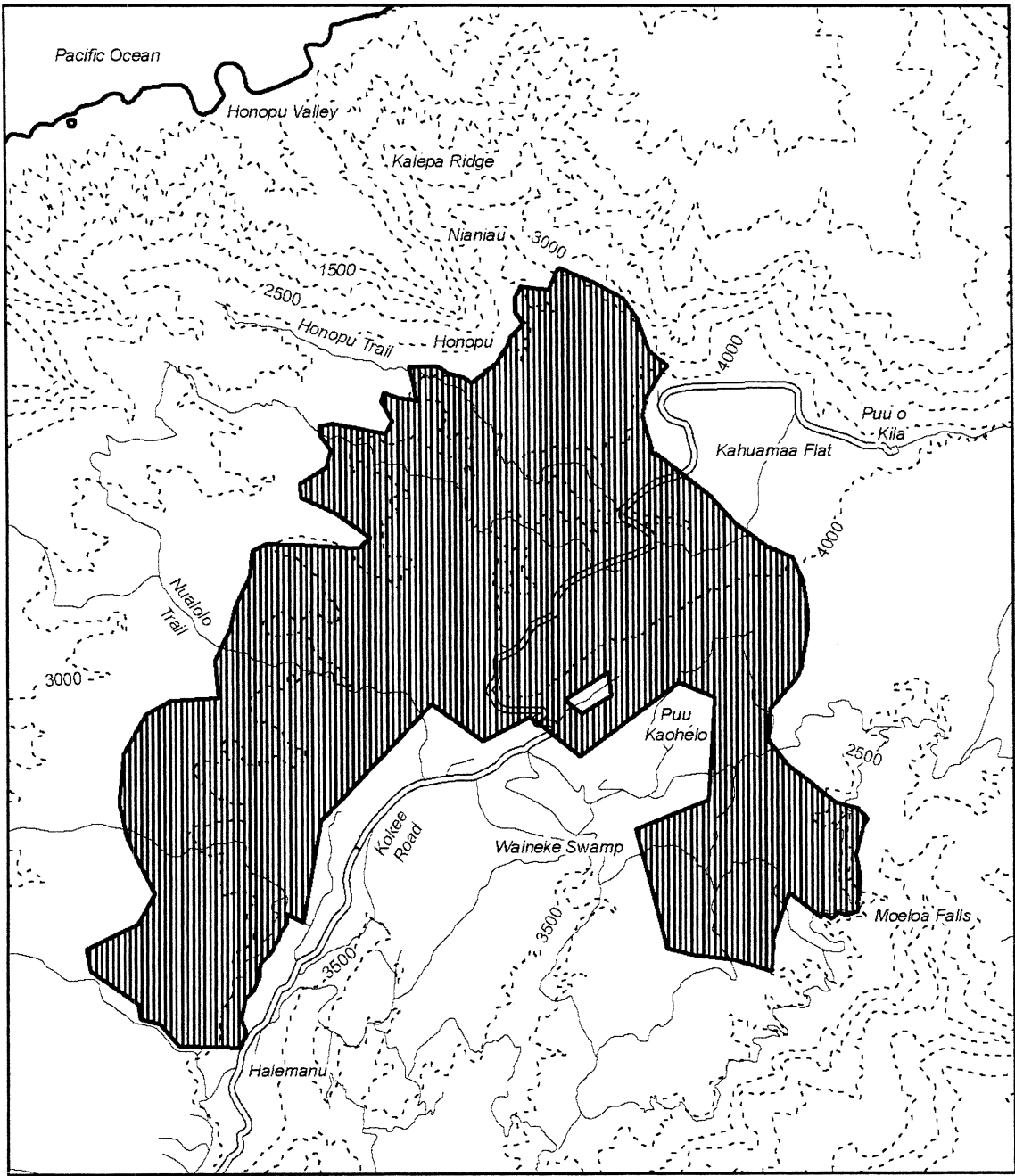
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2448994; 433401, 2449697; 433339, 2449600; 433313, 2449484; 433339, 2449381; 433368, 2449293; 433368, 2449292; 433369, 2449255; 433389, 2449256; 434254, 2447886; 433408, 2449708; 433527, 2447856; 434086, 2446095; 433862, 2446165; 433606, 2446193; 433449, 2446235; 433397, 2446440; 433257, 2446958; 433577, 2447086; 433706, 2447138; 434090, 2446098; 433562, 2447841; 432639, 2447624; 432918, 2447407; 432672, 2447598; 434620, 2446512; 432609, 2447647; 434318, 2448182; 432195, 2447587; 432136, 2447629; 432133, 2447631; 432081, 2447668; 433746, 2447766; 434500, 2446448; 432320, 2447497; 434103, 2446297; 434618, 2446459; 434582, 2446443; 434558, 2446439; 434514, 2446449; 434471, 2446422; 434457, 2446416; 434447, 2446420; 434392, 2446421; 434423, 2446441; 434416, 2446441; 434625, 2446467; 434201, 2446573; 434403, 2446435; 434628, 2446479; 434400, 2446429; 434434, 2446428; 434386, 2446429; 434533, 2446441.

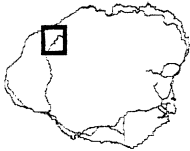
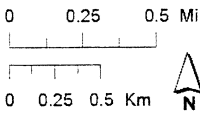
(ii) Map of Unit 1—Montane Mesic for Hawaiian picture-wing fly (*Drosophila sharpi*) follows:

BILLING CODE 4310-55-S

Drosophila sharpi
Unit 1 - Montane Mesic



-  *Drosophila sharpi* - Unit 1 - Montane Mesic
-  Major roads
-  Secondary roads and trails
-  Elevation (500-foot contours)
-  Coastline



(7) Unit 2—Montane Mesic, Kauai County, Hawaii.

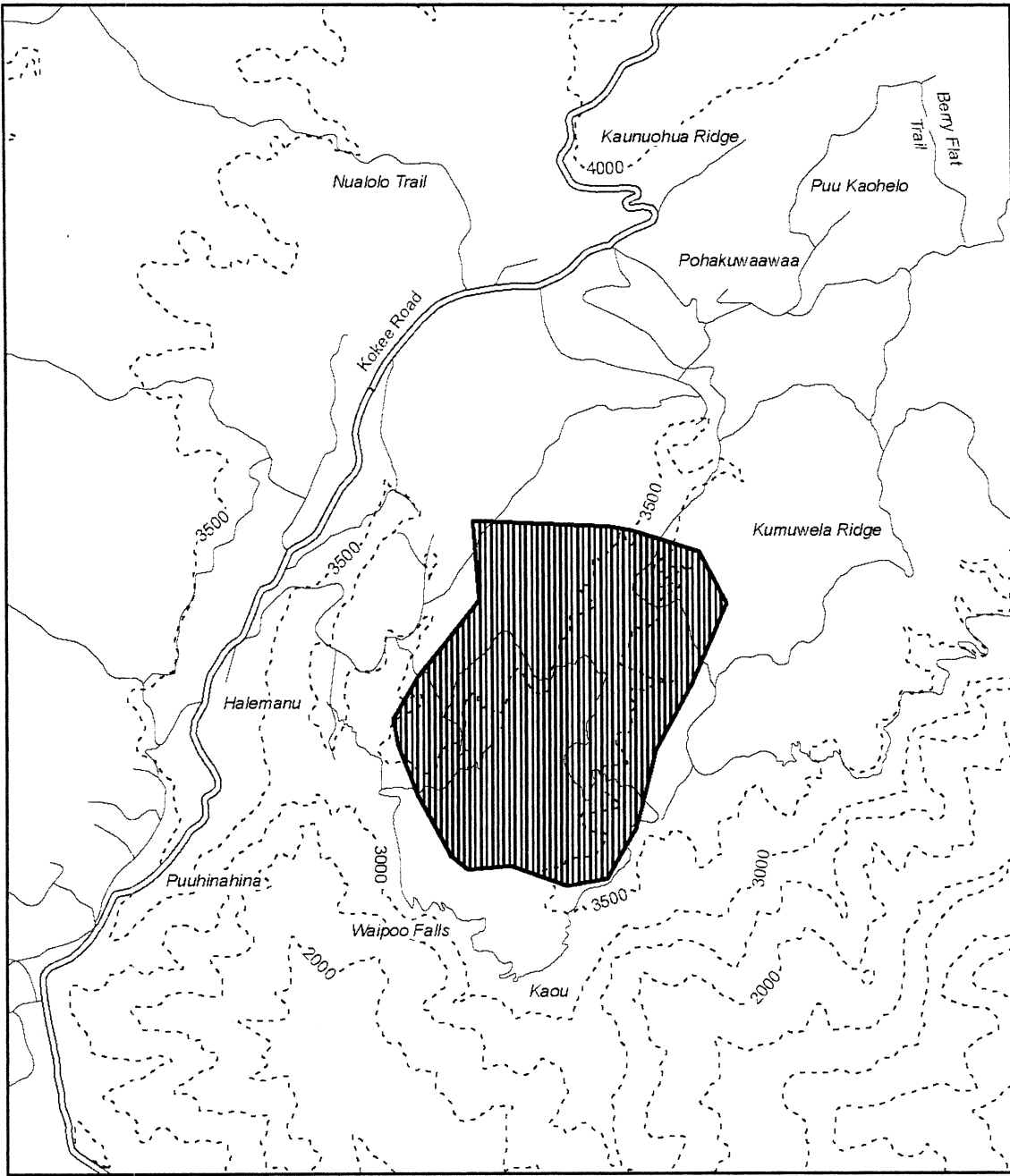
(i) Unit 2—Montane Mesic consists of 375.6 ac (152.0 ha) and includes land bounded by the following UTM Zone 4, NAD83 coordinates (E, N): 431975,

2446280; 432559, 2446255; 432659, 2446240; 432948, 2446150; 433067, 2445928; 432758, 2445304; 432001, 2445941; 431873, 2444849; 432912, 2445580; 432674, 2444970; 431626, 2445435; 431730, 2445114; 431950,

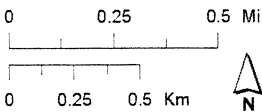
2444792; 432135, 2444807; 432377, 2444722; 432548, 2444752; 431645, 2445326; 431736, 2445617.

(ii) Map of Unit 2—Montane Mesic for Hawaiian picture-wing fly (*Drosophila sharpi*) follows:

Drosophila sharpi
Unit 2 - Montane Mesic



-  *Drosophila sharpi* - Unit 2 - Montane Mesic
-  Major roads
-  Secondary roads and trails
-  Elevation (500-foot contours)



(8) Unit 3—Montane Mesic, Kauai County, Hawaii.

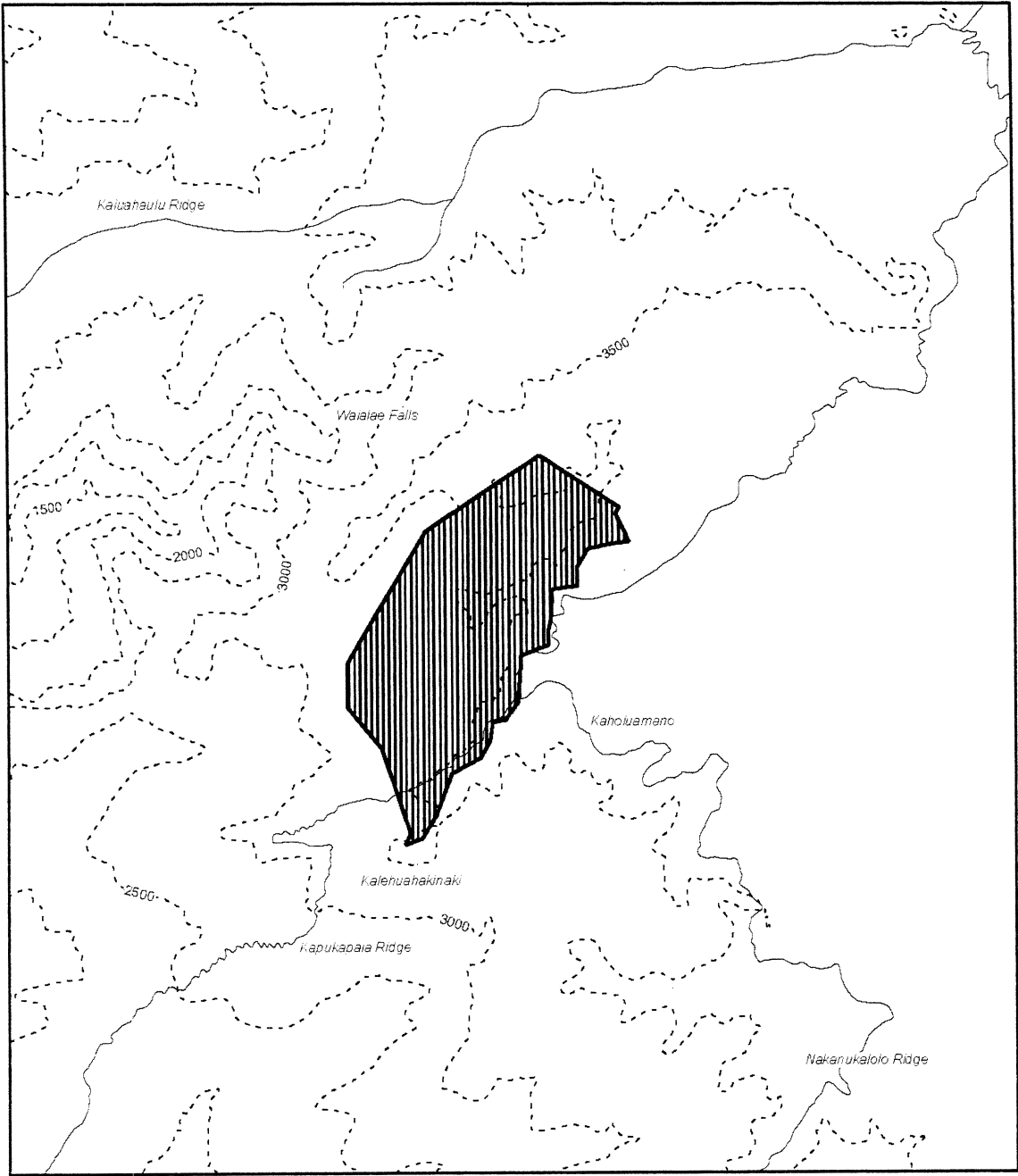
(i) Unit 3—Montane Mesic consists of 138.5 ac (56.0 ha) and includes land bounded by the following UTM Zone 4, NAD83 coordinates (E, N): 438012, 2440389; 438014, 2440437; 438023, 2440484; 438111, 2440652; 438112,

2440588; 437817, 2440071; 438028, 2440577; 437922, 2440355; 437336, 2440335; 437912, 2440201; 437827, 2440132; 437785, 2440013; 437687, 2439960; 437636, 2439819; 437870, 2440140; 437545, 2439761; 438149, 2440714; 437529, 2439721; 437987, 2441027; 437450, 2440047; 437335,

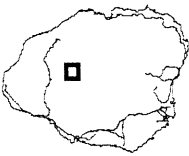
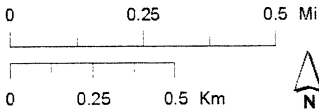
2440180; 437335, 2440329; 438159, 2440914; 438249, 2440857; 438253, 2440854; 438243, 2440830; 438287, 2440738; 437602, 2440771; 438227, 2440730; 437586, 2439743.

(ii) Map of Unit 3—Montane Mesic for Hawaiian picture-wing fly (*Drosophila sharpi*) follows:

Drosophila sharpi
Unit 3 - Montane Mesic



-  *Drosophila sharpi* - Unit 3 - Montane Mesic
-  Secondary roads and trails
-  Elevation (500-foot contours)



(9) Unit 4—Montane Wet, Kauai County, Hawaii.

(i) Unit 4—Montane Wet consists of 13,055.0 ac (5,283.2 ha) and includes land bounded by the following UTM Zone 4, NAD83 coordinates (E, N):

448638, 2440764; 448601, 2440679;
448606, 2440704; 448612, 2440722;
448615, 2440731; 448619, 2440740;
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448600, 2440668; 448622, 2440749;
448599, 2440647; 448601, 2440652;
448678, 2440741; 448777, 2440842;
448663, 2440773; 449006, 2441012;
448764, 2440857; 449068, 2441051;
449121, 2441114; 449121, 2441114;
448887, 2440934; 448811, 2440896;
448954, 2441097; 448943, 2441063;
448943, 2441053; 448943, 2441044;
448941, 2441024; 448940, 2441006;
448918, 2440982; 448877, 2440939;
448861, 2440927; 448735, 2440829;
448837, 2440912; 448678, 2440780;
448802, 2440889; 448788, 2440878;
449115, 2442038; 448745, 2440841;
449111, 2441196; 448727, 2440820;
448720, 2440813; 448711, 2440806;
448691, 2440790; 448841, 2440914;
447374, 2443275; 449244, 2441819;
447623, 2443445; 447616, 2443588;
447603, 2443646; 447556, 2443686;
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447247, 2443586; 448634, 2443800;
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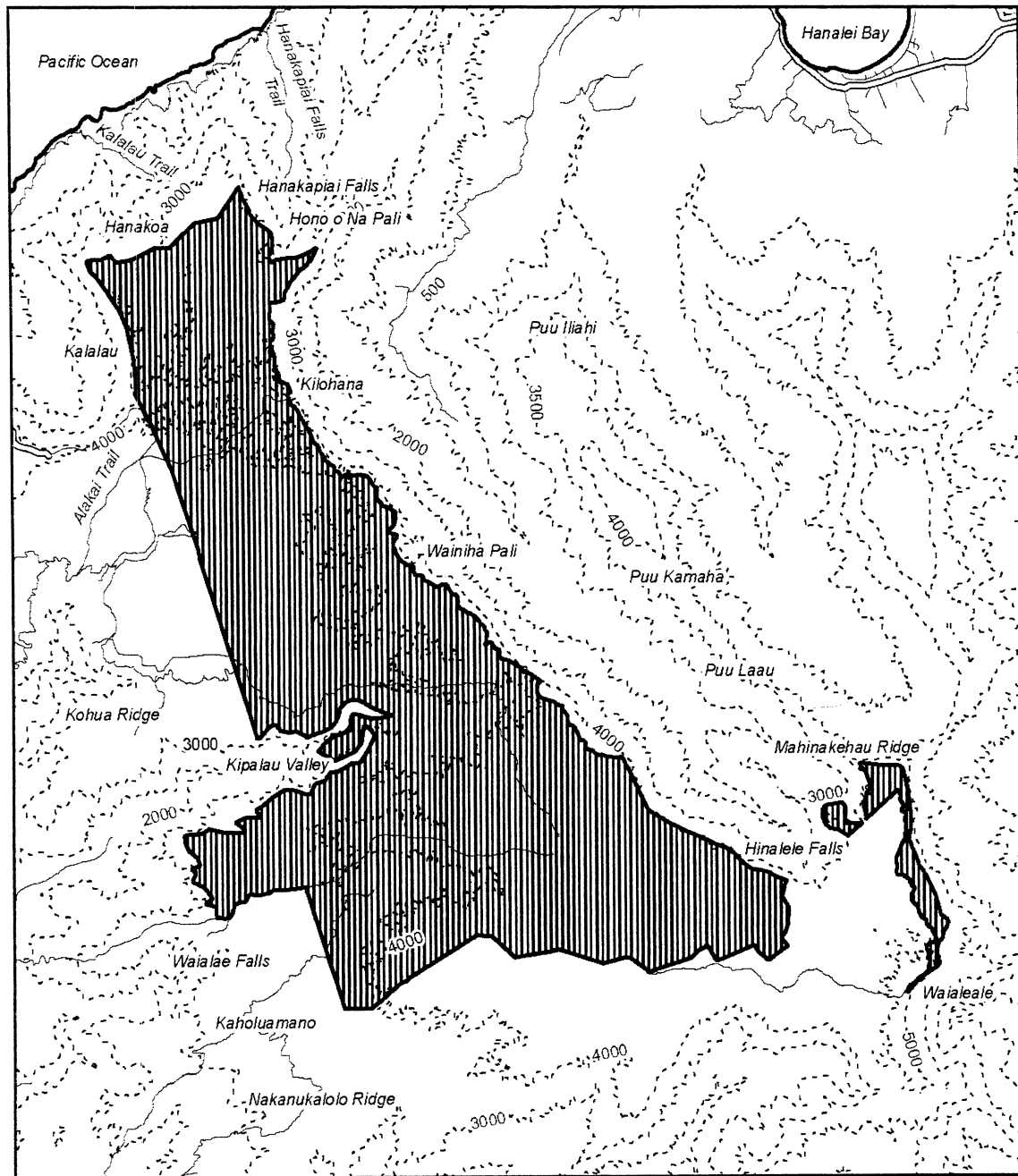
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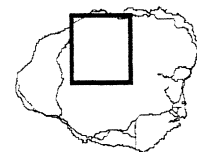
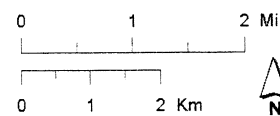
(ii) Map of Unit 4—Montane Wet for Hawaiian picture-wing fly (*Drosophila sharpi*) follows:

BILLING CODE 4310--55--S

Drosophila sharpi
Unit 4 - Montane Wet



-  *Drosophila sharpi* - Unit 4 - Montane Wet
-  Major roads
-  Secondary roads and trails
-  Elevation (500-foot contours)
-  Coastline



(10) Unit 5—Montane Wet, Kauai County, Hawaii.

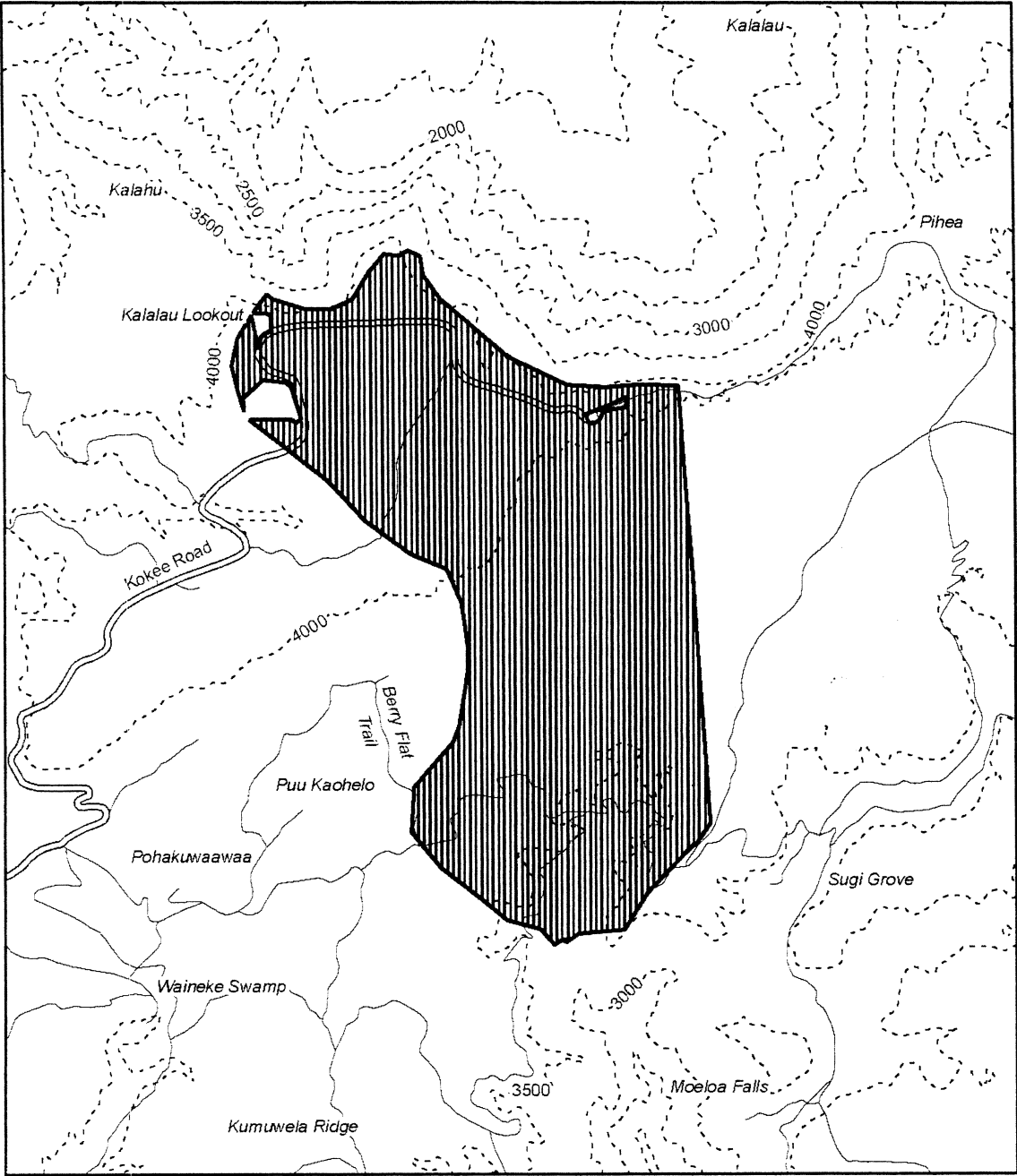
(i) Unit 5—Montane Wet consists of 789.9 ac (319.7 ha) and includes land bounded by the following UTM Zone 4, NAD83 coordinates (E, N): 433436, 2449707; 433445, 2449707; 433444, 2449707; 433443, 2449707; 433458, 2449707; 433436, 2449707; 433426, 2449707; 433408, 2449708; 433429, 2449741; 433493, 2449765; 433633, 2449724; 433742, 2449724; 433467, 2449787; 433460, 2449707; 433468, 2449706; 433484, 2449694; 433414, 2449628; 433461, 2449623; 433457, 2449622; 433339, 2449600; 433440, 2449604; 433437, 2449592; 433426, 2449556; 433419, 2449599; 433831, 2449767; 434991, 2449344; 433401, 2449697; 433480, 2449629; 434938, 2449321; 433313, 2449484; 433455, 2449620; 434842, 2449253; 434839, 2449258; 434834, 2449277; 434833,

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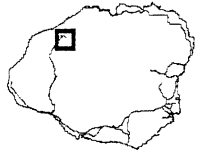
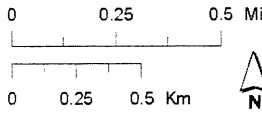
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(ii) Map of Unit 5—Montane Wet for Hawaiian picture-wing fly (*Drosophila sharpi*) follows:

Drosophila sharpi
Unit 5 - Montane Wet



-  *Drosophila sharpi* - Unit 5 - Montane Wet
-  Major roads
-  Secondary roads and trails
-  Elevation (500-foot contours)



(11) Unit 6—Montane Wet, Kauai County, Hawaii.

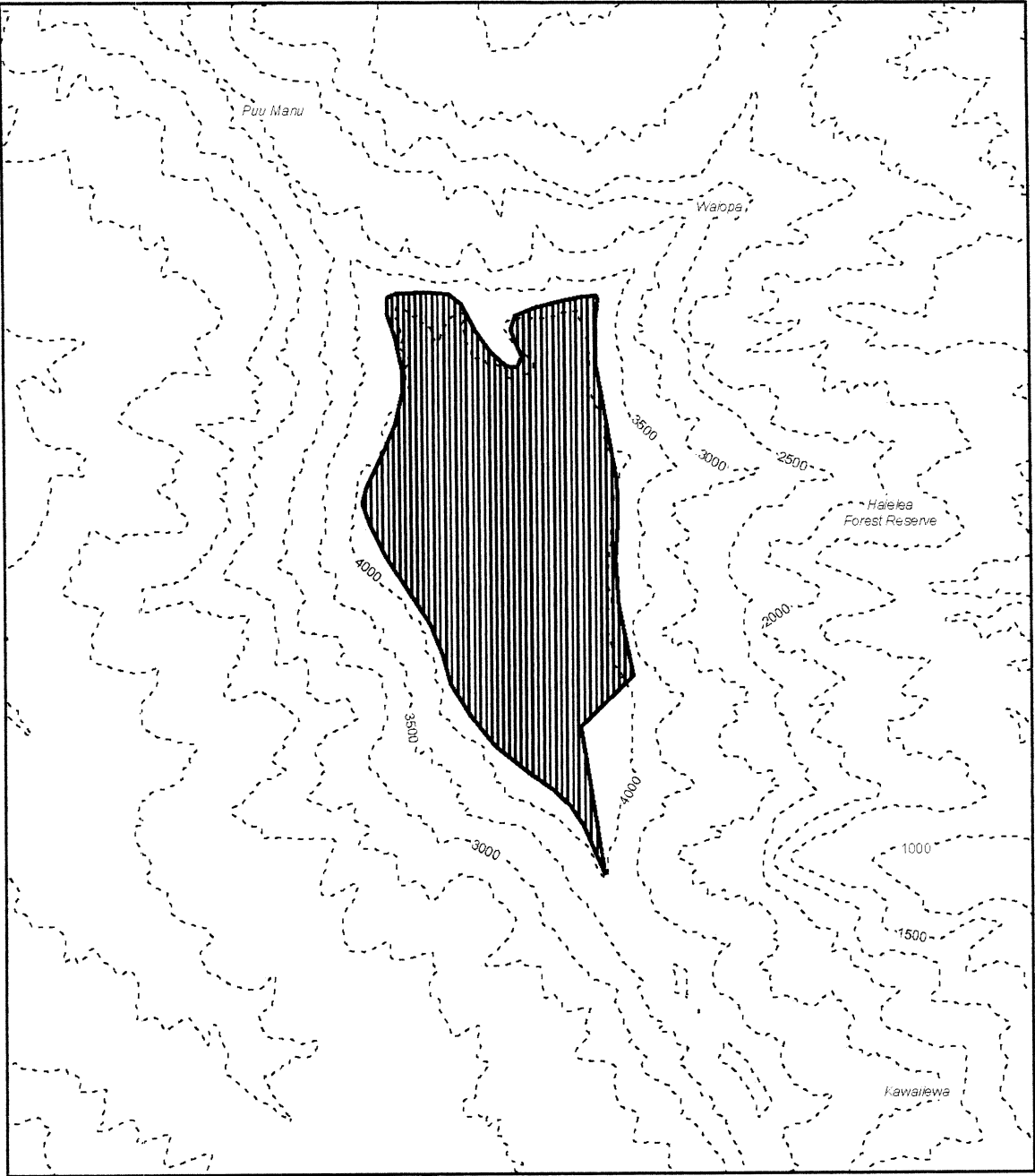
(i) Unit 6—Montane Wet consists of 413.5 ac (167.3 ha) and includes land bounded by the following UTM Zone 4, NAD83 coordinates (E, N): 448516, 2447525; 447976, 2448470; 448042, 2448338; 448133, 2448200; 448235, 2448042; 448834, 2447273; 448288, 2447915; 448412, 2447653; 448669, 2447406; 447943, 2448562; 448763, 2447342; 448059, 2449434; 448321,

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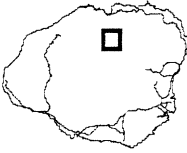
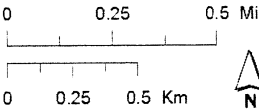
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(ii) Map of Unit 6—Montane Wet for Hawaiian picture-wing fly (*Drosophila sharpi*) follows:

Drosophila sharpi
Unit 6 - Montane Wet



 *Drosophila sharpi* - Unit 6 - Montane Wet
 Elevation (500-foot contours)



* * * * *

■ 5. Amend § 17.99 as follows:

- a. By revising the introductory text of paragraph (a)(1) to read as set forth below;
- b. By revising paragraph (a)(1)(i) as set forth below;
- c. By redesignating paragraphs (a)(1)(vi) through (a)(1)(ccxviii) as paragraphs (a)(1)(viii) through (a)(1)(ccxx);
- d. By adding new paragraphs (a)(1)(vi) and (a)(1)(vii) to read as set forth below;
- e. By redesignating newly designated paragraphs (a)(1)(ix) through (a)(1)(ccxx) as paragraphs (a)(1)(x) through (a)(1)(ccxxi);
- f. By adding new paragraph (a)(1)(ix) to read as set forth below;
- g. By redesignating newly designated paragraphs (a)(1)(xvi) through (a)(1)(ccxxi) as paragraphs (a)(1)(xix) through (a)(1)(ccxxiv);
- h. By adding new paragraphs (a)(1)(xvi), (a)(1)(xvii), and (a)(1)(xviii) to read as set forth below;
- i. By redesignating newly designated paragraphs (a)(1)(xxv) through (a)(1)(ccxxiv) as paragraphs (a)(1)(xxviii) through (a)(1)(ccxxvii);
- j. By adding new paragraphs (a)(1)(xxv), (a)(1)(xxvi), and (a)(1)(xxvii) to read as set forth below;
- k. By redesignating newly designated paragraphs (a)(1)(xxix) through (a)(1)(ccxxvii) as paragraphs (a)(1)(xxx) through (a)(1)(ccxxviii);
- l. By adding a new paragraph (a)(1)(xxix) to read as set forth below;
- m. By redesignating newly designated paragraphs (a)(1)(xxxiv) through (a)(1)(ccxxviii) as paragraphs (a)(1)(xxxviii) through (a)(1)(ccxxxii);
- n. By adding new paragraphs (a)(1)(xxxiv), (a)(1)(xxxv), (a)(1)(xxxvi), and (a)(1)(xxxvii) to read as set forth below;
- o. By redesignating newly designated paragraphs (a)(1)(xxxix) through (a)(1)(ccxxxii) as paragraphs (a)(1)(xli) through (a)(1)(ccxxxiv);
- p. By adding new paragraphs (a)(1)(xxxix) and (a)(1)(xl) to read as set forth below;
- q. By redesignating newly designated paragraphs (a)(1)(xlii) through (a)(1)(ccxxxiv) as paragraphs (a)(1)(xliii) through (a)(1)(ccxxxv);
- r. By adding a new paragraph (a)(1)(xlii) to read as set forth below;
- s. By redesignating newly designated paragraphs (a)(1)(xlvi) through (a)(1)(ccxxxv) as paragraphs (a)(1)(li) through (a)(1)(ccxxviii);
- t. By adding new paragraphs (a)(1)(xlvi), (a)(1)(xlix), and (a)(1)(l) to read as set forth below;
- u. By redesignating newly designated paragraphs (a)(1)(liii) through

- (a)(1)(ccxxviii) as paragraphs (a)(1)(liv) through (a)(1)(ccxxxix);
- v. By adding a new paragraph (a)(1)(liii) to read as set forth below;
- w. By redesignating newly designated paragraphs (a)(1)(lvii) through (a)(1)(ccxxxix) as paragraphs (a)(1)(lviii) through (a)(1)(ccxl);
- x. By adding a new paragraph (a)(1)(lvii) to read as set forth below;
- y. By redesignating newly designated paragraphs (a)(1)(lix) through (a)(1)(ccxl) as paragraphs (a)(1)(lxv) through (a)(1)(ccxli);
- z. By adding new paragraphs (a)(1)(lix), (a)(1)(lx), (a)(1)(lxi), (a)(1)(lxii), (a)(1)(lxiii), and (a)(1)(lxiv) to read as set forth below;
- aa. By redesignating newly designated paragraphs (a)(1)(lxvi) through (a)(1)(ccxli) as paragraphs (a)(1)(lxx) through (a)(1)(ccl);
- bb. By adding new paragraphs (a)(1)(lxvi), (a)(1)(lxvii), (a)(1)(lxviii), and (a)(1)(lxix) to read as set forth below;
- cc. By redesignating newly designated paragraphs (a)(1)(lxxiii) through (a)(1)(ccl) as paragraphs (a)(1)(lxxix) through (a)(1)(cclvi);
- dd. By adding new paragraphs (a)(1)(lxxiii), (a)(lxxiv), (a)(1)(lxxv), (a)(1)(lxxvi), (a)(1)(lxxvii), and (a)(1)(lxxviii) to read as set forth below;
- ee. By redesignating newly designated paragraphs (a)(1)(lxxx) through (a)(1)(cclvi) as paragraphs (a)(1)(lxxxii) through (a)(1)(cclviii);
- ff. By adding new paragraphs (a)(1)(lxxx) and (a)(1)(lxxxii) to read as set forth below;
- gg. By redesignating newly designated paragraphs (a)(1)(lxxxiii) through (a)(1)(cclviii) as paragraphs (a)(1)(lxxxiv) through (a)(1)(cclix);
- hh. By adding a new paragraph (a)(1)(lxxxiii) to read as set forth below;
- ii. By redesignating newly designated paragraphs (a)(1)(lxxxvi) through (a)(1)(cclix) as paragraphs (a)(1)(xc) through (a)(1)(cclxiii);
- jj. By adding new paragraphs (a)(1)(lxxxvi), (a)(1)(lxxxvii), (a)(1)(lxxxviii), and (a)(1)(lxxxix) to read as set forth below;
- kk. By redesignating newly designated paragraphs (a)(1)(xci) through (a)(1)(cclxiii) as paragraphs (a)(1)(xcii) through (a)(1)(cclxiv);
- ll. By adding a new paragraph (a)(1)(xci) to read as set forth below;
- mm. By redesignating newly designated paragraphs (a)(1)(xciii) through (a)(1)(cclxiv) as paragraphs (a)(1)(xciv) through (a)(1)(cclxv);
- nn. By adding a new paragraph (a)(1)(xciii) to read as set forth below;
- oo. By redesignating newly designated paragraphs (a)(1)(xcv) through

- (a)(1)(cclxv) as paragraphs (a)(1)(cii) through (a)(1)(cclxxii);
- pp. By adding new paragraphs (a)(1)(xcv), (a)(1)(xcvi), (a)(1)(xcvii), (a)(1)(xcviii), (a)(1)(xcix), (a)(1)(c), and (a)(1)(ci) to read as set forth below;
- qq. By redesignating newly designated paragraphs (a)(1)(cii) through (a)(1)(cclxxii) as paragraphs (a)(1)(civ) through (a)(1)(cclxxiii);
- rr. By adding a new paragraph (a)(1)(cii) to read as set forth below;
- ss. By redesignating newly designated paragraphs (a)(1)(cv) through (a)(1)(cclxxiii) as paragraphs (a)(1)(cvii) through (a)(1)(cclxxv);
- tt. By adding new paragraphs (a)(1)(cv) and (a)(1)(cvi) to read as set forth below;
- uu. By redesignating newly designated paragraphs (a)(1)(cviii) through (a)(1)(cclxxv) as paragraphs (a)(1)(cxii) through (a)(1)(cclxxix);
- vv. By adding new paragraphs (a)(1)(cviii), (a)(1)(cix), (a)(1)(cx), and (a)(1)(cxi) to read as set forth below;
- ww. By redesignating newly designated paragraphs (a)(1)(cxiii) through (a)(1)(cclxxix) as paragraphs (a)(1)(cxvii) through (a)(1)(cclxxxiii);
- xx. By adding new paragraphs (a)(1)(cxiii), (a)(1)(cxiv), (a)(1)(cxv), and (a)(1)(cxvi) to read as set forth below;
- yy. By redesignating newly designated paragraphs (a)(1)(cxxx) through (a)(1)(cclxxxiii) as paragraphs (a)(1)(cxxxii) through (a)(1)(cclxxxiv);
- zz. By adding a new paragraph (a)(1)(cxxx) to read as set forth below;
- aaa. By redesignating newly designated paragraphs (a)(1)(cxxxiii) through (a)(1)(cclxxxiv) as paragraphs (a)(1)(cxxxiv) through (a)(1)(cclxxxv);
- bbb. By adding a new paragraph (a)(1)(cxxxiii) to read as set forth below;
- ccc. By redesignating newly designated paragraphs (a)(1)(cxxxv) through (a)(1)(cclxxxv) as paragraphs (a)(1)(cxxxvii) through (a)(1)(cclxxxvii);
- ddd. By adding new paragraphs (a)(1)(cxxxv) and (a)(1)(cxxxvi) to read as set forth below;
- eee. By redesignating newly designated paragraphs (a)(1)(cxl) through (a)(1)(cclxxxvii) as paragraphs (a)(1)(cxlix) through (a)(1)(ccxcvi);
- fff. By adding new paragraphs (a)(1)(cxl), (a)(1)(cxli), (a)(1)(cxlii), (a)(1)(cxliii), (a)(1)(cxliv), (a)(1)(cxlv), (a)(1)(cxlvi), (a)(1)(cxlvii), and (a)(1)(cxlviii) to read as set forth below;
- ggg. By redesignating newly designated paragraphs (a)(1)(cl) through (a)(1)(ccxcvi) as paragraphs (a)(1)(cliv) through (a)(1)(ccc);
- hhh. By adding new paragraphs (a)(1)(cl), (a)(1)(cli), (a)(1)(clii), and (a)(1)(cliii) to read as set forth below;
- iii. By redesignating newly designated paragraphs (a)(1)(clxiii) through

(a)(1)(ccc) as paragraphs (a)(1)(clxvi) through (a)(1)(cccliii);

■ jjj. By adding new paragraphs (a)(1)(clxiii), (a)(1)(clxiv), and (a)(1)(clxv) to read as set forth below;

■ kkk. By redesignating newly designated paragraphs (a)(1)(clxxii) through (a)(1)(cccliii) as paragraphs (a)(1)(clxxiii) through (a)(1)(cccliv);

■ ll. By adding a new paragraph (a)(1)(clxxii) to read as set forth below;

■ mmm. By redesignating newly designated paragraphs (a)(1)(clxxvi) through (a)(1)(ccciv) as paragraphs (a)(1)(clxxxi) through (a)(1)(cccix);

■ nnn. By adding new paragraphs (a)(1)(clxxvi), (a)(1)(clxxvii), (a)(1)(clxxviii), (a)(1)(clxxix), and (a)(1)(clxxx) to read as set forth below;

■ ooo. By redesignating newly designated paragraphs (a)(1)(clxxxiv) through (a)(1)(cccix) as paragraphs (a)(1)(clxxxvi) through (a)(1)(cccxi);

■ ppp. By adding new paragraphs (a)(1)(clxxxiv) and (a)(1)(clxxxv) to read as set forth below;

■ qq. By redesignating newly designated paragraphs (a)(1)(cxcix) through (a)(1)(cccxi) as paragraphs (a)(1)(cc) through (a)(1)(ccclii);

■ rrr. By adding a new paragraph (a)(1)(cxcix) to read as set forth below;

■ sss. By redesignating newly designated paragraphs (a)(1)(ccxvi) through (a)(1)(cccii) as paragraphs (a)(1)(ccxviii) through (a)(1)(ccciv);

■ ttt. By adding new paragraphs (a)(1)(ccxvi) and (a)(1)(ccxvii) to read as set forth below;

■ uuu. By redesignating newly designated paragraphs (a)(1)(ccxxii) through (a)(1)(ccciv) as paragraphs (a)(1)(ccxxvi) through (a)(1)(ccclviii);

■ vvv. By adding new paragraphs (a)(1)(ccxxii), (a)(1)(ccxxiii), (a)(1)(ccxxiv), and (a)(1)(ccxxv) to read as set forth below;

■ www. By redesignating newly designated paragraphs (a)(1)(ccxxix) through (a)(1)(ccclviii) as paragraphs (a)(1)(ccxxx) through (a)(1)(cccix);

■ xxx. By adding a new paragraph (a)(1)(ccxxix) to read as set forth below;

■ yyy. By redesignating newly designated paragraphs (a)(1)(ccxxv) through (a)(1)(cccix) as paragraphs (a)(1)(ccxl) through (a)(1)(ccclxiv);

■ zzz. By adding new paragraphs (a)(1)(ccxxv), (a)(1)(ccxxvi), (a)(1)(ccxxvii), (a)(1)(ccxxviii), and (a)(1)(ccxxix) to read as set forth below;

■ aaaa. By redesignating newly designated paragraphs (a)(1)(cccli) through (a)(1)(ccclxiv) as paragraphs (a)(1)(ccclii) through (a)(1)(ccclv);

■ bbbb. By adding a new paragraph (a)(1)(cccli) to read as set forth below;

■ cccc. By redesignating newly designated paragraphs (a)(1)(ccclviii)

through (a)(1)(ccclxxv) as paragraphs (a)(1)(cccli) through (a)(1)(ccclxxviii);

■ dddd. By adding new paragraphs (a)(1)(ccclviii), (a)(1)(ccclix), and (a)(1)(cccl) to read as set forth below;

■ eeee. By redesignating newly designated paragraphs (a)(1)(ccclii) through (a)(1)(ccclxxviii) as paragraphs (a)(1)(cccliv) through (a)(1)(ccclxxix);

■ ffff. By adding a new paragraph (a)(1)(ccclii) to read as set forth below;

■ gggg. By redesignating newly designated paragraphs (a)(1)(ccclviii) through (a)(1)(ccclxxix) as paragraphs (a)(1)(cccl) through (a)(1)(ccclxxxi);

■ hhhh. By adding new paragraphs (a)(1)(ccclviii) and (a)(1)(ccclix) to read as set forth below;

■ iii. By redesignating newly designated paragraphs (a)(1)(ccclvi) through (a)(1)(ccclxxxi) as paragraphs (a)(1)(ccclviii) through (a)(1)(ccclxxxi);

■ jjj. By adding new paragraphs (a)(1)(ccclvi) and (a)(1)(ccclvii) to read as set forth below;

■ kkkk. By redesignating newly designated paragraphs (a)(1)(ccclxxii) through (a)(1)(ccclxxxi) as paragraphs (a)(1)(ccclxxiii) through (a)(1)(ccclxxiv);

■ ll. By adding a new paragraph (a)(1)(ccclxxii) to read as set forth below;

■ mmm. By redesignating newly designated paragraphs (a)(1)(ccclxxvii) through (a)(1)(ccclxxiv) as paragraphs (a)(1)(ccclxxxi) through (a)(1)(ccclxxxi);

■ nnnn. By adding new paragraphs (a)(1)(ccclxxvii), (a)(1)(ccclxxviii), (a)(1)(ccclxxix), (a)(1)(ccclxxx), and (a)(1)(ccclxxxi) to read as set forth below;

■ oooo. By redesignating newly designated paragraphs (a)(1)(ccxc) through (a)(1)(ccclxxxi) as paragraphs (a)(1)(ccxciii) through (a)(1)(ccclxi);

■ ppp. By adding new paragraphs (a)(1)(ccxc), (a)(1)(ccxcii), and (a)(1)(ccxcii) to read as set forth below;

■ qq. By redesignating newly designated paragraphs (a)(1)(cccix) through (a)(1)(ccclxi) as paragraphs (a)(1)(cccix) through (a)(1)(ccclxi);

■ rrr. By adding a new paragraph (a)(1)(cccix) to read as set forth below;

■ ssss. By redesignating newly designated paragraphs (a)(1)(cccix) through (a)(1)(ccclxi) as paragraphs (a)(1)(cccixxxvii) through (a)(1)(ccclxi);

■ tttt. By adding new paragraphs (a)(1)(cccixxx), (a)(1)(cccixxx), (a)(1)(cccixxxi), (a)(1)(cccixxxii), (a)(1)(cccixxxiii), (a)(1)(cccixxxiv), (a)(1)(cccixxxv), and (a)(1)(cccixxxvi) to read as set forth below;

■ uuuu. By redesignating newly designated paragraph (a)(1)(cccli) as paragraph (a)(1)(ccclix);

■ vvvv. By adding new paragraphs (a)(1)(cccli), (a)(1)(ccclii), (a)(1)(cccliii), (a)(1)(cccliv), (a)(1)(ccclv), (a)(1)(ccclvi), (a)(1)(ccclvii), (a)(1)(ccclviii),

(a)(1)(ccclix), (a)(1)(ccclx), (a)(1)(ccclxi), (a)(1)(ccclxii), (a)(1)(ccclxiii), (a)(1)(ccclxiv), (a)(1)(ccclxv), (a)(1)(ccclxvi), (a)(1)(ccclxvii), (a)(1)(ccclxviii), (a)(1)(ccclxix), (a)(1)(ccclxx), (a)(1)(ccclxxi), (a)(1)(ccclxxii), (a)(1)(ccclxxiii), (a)(1)(ccclxxiv), (a)(1)(ccclxxv), (a)(1)(ccclxxvi), (a)(1)(ccclxxvii), (a)(1)(ccclxxviii), (a)(1)(ccclxxix), (a)(1)(ccclxxx), (a)(1)(ccclxxxi), (a)(1)(ccclxxxii), (a)(1)(ccclxxxiii), (a)(1)(ccclxxxiv), (a)(1)(ccclxxxv), (a)(1)(ccclxxxvi), (a)(1)(ccclxxxvii), (a)(1)(ccclxxxviii), (a)(1)(ccclxxxix), (a)(1)(cccxc), (a)(1)(cccxi), (a)(1)(cccxcii), (a)(1)(cccxciii), (a)(1)(cccxciv), (a)(1)(cccxcv), (a)(1)(cccxcvi), (a)(1)(cccxcvii), (a)(1)(cccxcviii), (a)(1)(cccxcix), (a)(1)(cd), (a)(1)(cdi), (a)(1)(cdii), (a)(1)(cdiii), (a)(1)(cdiv), (a)(1)(cdv), (a)(1)(cdvi), (a)(1)(cdvii), (a)(1)(cdviii), (a)(1)(cdix), (a)(1)(cdx), (a)(1)(cdxi), (a)(1)(cdxii), (a)(1)(cdxiii), (a)(1)(cdxiv), (a)(1)(cdxv), (a)(1)(cdxvi), (a)(1)(cdxvii), (a)(1)(cdxviii), (a)(1)(cdxix), (a)(1)(cdxx), (a)(1)(cdxxi), (a)(1)(cdxxii), (a)(1)(cdxxiii), (a)(1)(cdxxiv), (a)(1)(cdxxv), (a)(1)(cdxxvi), (a)(1)(cdxxvii), (a)(1)(cdxxviii), (a)(1)(cdxxix), (a)(1)(cdxxxi), (a)(1)(cdxxx), (a)(1)(cdxxxii), (a)(1)(cdxxxiii), (a)(1)(cdxxxiv), (a)(1)(cdxxxv), (a)(1)(cdxxxvi), (a)(1)(cdxxxvii), (a)(1)(cdxxxviii), (a)(1)(cdxxxix), (a)(1)(cdxli), (a)(1)(cdxlii), (a)(1)(cdxliii), (a)(1)(cdxliv), (a)(1)(cdxlv), (a)(1)(cdxlvii), (a)(1)(cdxlviii), (a)(1)(cdxlvi), (a)(1)(cdxlvii), (a)(1)(cdxlviii), (a)(1)(cdxlix), (a)(1)(cdli), (a)(1)(cdlii), (a)(1)(cdliii), (a)(1)(cdliv), (a)(1)(cdlv), (a)(1)(cdlvi), (a)(1)(cdlvii), and (a)(1)(cdlviii), to read as set forth below;

■ www. By amending the table at newly designated paragraph (a)(1)(cdlix) by adding the following entries, first by unit number and then alphabetically by species name, in the same order as these units are presented in the preceding subparagraphs of this section, as set forth below:

New entry:

Kauai 4—*Chamaesyce remyi* var. *kauaiensis*—a
Kauai 4—*Chamaesyce remyi* var. *remyi*—a
Kauai 4—*Cyanea dolichopoda*—a
Kauai 4—*Cyrtandra oenobarba*—a
Kauai 4—*Cyrtandra paliku*—a
Kauai 4—*Dubautia plantaginea* ssp. *magnifolia*—a
Kauai 4—*Lysimachia iniki*—a
Kauai 4—*Lysimachia pendens*—a
Kauai 4—*Lysimachia venosa*—a
Kauai 4—*Platydesma rostrata*—a
Kauai 7—*Canavalia napaliensis*—a

- Kauai 7-*Chamaesyce eleanoriae*-a
 Kauai 7-*Chamaesyce remyi* var.
remyi-b
 Kauai 7-*Charpentiera densiflora*-a
 Kauai 7-*Doryopteris angelica*-a
 Kauai 7-*Dubautia kenwoodii*-a
 Kauai 7-*Labordia helleri*-a
 Kauai 7-*Pittosporum napaliense*-a
 Kauai 7-*Platydesma rostrata*-b
 Kauai 7-*Psychotria hobydi*-a
 Kauai 7-*Tetraplasandra*
bisattenuata-a
 Kauai 10-*Astelia waialealae*-a
 Kauai 10-*Chamaesyce remyi* var.
kauaiensis-b
 Kauai 10-*Chamaesyce remyi* var.
kauaiensis-c
 Kauai 10-*Chamaesyce remyi* var.
remyi-c
 Kauai 10-*Chamaesyce remyi* var.
remyi-d
 Kauai 10-*Chamaesyce remyi* var.
remyi-e
 Kauai 10-*Charpentiera densiflora*-b
 Kauai 10-*Cyanea dolichopoda*-b
 Kauai 10-*Cyanea eleeleensis*-a
 Kauai 10-*Cyanea kolekoleensis*-a
 Kauai 10-*Cyanea kuhihewa*-a
 Kauai 10-*Cyrtandra oenobarba*-b
 Kauai 10-*Cyrtandra oenobarba*-c
 Kauai 10-*Cyrtandra paliku*-b
 Kauai 10-*Dryopteris crinalis* var.
podosorus-a
 Kauai 10-*Dubautia imbricata* ssp.
imbricata-a
 Kauai 10-*Dubautia kalalauensis*-a
 Kauai 10-*Dubautia plantaginea* ssp.
magnifolia-b
 Kauai 10-*Dubautia waialealae*-a
 Kauai 10-*Geranium kauaiense*-a
 Kauai 10-*Keysseria erici*-a
 Kauai 10-*Keysseria helenae*-a
 Kauai 10-*Labordia helleri*-b
 Kauai 10-*Labordia helleri*-c
 Kauai 10-*Labordia pumila*-a
 Kauai 10-*Lysimachia daphnoides*-a
 Kauai 10-*Lysimachia iniki*-b
 Kauai 10-*Lysimachia pendens*-b
 Kauai 10-*Lysimachia venosa*-b
 Kauai 10-*Melicope degeneri*-a
 Kauai 10-*Melicope paniculata*-a
 Kauai 10-*Melicope puberula*-a
 Kauai 10-*Melicope puberula*-b
 Kauai 10-*Myrsine mezii*-a
 Kauai 10-*Phyllostegia renovans*-a
 Kauai 10-*Phyllostegia renovans*-b
 Kauai 10-*Platydesma rostrata*-c
 Kauai 10-*Platydesma rostrata*-d
 Kauai 10-*Platydesma rostrata*-e
 Kauai 10-*Psychotria grandiflora*-a
 Kauai 10-*Stenogyne kealiae*-a
 Kauai 10-*Tetraplasandra*
bisattenuata-b
 Kauai 10-*Tetraplasandra flynnii*-a
 Kauai 10-*Tetraplasandra flynnii*-b
 Kauai 11-*Astelia waialealae*-b
 Kauai 11-*Canavalia napaliensis*-b
 Kauai 11-*Chamaesyce eleanoriae*-b
 Kauai 11-*Chamaesyce eleanoriae*-c
 Kauai 11-*Chamaesyce remyi* var.
kauaiensis-d
 Kauai 11-*Chamaesyce remyi* var.
kauaiensis-e
 Kauai 11-*Chamaesyce remyi* var.
remyi-f
 Kauai 11-*Chamaesyce remyi* var.
remyi-g
 Kauai 11-*Chamaesyce remyi* var.
remyi-h
 Kauai 11-*Chamaesyce remyi* var.
remyi-i
 Kauai 11-*Chamaesyce remyi* var.
remyi-j
 Kauai 11-*Charpentiera densiflora*-c
 Kauai 11-*Charpentiera densiflora*-d
 Kauai 11-*Cyanea dolichopoda*-c
 Kauai 11-*Cyanea eleeleensis*-b
 Kauai 11-*Cyanea kolekoleensis*-b
 Kauai 11-*Cyanea kuhihewa*-b
 Kauai 11-*Cyrtandra oenobarba*-d
 Kauai 11-*Cyrtandra oenobarba*-e
 Kauai 11-*Cyrtandra paliku*-c
 Kauai 11-*Diellia mannii*-a
 Kauai 11-*Doryopteris angelica*-b
 Kauai 11-*Dryopteris crinalis* var.
podosorus-b
 Kauai 11-*Dubautia imbricata* ssp.
imbricata-b
 Kauai 11-*Dubautia kalalauensis*-b
 Kauai 11-*Dubautia kenwoodii*-b
 Kauai 11-*Dubautia plantaginea* ssp.
magnifolia-c
 Kauai 11-*Dubautia waialealae*-b
 Kauai 11-*Geranium kauaiense*-b
 Kauai 11-*Keysseria erici*-b
 Kauai 11-*Keysseria helenae*-b
 Kauai 11-*Labordia helleri*-d
 Kauai 11-*Labordia helleri*-e
 Kauai 11-*Labordia helleri*-f
 Kauai 11-*Labordia helleri*-g
 Kauai 11-*Labordia pumila*-b
 Kauai 11-*Lysimachia daphnoides*-b
 Kauai 11-*Lysimachia iniki*-c
 Kauai 11-*Lysimachia pendens*-c
 Kauai 11-*Lysimachia scopulensis*-a
 Kauai 11-*Lysimachia venosa*-c
 Kauai 11-*Melicope degeneri*-b
 Kauai 11-*Melicope paniculata*-b
 Kauai 11-*Melicope puberula*-c
 Kauai 11-*Melicope puberula*-d
 Kauai 11-*Myrsine knudsenii*-a
 Kauai 11-*Myrsine mezii*-b
 Kauai 11-*Myrsine mezii*-c
 Kauai 11-*Phyllostegia renovans*-c
 Kauai 11-*Phyllostegia renovans*-d
 Kauai 11-*Pittosporum napaliense*-b
 Kauai 11-*Platydesma rostrata*-f
 Kauai 11-*Platydesma rostrata*-g
 Kauai 11-*Platydesma rostrata*-h
 Kauai 11-*Platydesma rostrata*-i
 Kauai 11-*Platydesma rostrata*-j
 Kauai 11-*Psychotria grandiflora*-b
 Kauai 11-*Psychotria grandiflora*-c
 Kauai 11-*Psychotria hobydi*-b
 Kauai 11-*Schiedea attenuata*-a
 Kauai 11-*Stenogyne kealiae*-b
 Kauai 11-*Stenogyne kealiae*-c
 Kauai 11-*Stenogyne kealiae*-d
 Kauai 11-*Tetraplasandra*
bisattenuata-c
 Kauai 11-*Tetraplasandra*
bisattenuata-d
 Kauai 11-*Tetraplasandra flynnii*-c
 Kauai 11-*Tetraplasandra flynnii*-d
 Kauai 11-*Tetraplasandra flynnii*-e
 Kauai 18-*Chamaesyce remyi* var.
kauaiensis-f
 Kauai 18-*Chamaesyce remyi* var.
remyi-k
 Kauai 18-*Cyanea dolichopoda*-d
 Kauai 18-*Cyrtandra oenobarba*-f
 Kauai 18-*Cyrtandra paliku*-d
 Kauai 18-*Dubautia plantaginea* ssp.
magnifolia-d
 Kauai 18-*Lysimachia iniki*-d
 Kauai 18-*Lysimachia pendens*-d
 Kauai 18-*Lysimachia venosa*-d
 Kauai 18-*Platydesma rostrata*-k
 Kauai 19-*Chamaesyce remyi* var.
kauaiensis-g
 Kauai 19-*Chamaesyce remyi* var.
remyi-l
 Kauai 19-*Cyanea dolichopoda*-e
 Kauai 19-*Cyrtandra oenobarba*-g
 Kauai 19-*Cyrtandra paliku*-e
 Kauai 19-*Dubautia plantaginea* ssp.
magnifolia-e
 Kauai 19-*Lysimachia iniki*-e
 Kauai 19-*Lysimachia pendens*-e
 Kauai 19-*Lysimachia venosa*-e
 Kauai 19-*Platydesma rostrata*-l
 Kauai 20-*Chamaesyce remyi* var.
kauaiensis-h
 Kauai 20-*Chamaesyce remyi* var.
remyi-m
 Kauai 20-*Charpentiera densiflora*-e
 Kauai 20-*Cyanea eleeleensis*-c
 Kauai 20-*Cyanea kolekoleensis*-c
 Kauai 20-*Cyanea kuhihewa*-c
 Kauai 20-*Cyrtandra oenobarba*-h
 Kauai 20-*Dubautia imbricata* ssp.
imbricata-c
 Kauai 20-*Labordia helleri*-h
 Kauai 20-*Melicope paniculata*-c
 Kauai 20-*Melicope puberula*-e
 Kauai 20-*Phyllostegia renovans*-e
 Kauai 20-*Platydesma rostrata*-m
 Kauai 20-*Stenogyne kealiae*-e
 Kauai 20-*Tetraplasandra*
bisattenuata-e
 Kauai 20-*Tetraplasandra flynnii*-f
 Kauai 21-*Chamaesyce remyi* var.
remyi-n
 Kauai 21-*Diellia mannii*-b
 Kauai 21-*Labordia helleri*-i
 Kauai 21-*Myrsine knudsenii*-b
 Kauai 21-*Myrsine mezii*-d
 Kauai 21-*Platydesma rostrata*-n
 Kauai 21-*Psychotria grandiflora*-d
 Kauai 21-*Stenogyne kealiae*-f
 Kauai 21-*Tetraplasandra flynnii*-g
 Kauai 22-*Chamaesyce remyi* var.
remyi-o
 Kauai 22-*Diellia mannii*-c
 Kauai 22-*Labordia helleri*-j
 Kauai 22-*Myrsine knudsenii*-c
 Kauai 22-*Myrsine mezii*-e

Kauai 22—*Platydesma rostrata*—o
 Kauai 22—*Psychotria grandiflora*—e
 Kauai 22—*Stenogyne kealiae*—g
 Kauai 22—*Tetraplasandra flynnii*—h
 Kauai 23—*Astelia waialealae*—c
 Kauai 23—*Chamaesyce remyi* var.

remyi—p

Kauai 23—*Dryopteris crinalis* var.

podosorus—c

Kauai 23—*Dubautia kalalauensis*—c

Kauai 23—*Dubautia waialealae*—c

Kauai 23—*Geranium kauaiense*—c

Kauai 23—*Keysseria erici*—c

Kauai 23—*Keysseria helenae*—c

Kauai 23—*Labordia helleri*—k

Kauai 23—*Labordia pumila*—c

Kauai 23—*Lysimachia daphnoides*—c

Kauai 23—*Melicope degeneri*—c

Kauai 23—*Melicope puberula*—f

Kauai 23—*Myrsine mezii*—f

Kauai 23—*Phyllostegia renovans*—f

Kauai 23—*Platydesma rostrata*—p

Kauai 23—*Psychotria grandiflora*—f

Kauai 23—*Tetraplasandra flynnii*—i

Kauai 24—*Astelia waialealae*—d

Kauai 24—*Chamaesyce remyi* var.

remyi—q

Kauai 24—*Dryopteris crinalis* var.

podosorus—d

Kauai 24—*Dubautia kalalauensis*—d

Kauai 24—*Dubautia waialealae*—d

Kauai 24—*Geranium kauaiense*—d

Kauai 24—*Keysseria erici*—d

Kauai 24—*Keysseria helenae*—d

Kauai 24—*Labordia helleri*—l

Kauai 24—*Labordia pumila*—d

Kauai 24—*Lysimachia daphnoides*—d

Kauai 24—*Melicope degeneri*—d

Kauai 24—*Melicope puberula*—g

Kauai 24—*Myrsine mezii*—g

Kauai 24—*Phyllostegia renovans*—g

Kauai 24—*Platydesma rostrata*—q

Kauai 24—*Psychotria grandiflora*—g

Kauai 24—*Tetraplasandra flynnii*—j

Kauai 25—*Astelia waialealae*—e

Kauai 25—*Chamaesyce remyi* var.

remyi—r

Kauai 25—*Dryopteris crinalis* var.

podosorus—e

Kauai 25—*Dubautia kalalauensis*—e

Kauai 25—*Dubautia waialealae*—e

Kauai 25—*Geranium kauaiense*—e

Kauai 25—*Keysseria erici*—e

Kauai 25—*Keysseria helenae*—e

Kauai 25—*Labordia helleri*—m

Kauai 25—*Labordia pumila*—e

Kauai 25—*Lysimachia daphnoides*—e

Kauai 25—*Melicope degeneri*—e

Kauai 25—*Melicope puberula*—h

Kauai 25—*Myrsine mezii*—h

Kauai 25—*Phyllostegia renovans*—h

Kauai 25—*Platydesma rostrata*—r

Kauai 25—*Psychotria grandiflora*—h

Kauai 25—*Tetraplasandra flynnii*—k

■ xxxx. By amending paragraph (b) as follows:

■ i. In paragraph (b)(1), by adding “Family Amaranthaceae”, “Family Asteliaceae”, and “Family Pittosporaceae” in alphabetical order to the list of family names;

■ ii. In paragraph (b)(1), by adding entries in alphabetical order by family name to read as set forth below:

New entry:

Family Amaranthaceae:

Charpentiera densiflora

Family Araliaceae: *Tetraplasandra*

bisattenuata

Family Araliaceae: *Tetraplasandra*

flynnii

Family Asteliaceae: *Astelia*

waialealae

Family Asteraceae: *Dubautia*

imbricata ssp. *imbricata*

Family Asteraceae: *Dubautia*

kalalauensis

Family Asteraceae: *Dubautia*

kenwoodii

Family Asteraceae: *Dubautia*

plantaginea ssp. *magnifolia*

Family Asteraceae: *Dubautia*

waialealae

Family Asteraceae: *Keysseria erici*

Family Asteraceae: *Keysseria helenae*

Family Campanulaceae: *Cyanea*

dolichopoda

Family Campanulaceae: *Cyanea*

eleleensis

Family Campanulaceae: *Cyanea*

kolekoleensis

Family Campanulaceae: *Cyanea*

kuhihewa

Family Caryophyllaceae: *Schiedea*

attenuata

Family Euphorbiaceae: *Chamaesyce*

eleanoriae

Family Euphorbiaceae: *Chamaesyce*

remyi var. *kauaiensis*

Family Euphorbiaceae: *Chamaesyce*

remyi var. *remyi*

Family Fabaceae: *Canavalia*

napaliensis

Family Geraniaceae: *Geranium*

kauaiense

Family Gesneriaceae: *Cyrtandra*

oenobarba

Family Gesneriaceae: *Cyrtandra*
paliku

Family Lamiaceae: *Phyllostegia*
renovans

Family Lamiaceae: *Stenogyne kealiae*

Family Loganiaceae: *Labordia helleri*

Family Loganiaceae: *Labordia pumila*

Family Myrsinaceae: *Lysimachia*

daphnoides

Family Myrsinaceae: *Lysimachia iniki*

Family Myrsinaceae: *Lysimachia*

pendens

Family Myrsinaceae: *Lysimachia*

scopulensis

Family Myrsinaceae: *Lysimachia*

venosa

Family Myrsinaceae: *Myrsine*

knudsenii

Family Myrsinaceae: *Myrsine mezii*

Family Pittosporaceae: *Pittosporum*

napaliense

Family Rubiaceae: *Psychotria*

grandiflora

Family Rubiaceae: *Psychotria hobdyi*

Family Rutaceae: *Melicope degeneri*

Family Rutaceae: *Melicope paniculata*

Family Rutaceae: *Melicope puberula*

Family Rutaceae: *Platydesma rostrata*

■ iii. In paragraph (b)(2), by adding “Family Dryopteridaceae” and “Family Pteridaceae” in alphabetical order to the list of family names; and

■ iv. In paragraph (b)(2), by adding entries in alphabetical order by family name to read as set forth below:

New entry:

Family Aspleniaceae: *Diellia mannii*

Family Dryopteridaceae: *Dryopteris*

crinalis var. *podosorus*

Family Pteridaceae: *Doryopteris*

angelica

§ 17.99 Critical habitat; plants on the islands of Kauai, Niihau, Molokai, Maui, Kahoolawe, Oahu, and Hawaii, HI, and on the Northwestern Hawaiian Islands.

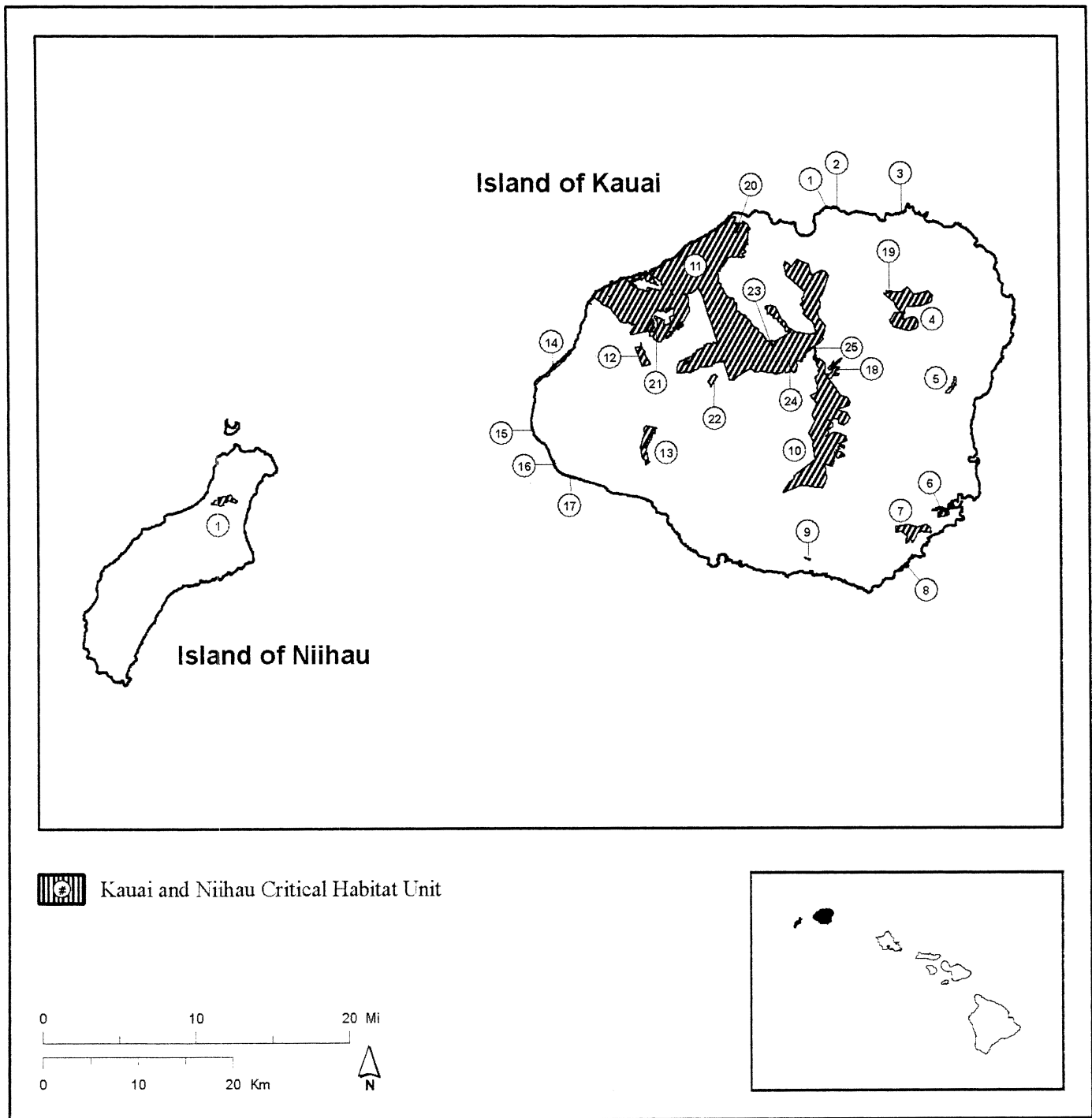
(a) * * *

(1) *Kauai*. Critical habitat units are described below. Coordinates are in UTM Zone 4 with units in meters using North American Datum of 1983 (NAD83). The following map shows the general locations of the critical habitat units designated on the island of Kauai.

(i) *Note*: Map 1—Index map follows:

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Map 1
Kauai and Niihau Critical Habitat–Island Index Map



* * * * *

(vi) Kauai 4—*Chamaesyce remyi* var. *kauaiensis*—a

(A) This is a unit of the Wet Cliff ecosystem and consists of 38 ac (15.4 ha). This unit includes land bounded by the following UTM Zone 4, NAD 83 coordinates (E, N): 457610, 2449548; 457661, 2449558; 457661, 2449558; 457651, 2449568; 457646, 2449571; 457637, 2449567; 457631, 2449564; 457621, 2449558; 457618, 2449556; 457613, 2449551; 457611, 2449549;

457144, 2449549; 457144, 2449549; 456901, 2449549; 457285, 2449395; 457635, 2449536; 457541, 2449482; 457611, 2449549; 457388, 2449419; 456313, 2449442; 457278, 2449394; 457141, 2449391; 456345, 2449426; 456848, 2449384; 456731, 2449379; 456589, 2449387; 456467, 2449400; 456999, 2449392; 457474, 2449457. This unit is also critical habitat for Kauai 4—*Chamaesyce remyi* var. *remyi*—a, Kauai 4—*Cyanea dolichopoda*—a, Kauai 4—*Cyrtandra oenobarba*—a, Kauai

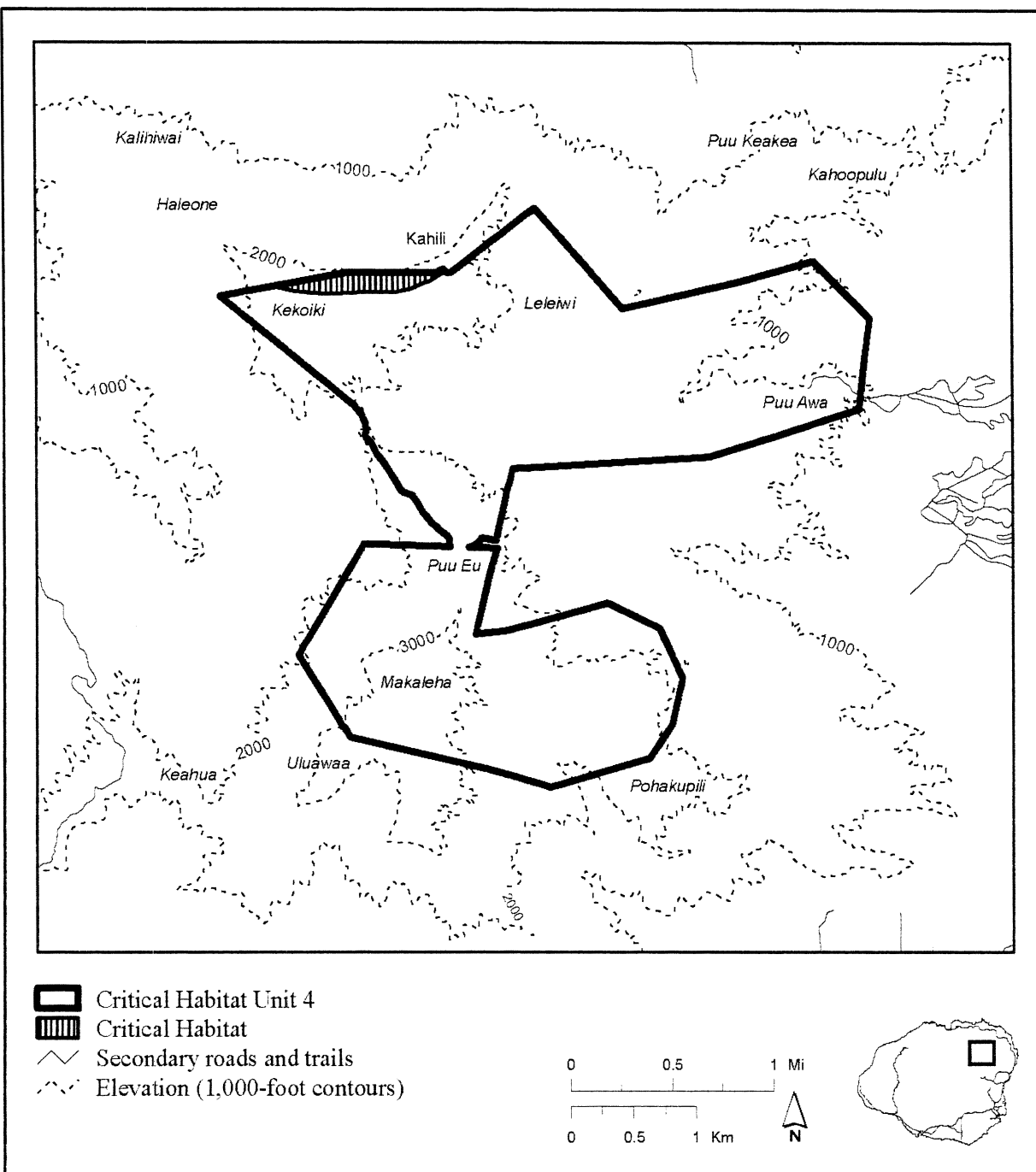
4—*Cyrtandra paliku*—a, Kauai 4—*Dubautia plantaginea* ssp. *magnifolia*—a, Kauai 4—*Lysimachia iniki*—a, Kauai 4—*Lysimachia pendens*—a, Kauai 4—*Lysimachia venosa*—a, and Kauai 4—*Platydesma rostrata*—a (see paragraphs (a)(1)(vii), (a)(1)(ix), (a)(1)(xvi), (a)(1)(xvii), (a)(1)(xviii), (a)(1)(xxv), (a)(1)(xxvi), (a)(1)(xxvii), and (a)(1)(xxix), respectively, of this section).

(B) Note: Map 5a follows:

Map 5a

Kauai 4—*Chamaesyce remyi* var. *kauaiensis*—a, Kauai 4—*Chamaesyce remyi* var. *remyi*—a, Kauai 4—*Cyanea dolichopoda*—a, Kauai 4—*Cyrtandra oenobarba*—a, Kauai 4—*Cyrtandra paliku*—a, Kauai 4—*Dubautia plantaginea* ssp. *magnifolia*—a, Kauai 4—*Lysimachia iniki*—a, Kauai 4—*Lysimachia pendens*—a, Kauai 4—*Lysimachia venosa*—a, Kauai 4—*Platydesma rostrata*—a

Wet Cliff



(vii) Kauai 4—*Chamaesyce remyi* var. *remyi*—a

(A) See paragraph (a)(1)(vi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(vi)(B) of this section for the map of this unit.

* * * * *

(ix) Kauai 4—*Cyanea dolichopoda*—a

(A) See paragraph (a)(1)(vi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(vi)(B) of this section for the map of this unit.

* * * * *

(xvi) Kauai 4—*Cyrtandra oenobarba*—a

(A) See paragraph (a)(1)(vi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(vi)(B) of this section for the map of this unit.

(xvii) Kauai 4—*Cyrtandra paliku*—a

(A) See paragraph (a)(1)(vi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(vi)(B) of this section for the map of this unit.

(xviii) Kauai 4—*Dubautia plantaginea* ssp. *magnifolia*—a

(A) See paragraph (a)(1)(vi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(vi)(B) of this section for the map of this unit.

* * * * *

(xxv) Kauai 4—*Lysimachia iniki*—a

(A) See paragraph (a)(1)(vi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(vi)(B) of this section for the map of this unit.

(xxvi) Kauai 4—*Lysimachia pendens*—a

(A) See paragraph (a)(1)(vi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(vi)(B) of this section for the map of this unit.

(xxvii) Kauai 4—*Lysimachia venosa*—a

(A) See paragraph (a)(1)(vi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(vi)(B) of this section for the map of this unit.

* * * * *

(xxix) Kauai 4—*Platydesma rostrata*—a

(A) See paragraph (a)(1)(vi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(vi)(B) of this section for the map of this unit.

* * * * *

(xxxiv) Kauai 7—*Canavalia napaliensis*—a (37 ac; 15 ha)

(A) This is a unit of the Lowland Mesic ecosystem and consists of 37 ac (15 ha). This unit includes land bounded by the following UTM Zone 4, NAD 83 coordinates (E, N): 458130, 2424804; 458259, 2424774; 458356, 2424758; 458478, 2424743; 458570, 2424730; 458648, 2424694; 458648, 2424470; 458666, 2424580; 458010, 2424827; 458671, 2424648; 458429, 2424488; 458620, 2424409; 458620, 2424409; 457920, 2424829; 458513, 2424437; 458579, 2424401; 458340, 2424534; 458241, 2424577; 458160, 2424631; 458068, 2424690; 458000, 2424733; 457959, 2424769. This unit is also critical habitat for Kauai 7—*Chamaesyce eleanoriae*—a, Kauai 7—*Chamaesyce remyi* var. *remyi*—b, Kauai 7—*Charpentiera densiflora*—a, Kauai 7—*Doryopteris angelica*—a, Kauai 7—*Dubautia kenwoodii*—a, Kauai 7—*Labordia helleri*—a, Kauai 7—*Pittosporum napaliense*—a, Kauai 7—*Platydesma rostrata*—b, Kauai 7—*Psychotria hobdyi*—a, and Kauai 7—*Tetraplasandra bisattenuata*—a (see paragraphs (a)(1)(xxxv), (a)(1)(xxxvi), (a)(1)(xxxvii), (a)(1)(xxxix), (a)(1)(xl), (a)(1)(xlii), (a)(1)(xlvi), (a)(1)(xlix), (a)(1)(l), and (a)(1)(liii), respectively, of this section).

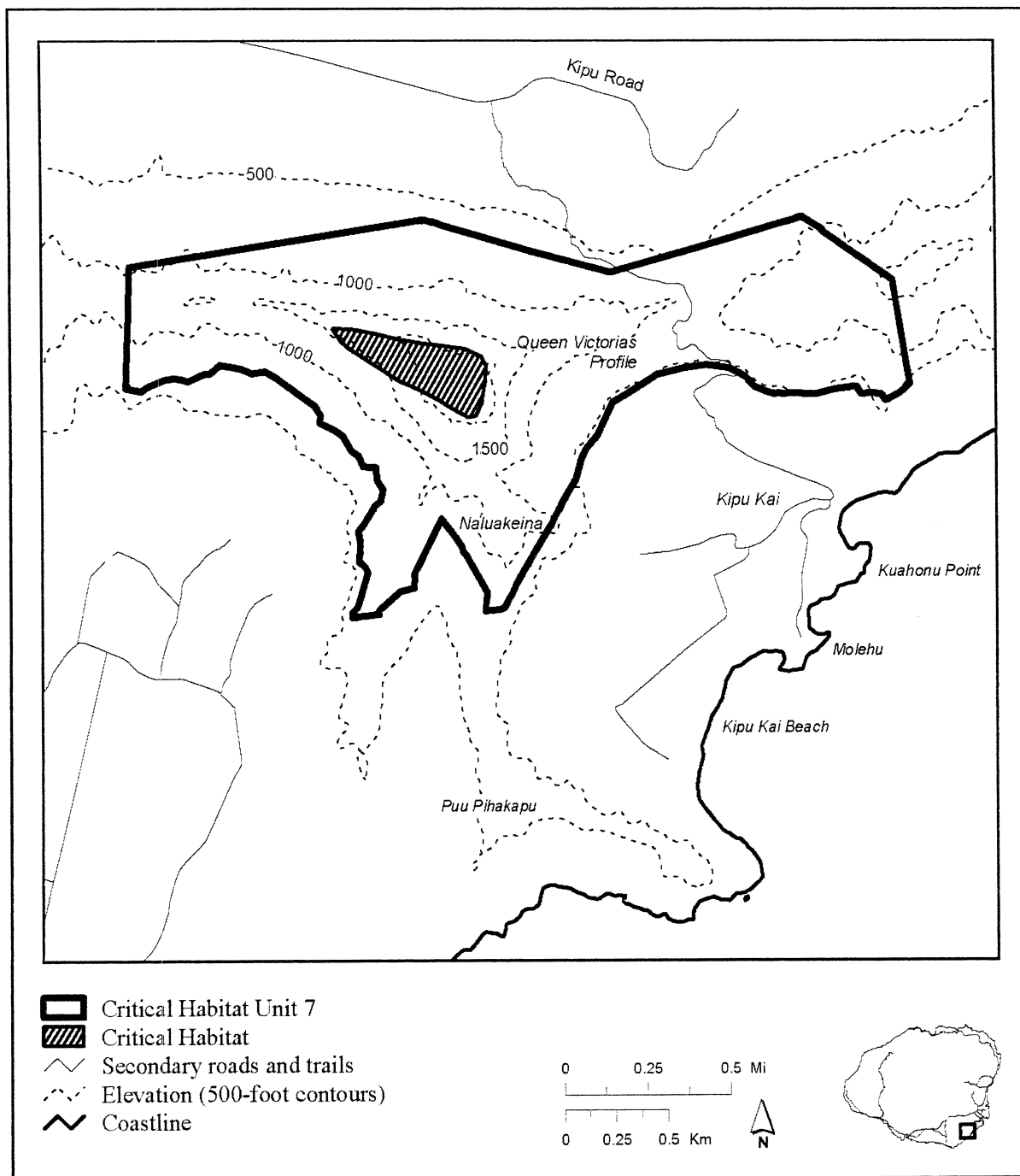
(B) Note: Map 23a follows:

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Map 23a

Kauai 7-*Canavalia napaliensis*-a, Kauai 7-*Chamaesyce eleanoriae*-a, Kauai 7-*Chamaesyce remyi* var. *remyi*-b, Kauai 7-*Charpentiera densiflora*-a, Kauai 7-*Doryopteris angelica*-a, Kauai 7-*Dubautia kenwoodii*-a, Kauai 7-*Labordia helleri*-a, Kauai 7-*Pittosporum napaliense*-a, Kauai 7-*Platydesma rostrata*-b, Kauai 7-*Psychotria hobbii*-a, Kauai 7-*Tetraplasandra bisattenuata*-a

Lowland Mesic



(xxxv) Kauai 7—*Chamaesyce eleanoriae*—a

(A) See paragraph (a)(1)(xxxiv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(xxxiv)(B) of this section for the map of this unit.

(xxxvi) Kauai 7—*Chamaesyce remyi* var. *remyi*—b

(A) See paragraph (a)(1)(xxxiv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(xxxiv)(B) of this section for the map of this unit.

(xxxvii) Kauai 7—*Charpentiera densiflora*—a

(A) See paragraph (a)(1)(xxxiv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(xxxiv)(B) of this section for the map of this unit.

* * * * *

(xxxix) Kauai 7—*Doryopteris angelica*—a

(A) See paragraph (a)(1)(xxxiv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(xxxiv)(B) of this section for the map of this unit.

(xl) Kauai 7—*Dubautia kenwoodii*—a

(A) See paragraph (a)(1)(xxxiv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(xxxiv)(B) of this section for the map of this unit.

* * * * *

(xlii) Kauai 7—*Labordia helleri*—a

(A) See paragraph (a)(1)(xxxiv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(xxxiv)(B) of this section for the map of this unit.

* * * * *

(xlviii) Kauai 7—*Pittosporum napaliense*—a

(A) See paragraph (a)(1)(xxxiv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(xxxiv)(B) of this section for the map of this unit.

(xlix) Kauai 7—*Platydesma rostrata*—b

(A) See paragraph (a)(1)(xxxiv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(xxxiv)(B) of this section for the map of this unit.

(l) Kauai 7—*Psychotria hobdyi*—a

(A) See paragraph (a)(1)(xxxiv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(xxxiv)(B) of this section for the map of this unit.

* * * * *

(liii) Kauai 7—*Tetraplasandra bisattenuata*—a

(A) See paragraph (a)(1)(xxxiv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(xxxiv)(B) of this section for the map of this unit.

* * * * *

(lvii) Kauai 10—*Astelia waialealae*—a

(A) This is a unit of the Montane Wet ecosystem and consists of 99 ac (40 ha). This unit includes land bounded by the following UTM Zone 4, NAD83

coordinates (E, N): 449000, 2441660; 449004, 2441650; 449006, 2441639; 448995, 2441668; 449009, 2441625; 449012, 2441616; 449030, 2441595; 448925, 2441722; 449037, 2441588; 449017, 2441611; 448986, 2441677; 448972, 2441689; 448957, 2441700; 449043, 2441578; 448933, 2441715; 449060, 2441481; 448915, 2441738; 448913, 2441753; 448914, 2441760; 448913, 2441774; 448915, 2441796; 448910, 2441807; 448900, 2441814; 448939, 2441710; 448964, 2441441; 448677, 2442140; 448892, 2441817; 448916, 2441369; 448918, 2441381; 448922, 2441392; 448930, 2441400; 448936, 2441403; 448940, 2441404; 448945, 2441411; 449065, 2441502; 448952, 2441427; 449046, 2441569; 448971, 2441443; 449003, 2441449; 449032, 2441461; 449040, 2441466; 449049, 2441471; 449053, 2441472; 449064, 2441492; 449066, 2441511; 449061, 2441528; 449050, 2441561; 448948, 2441420; 448764, 2442029; 448684, 2442157; 448675, 2442123; 448677, 2442115; 448683, 2442101; 448694, 2442089; 448710, 2442077; 448718, 2442069; 448723, 2442061; 448728, 2442058; 448736, 2442055; 448682, 2442148; 448755, 2442041; 448917, 2441357; 448768, 2442019; 448773, 2442013; 448777, 2442002; 448781, 2441990; 448787, 2441967; 448789, 2441938; 448803, 2441914; 448813, 2441900; 448814, 2441894; 448817, 2441884; 448746, 2442051; 448707, 2442267; 448884, 2441820; 448877, 2441825; 448850, 2441844; 448840, 2441852; 448697, 2442342; 448711, 2442341; 448721, 2442331; 448724, 2442320; 448723, 2442309; 448722, 2442303; 448944, 2441075; 448712, 2442283; 448890, 2441818; 448706, 2442257; 448705, 2442250; 448699, 2442238; 448692, 2442233; 448684, 2442226; 448678, 2442221; 448673, 2442209; 448671, 2442202; 448674, 2442187; 448680, 2442169; 448718, 2442295; 448601, 2440652;

448638, 2440764; 449173, 2441529; 449106, 2441435; 449078, 2441297; 449111, 2441196; 449121, 2441114; 449121, 2441114; 449068, 2441051; 449006, 2441012; 448887, 2440934; 449249, 2441697; 448678, 2440741; 449275, 2441773; 448601, 2440652; 448599, 2440647; 448600, 2440668; 448601, 2440679; 448606, 2440704; 448612, 2440722; 448615, 2440731; 448619, 2440740; 448622, 2440749; 448954, 2441097; 448777, 2440842; 448640, 2442451; 448682, 2442350; 448677, 2442356; 448673, 2442365; 448671, 2442369; 448665, 2442379; 448657, 2442387; 448648, 2442399; 448643, 2442410; 448642, 2442419; 448642, 2442430; 449201, 2441638; 448831, 2441859; 448650, 2440769; 448637, 2442455; 448880, 2442563; 448917, 2442504; 448983, 2442384; 449024, 2442290; 449064, 2442221; 449090, 2442135; 449115, 2442038; 449148, 2441893; 449244, 2441819; 448642, 2442440; 448940, 2441238; 448630, 2440759; 448969, 2441116; 448971, 2441119; 448972, 2441136; 448973, 2441143; 448972, 2441150; 448967, 2441159; 448961, 2441163; 448949, 2441170; 448941, 2441177; 448820, 2441871; 448934, 2441230; 448948, 2441084; 448944, 2441250; 448946, 2441259; 448948, 2441264; 448948, 2441273; 448948, 2441281; 448944, 2441291; 448935, 2441302; 448928, 2441313; 448925, 2441322; 448920, 2441333; 448930, 2441194; 448837, 2440912; 448663, 2440773; 448678, 2440780; 448691, 2440790; 448711, 2440806; 448720, 2440813; 448727, 2440820; 448735, 2440829; 448745, 2440841; 448764, 2440857; 448788, 2440878; 448964, 2441109; 448811, 2440896; 448919, 2441341; 448841, 2440914; 448861, 2440927; 448877, 2440939; 448918, 2440982; 448940, 2441006; 448941, 2441024; 448943, 2441044; 448943, 2441053; 448943, 2441063; 448926, 2441212; 448802, 2440889; 448933, 2441184. This unit is also critical habitat for Kauai 10—*Chamaesyce remyi* var. *remyi*—c, Kauai 10—*Dryopteris crinalis* var. *podosorus*—a, Kauai 10—*Dubautia kalalauensis*—a, Kauai 10—*Dubautia waialealae*—a, Kauai 10—*Geranium kauaiense*—a, Kauai 10—*Keysseria erici*—a, Kauai 10—*Keysseria helenae*—a, Kauai 10—*Labordia helleri*—b, Kauai 10—*Labordia pumila*—a, Kauai 10—*Lysimachia daphnoides*—a, Kauai 10—*Melicope degeneri*—a, Kauai 10—*Melicope puberula*—a, Kauai 10—*Myrsine mezii*—a, Kauai 10—*Phyllostegia renovans*—a, Kauai 10—*Platydesma rostrata*—c, Kauai 10—*Psychotria grandiflora*—a, and Kauai 10—*Tetraplasandra flynnii*—a (see

paragraphs (a)(1)(lxi), (a)(1)(lxxvi),
(a)(1)(lxxviii), (a)(1)(lxxxi),
(a)(1)(lxxxiii), (a)(1)(lxxxvi),
(a)(1)(lxxxvii), (a)(1)(lxxxviii),

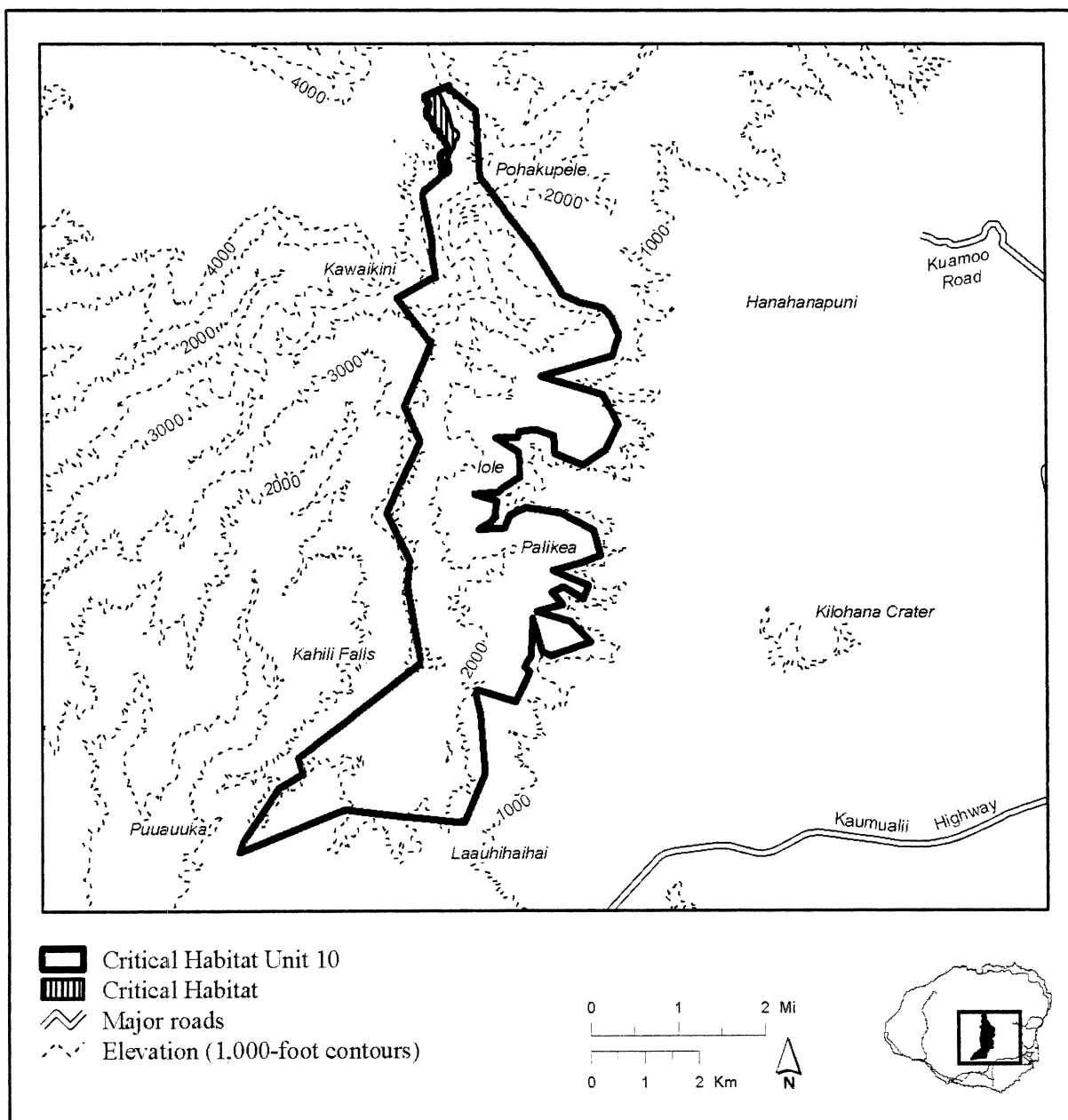
(a)(1)(xci), (a)(1)(xciii), (a)(1)(xcviii),
(a)(1)(c), (a)(1)(cii), (a)(1)(cv),
(a)(1)(cviii), (a)(1)(cxi), and (a)(1)(cxv),
respectively, of this section).

(B) Note: Map 35a follows:
BILLING CODE 4310-55-S

Map 35a

Kauai 10—*Astelia waialealae*—a, Kauai 10—*Chamaesyce remyi* var. *remyi*—c, Kauai 10—*Dryopteris crinalis* var. *podosorus*—a, Kauai 10—*Dubautia kalalauensis*—a, Kauai 10—*Dubautia waialealae*—a, Kauai 10—*Geranium kauaiense*—a, Kauai 10—*Keysseria erici*—a, Kauai 10—*Keysseria helenae*—a, Kauai 10—*Labordia helleri*—b, Kauai 10—*Labordia pumila*—a, Kauai 10—*Lysimachia daphnoides*—a, Kauai 10—*Melicope degeneri*—a, Kauai 10—*Melicope puberula*—a, Kauai 10—*Myrsine mezii*—a, Kauai 10—*Phyllostegia renovans*—a, Kauai 10—*Platydesma rostrata*—c, Kauai 10—*Psychotria grandiflora*—a, Kauai 10—*Tetraplasandra flynnii*—a

Montane Wet



* * * * *

(lix) Kauai 10—*Chamaesyce remyi* var. *kauaiensis*—b

(A) This is a unit of the Lowland Wet ecosystem and consists of 2,330 ac (943 ha). This unit is also critical habitat for Kauai 10—*Chamaesyce remyi* var. *remyi*—d, Kauai 10—*Charpentiera densiflora*—b, Kauai 10—*Cyanea eleeleensis*—a, Kauai 10—*Cyanea kolekoleensis*—a, Kauai 10—*Cyanea kuhihewa*—a, Kauai 10—*Cyrtandra oenobarba*—b, Kauai 10—*Dubautia imbricata* ssp. *imbricata*—a, Kauai 10—*Labordia helleri*—c, Kauai 10—*Melicope paniculata*—a, Kauai 10—*Melicope puberula*—b, Kauai 10—*Phyllostegia renovans*—b, Kauai 10—*Platydesma rostrata*—d, Kauai 10—*Stenogyne kealiae*—a, Kauai 10—*Tetraplasandra bisattenuata*—b, and Kauai 10—*Tetraplasandra flynnii*—b, (see paragraphs (a)(1)(lxii), (a)(1)(lxiv), (a)(1)(lxvii), (a)(1)(lxviii), (a)(1)(lxix), (a)(1)(lxxiii), (a)(1)(lxxvii), (a)(1)(lxxxix), (a)(1)(xcix), (a)(1)(ci), (a)(1)(cvi), (a)(1)(cix), (a)(1)(cxiii), (a)(1)(cxiv), and (a)(1)(cxvi), respectively, of this section).

(1) This unit includes land bounded by the following UTM Zone 4, NAD83 coordinates (E, N): 450218, 2439675; 451901, 2438605; 451485, 2438695; 451170, 2438845; 450653, 2439686; 450094, 2440396; 450101, 2440409; 450009, 2440531; 450060, 2439401; 450044, 2439436; 450080, 2439502; 450121, 2439558; 450313, 2437467; 450187, 2439652; 452012, 2438334; 450243, 2439684; 450236, 2439581; 450179, 2439451; 450144, 2439400; 450116, 2439393; 450060, 2439401; 450009, 2440531; 449922, 2440494; 449797, 2440464; 449675, 2440467; 450154, 2439614; 451319, 2437948; 450466, 2437546; 450580, 2437507; 450757, 2437431; 450948, 2437416; 451043, 2437429; 451072, 2437437; 451101, 2437491; 451108, 2437503; 451138, 2437581; 451245, 2437644; 451275, 2437714; 452023, 2438472; 451205, 2437885; 452004, 2438389; 451411, 2437910; 451488, 2437910; 451579, 2437997; 451593, 2438098; 451654, 2438137; 451738, 2438169; 451822, 2438170; 451898, 2438217; 451952, 2438225; 451982, 2438287; 449326, 2440266; 451228, 2437792; 450799, 2438248; 449502, 2440462; 450261, 2439193; 450390, 2438961; 450492, 2438803; 450601, 2438722; 450715, 2438722; 450776, 2438704; 450786, 2438622; 450835, 2438510; 450888, 2438416; 450949, 2438380;

450103, 2439293; 450921, 2438291; 450098, 2439272; 450704, 2438180; 450742, 2438065; 450785, 2437968; 450701, 2437933; 450657, 2437930; 450554, 2437925; 450467, 2437958; 450381, 2437976; 450256, 2438015; 450165, 2438076; 448286, 2436668; 451002, 2438334; 449748, 2439830; 450248, 2439634; 449295, 2440144; 449323, 2440106; 449435, 2440131; 449639, 2440133; 449771, 2440087; 449931, 2440046; 450041, 2440031; 450084, 2440003; 450061, 2439947; 449964, 2439881; 450172, 2439295; 449758, 2439861; 449402, 2440381; 449760, 2439660; 449816, 2439481; 449861, 2439257; 449886, 2439054; 449944, 2438939; 449945, 2438937; 450092, 2438827; 450179, 2438817; 450222, 2438885; 450189, 2439030; 450136, 2439186; 449852, 2439858; 449221, 2436668; 449007, 2436513; 449328, 2436406; 449213, 2436403; 449145, 2436465; 449130, 2436544; 449158, 2436572; 449514, 2436395; 449231, 2436635; 449615, 2436301; 449188, 2436712; 449145, 2436768; 449110, 2436794; 449120, 2436671; 449102, 2436620; 449079, 2436605; 450823, 2436692; 449219, 2436602; 449927, 2436216; 450785, 2436606; 450862, 2436552; 450878, 2436459; 450894, 2436334; 450928, 2436285; 450659, 2436369; 449414, 2436418; 450332, 2436229; 449008, 2436511; 449924, 2436215; 449870, 2436206; 449812, 2436172; 449765, 2436128; 449727, 2436090; 449689, 2436186; 449683, 2436195; 450351, 2436329; 448790, 2437520; 449020, 2436554; 448912, 2438027; 448953, 2437948; 448991, 2437897; 449024, 2437853; 448994, 2437683; 448926, 2438111; 448920, 2437538; 449012, 2438179; 448665, 2437510; 448596, 2437431; 448540, 2437294; 448517, 2437230; 448459, 2437218; 448428, 2437261; 448226, 2436801; 450205, 2439505; 449412, 2438461; 448436, 2436335; 450010, 2438158; 449905, 2438254; 449811, 2438272; 449689, 2438311; 449567, 2438395; 448910, 2438029; 449445, 2438454; 449027, 2437802; 449303, 2438449; 449280, 2438423; 449234, 2438327; 449198, 2438248; 449146, 2438227; 449117, 2438215; 449027, 2438184; 449506, 2438446; 450506, 2437164; 450691, 2436909; 450656, 2436941; 450515, 2437040; 450407, 2437210; 450299, 2437233; 448983, 2437578; 450584, 2437009.

(2) This unit includes land bounded by the following UTM Zone 4, NAD 83

coordinates (E, N): 448864, 2430994; 448915, 2431294; 448870, 2430976; 448747, 2431927; 448866, 2430965; 448877, 2431143; 448890, 2431196; 448902, 2431222; 448896, 2431533; 448792, 2431836; 448857, 2431685; 448875, 2431636; 448879, 2431616; 448879, 2431586; 448904, 2431254; 448883, 2431556; 448907, 2431280; 448580, 2432096; 448909, 2431441; 448926, 2431397; 448922, 2431378; 448920, 2431356; 448871, 2430833; 448858, 2431071; 449196, 2430298; 448319, 2429275; 449002, 2429203; 448999, 2429252; 449004, 2429384; 449017, 2429491; 449053, 2429598; 449076, 2429644; 449139, 2429727; 449175, 2429758; 449262, 2429801; 449318, 2429811; 449326, 2430025; 449290, 2430091; 448866, 2430960; 448995, 2430341; 448858, 2431041; 448902, 2430792; 448947, 2430723; 448983, 2430644; 448991, 2430617; 449290, 2430208; 449026, 2430433; 449260, 2430300; 448959, 2430257; 448970, 2430209; 449020, 2430214; 449086, 2430250; 449107, 2430262; 448869, 2430883; 449011, 2430547; 447154, 2430979; 448122, 2430928; 446849, 2430738; 446921, 2430739; 446961, 2430832; 448892, 2431475; 446996, 2430939; 448686, 2432011; 446996, 2430939; 447214, 2431052; 447347, 2431063; 447367, 2431032; 447520, 2431054; 447836, 2431129; 447989, 2431010; 447038, 2430959; 447800, 2431556; 448534, 2432102; 448512, 2432103; 448509, 2432100; 448291, 2431933; 448077, 2431769; 446723, 2430729; 447808, 2431563; 447073, 2430978; 447681, 2431465; 447305, 2431176; 448877, 2431143; 447222, 2431112; 448868, 2431103; 447039, 2430972; 448011, 2431718; 447907, 2429318; 448615, 2432078; 448288, 2429278; 448283, 2429271; 448109, 2429291; 446993, 2430912; 448055, 2429303; 448174, 2430856; 447613, 2429349; 447532, 2429359; 447492, 2429364; 447530, 2429461; 447517, 2429602; 447489, 2429733; 447465, 2429924; 448370, 2430494; 448055, 2429297; 447481, 2430092; 448175, 2430731; 448297, 2430722; 448369, 2430567; 448340, 2430390; 448312, 2430325; 447855, 2430195; 447580, 2430191; 448297, 2430660; 447684, 2430223; 448070, 2430056; 448138, 2430060; 448199, 2430119; 448260, 2430203.

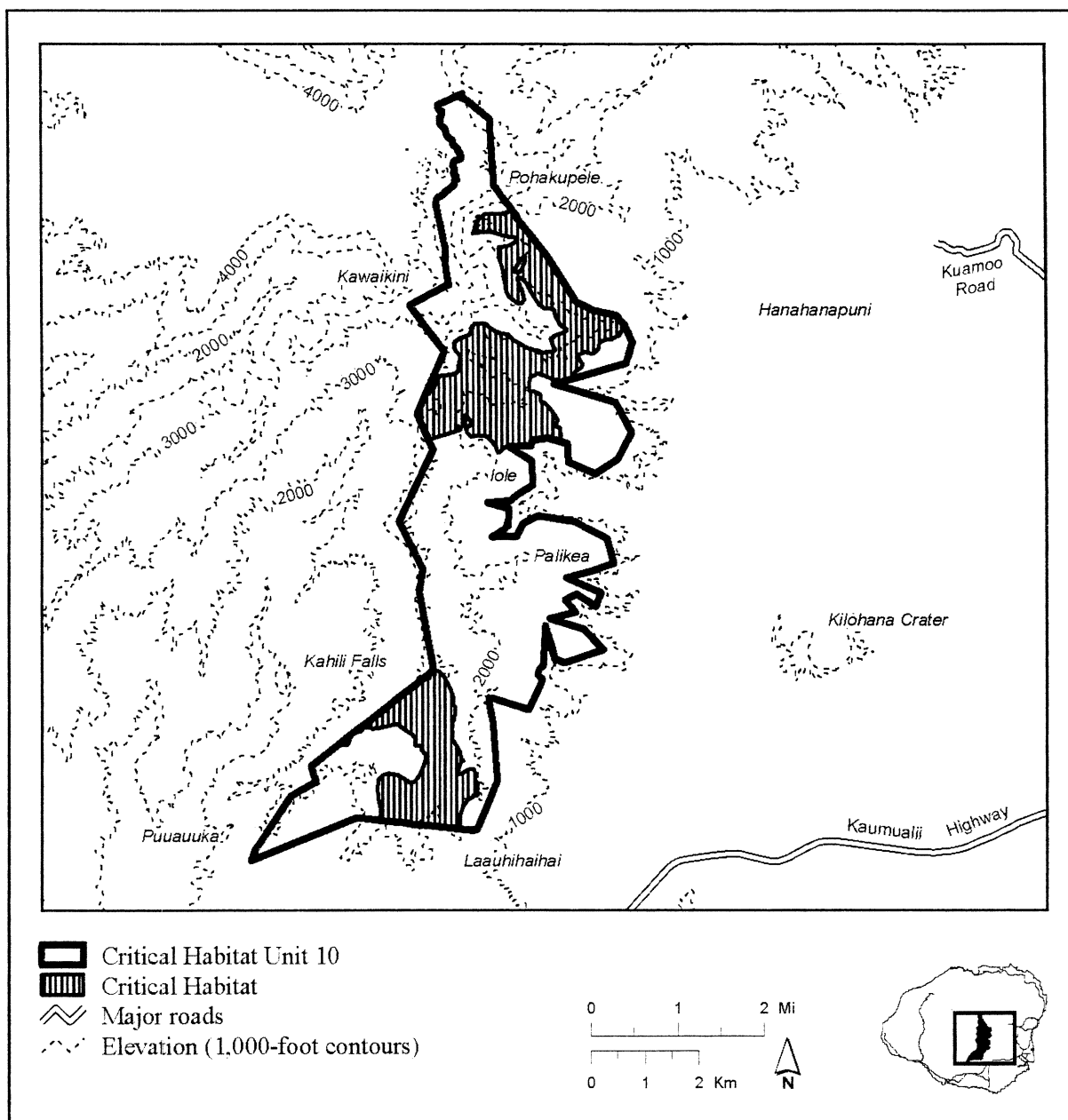
(B) Note: Map 36a follows:

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Map 36a

Kauai 10—*Chamaesyce remyi* var. *kauaiensis*—b, Kauai 10—*Chamaesyce remyi* var. *remyi*—d, Kauai 10—*Charpentiera densiflora*—b, Kauai 10—*Cyanea eleeleensis*—a, Kauai 10—*Cyanea kolekoleensis*—a, Kauai 10—*Cyanea kuhihewa*—a, Kauai 10—*Cyrtandra oenobarba*—b, Kauai 10—*Dubautia imbricata* ssp. *imbricata*—a, Kauai 10—*Labordia helleri*—c, Kauai 10—*Melicope paniculata*—a, Kauai 10—*Melicope puberula*—b, Kauai 10—*Phyllostegia renovans*—b, Kauai 10—*Platydesma rostrata*—d, Kauai 10—*Stenogyne kealiae*—a, Kauai 10—*Tetraplasandra bisattenuata*—b, Kauai 10—*Tetraplasandra flynnii*—b

Lowland Wet



(lx) Kauai 10—*Chamaesyce remyi* var. *kauaiensis*—c

(A) This is a unit of the Wet Cliff ecosystem and consists of 489 ac (198 ha). This unit includes land bounded by the following UTM Zone 4, NAD 83 coordinates (E, N): 449326, 2440266; 449663, 2440988; 449861, 2440726; 449771, 2440087; 449639, 2440133; 449435, 2440131; 449323, 2440106; 449295, 2440144; 449931, 2440046; 449402, 2440381; 449502, 2440462; 449675, 2440467; 449797, 2440464; 449922, 2440494; 450009, 2440531; 449861, 2440726; 449663, 2440988; 449758, 2439861; 449987, 2440561; 450084, 2440003; 449943, 2438939;

448756, 2439586; 448792, 2439355; 448831, 2439328; 448887, 2439317; 448953, 2439254; 449067, 2439195; 448605, 2440582; 449760, 2439660; 448605, 2440585; 449964, 2439881; 449245, 2439220; 449852, 2439858; 449748, 2439830; 449816, 2439481; 449861, 2439257; 449886, 2439054; 449944, 2438939; 449177, 2439197; 448777, 2440842; 449662, 2441006; 449661, 2441029; 449533, 2441052; 449396, 2441083; 449396, 2441083; 449121, 2441114; 449068, 2441051; 448770, 2439804; 448887, 2440934; 450061, 2439947; 448678, 2440741; 448601, 2440652; 448599, 2440647; 448599, 2440637; 448600, 2440627; 448601, 2440618; 448603, 2440603;

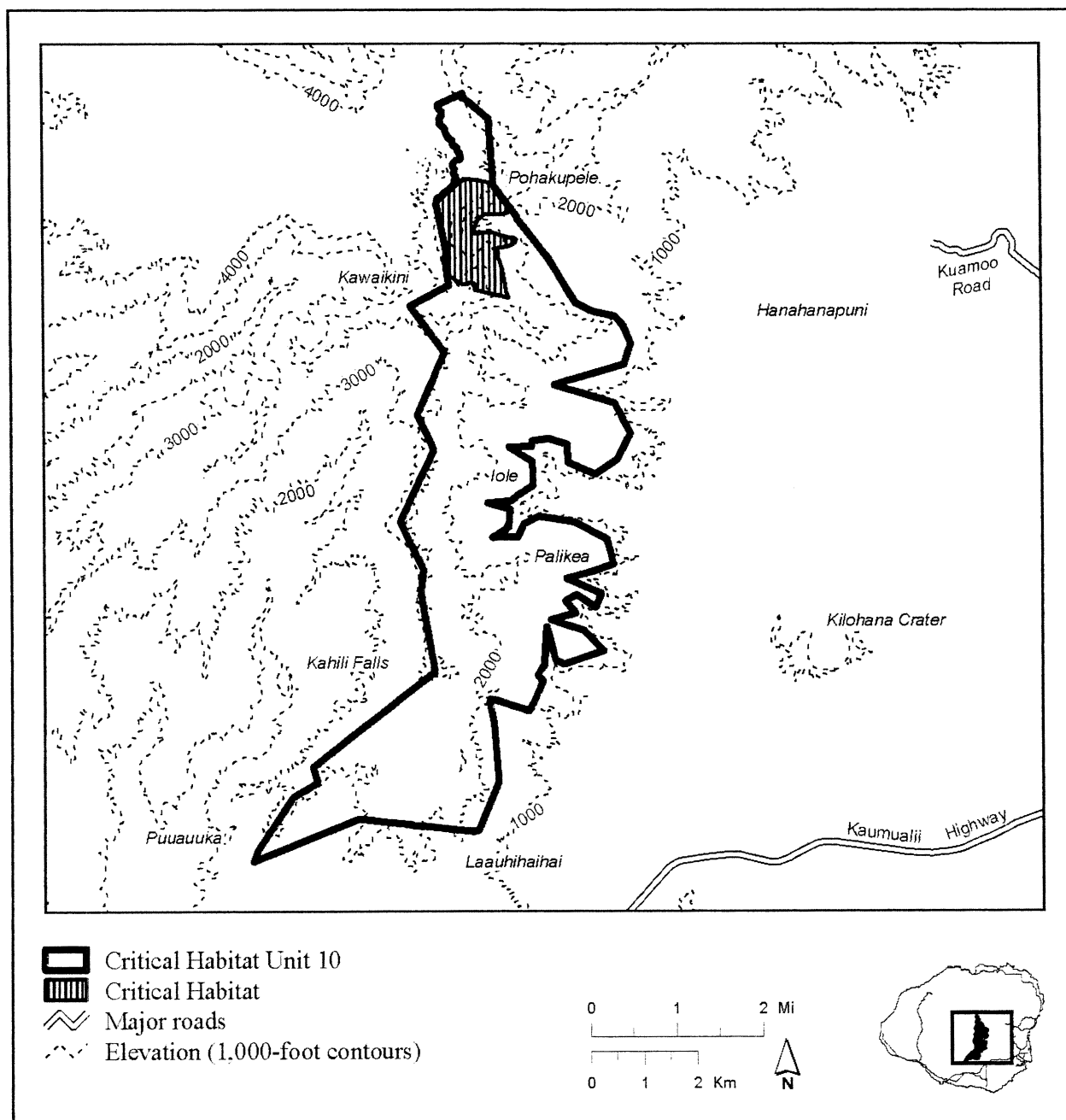
448604, 2440594; 449006, 2441012; 449309, 2439083; 449311, 2439179; 450041, 2440031. This unit is also critical habitat for Kauai 10—*Chamaesyce remyi* var. *remyi*—e, Kauai 10—*Cyanea dolichopoda*—b, Kauai 10—*Cyrtandra oenobarba*—c, Kauai 10—*Cyrtandra paliku*—b, Kauai 10—*Dubautia plantaginea* ssp. *magnifolia*—b, Kauai 10—*Lysimachia iniki*—b, Kauai 10—*Lysimachia pendens*—b, Kauai 10—*Lysimachia venosa*—b, and Kauai 10—*Platydesma rostrata*—e (see paragraphs (a)(1)(lxiii), (a)(1)(lxvi), (a)(1)(lxxiv), (a)(1)(lxxv), (a)(1)(lxxx), (a)(1)(xcv), (a)(1)(xcvi), (a)(1)(xcvii), and (a)(1)(cx), respectively, of this section).

(B) Note: Map 36b follows:

Map 36b

Kauai 10—*Chamaesyce remyi* var. *kauaiensis*—c, Kauai 10—*Chamaesyce remyi* var. *remyi*—e, Kauai 10—*Cyanea dolichopoda*—b, Kauai 10—*Cyrtandra oenobarba*—c, Kauai 10—*Cyrtandra paliku*—b, Kauai 10—*Dubautia plantaginea* ssp. *magnifolia*—b, Kauai 10—*Lysimachia iniki*—b, Kauai 10—*Lysimachia pendens*—b, Kauai 10—*Lysimachia venosa*—b, Kauai 10—*Platydesma rostrata*—e

Wet Cliff



(lxi) Kauai 10—*Chamaesyce remyi* var. *remyi*—c

(A) See paragraph (a)(1)(lvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lvii)(B) of this section for the map of this unit.

(lxii) Kauai 10—*Chamaesyce remyi* var. *remyi*—d

(A) See paragraph (a)(1)(lix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lix)(B) of this section for the map of this unit.

(lxiii) Kauai 10—*Chamaesyce remyi* var. *remyi*—e

(A) See paragraph (a)(1)(lx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lx)(B) of this section for the map of this unit.

(lxiv) Kauai 10—*Charpentiera densiflora*—b

(A) See paragraph (a)(1)(lix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lix)(B) of this section for the map of this unit.

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(lxvi) Kauai 10—*Cyanea dolichopoda*—b

(A) See paragraph (a)(1)(lx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lx)(B) of this section for the map of this unit.

(lxvii) Kauai 10—*Cyanea eleeleensis*—a

(A) See paragraph (a)(1)(lix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lix)(B) of this section for the map of this unit.

(lxviii) Kauai 10—*Cyanea kolekoleensis*—a

(A) See paragraph (a)(1)(lix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lix)(B) of this section for the map of this unit.

(lxix) Kauai 10—*Cyanea kuhihewa*—a

(A) See paragraph (a)(1)(lix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lix)(B) of this section for the map of this unit.

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(lxxiii) Kauai 10—*Cyrtandra oenobarba*—b

(A) See paragraph (a)(1)(lix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lix)(B) of this section for the map of this unit.

(lxxiv) Kauai 10—*Cyrtandra oenobarba*—c

(A) See paragraph (a)(1)(lx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lx)(B) of this section for the map of this unit.

(lxxv) Kauai 10—*Cyrtandra paliku*—b

(A) See paragraph (a)(1)(lx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lx)(B) of this section for the map of this unit.

(lxxvi) Kauai 10—*Dryopteris crinalis* var. *podosorus*—a

(A) See paragraph (a)(1)(lvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lvii)(B) of this section for the map of this unit.

(lxxvii) Kauai 10—*Dubautia imbricata* ssp. *imbricata*—a

(A) See paragraph (a)(1)(lix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lix)(B) of this section for the map of this unit.

(lxxviii) Kauai 10—*Dubautia kalalauensis*—a

(A) See paragraph (a)(1)(lvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lvii)(B) of this section for the map of this unit.

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(lxxx) Kauai 10—*Dubautia plantaginea* ssp. *magnifolia*—b

(A) See paragraph (a)(1)(lx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lx)(B) of this section for the map of this unit.

(lxxxi) Kauai 10—*Dubautia waialealae*—a

(A) See paragraph (a)(1)(lvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lvii)(B) of this section for the map of this unit.

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(lxxxiii) Kauai 10—*Geranium kauaiense*—a

(A) See paragraph (a)(1)(lvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lvii)(B) of this section for the map of this unit.

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(lxxxvi) Kauai 10—*Keysseria erici*—a

(A) See paragraph (a)(1)(lvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lvii)(B) of this section for the map of this unit.

(lxxxvii) Kauai 10—*Keysseria helenae*—a

(A) See paragraph (a)(1)(lvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lvii)(B) of this section for the map of this unit.

(lxxxviii) Kauai 10—*Labordia helleri*—b

(A) See paragraph (a)(1)(lvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lvii)(B) of this section for the map of this unit.

(lxxxix) Kauai 10—*Labordia helleri*—c

(A) See paragraph (a)(1)(lix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lix)(B) of this section for the map of this unit.

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(xci) Kauai 10—*Labordia pumila*—a

(A) See paragraph (a)(1)(lvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lvii)(B) of this section for the map of this unit.

* * * * *

(xciii) Kauai 10—*Lysimachia daphnoides*—a

(A) See paragraph (a)(1)(lvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lvii)(B) of this section for the map of this unit.

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(xcv) Kauai 10—*Lysimachia iniki*—b

(A) See paragraph (a)(1)(lx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lx)(B) of this section for the map of this unit.

(xcvi) Kauai 10—*Lysimachia pendens*—b

(A) See paragraph (a)(1)(lx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lx)(B) of this section for the map of this unit.

(xcvii) Kauai 10—*Lysimachia venosa*—b

(A) See paragraph (a)(1)(lx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lx)(B) of this section for the map of this unit.

(xcviii) Kauai 10—*Melicope degeneri*—a

(A) See paragraph (a)(1)(lvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lvii)(B) of this section for the map of this unit.

(xcix) Kauai 10—*Melicope paniculata*—a

(A) See paragraph (a)(1)(lix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lix)(B) of this section for the map of this unit.

(c) Kauai 10—*Melicope puberula*—a

(A) See paragraph (a)(1)(lvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lvii)(B) of this section for the map of this unit.

(ci) Kauai 10—*Melicope puberula*—b

(A) See paragraph (a)(1)(lix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lix)(B) of this section for the map of this unit.

* * * * *

(ciii) Kauai 10—*Myrsine mezii*—a

(A) See paragraph (a)(1)(lvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lvii)(B) of this section for the map of this unit.

* * * * *

(cv) Kauai 10—*Phyllostegia renovans*—a

(A) See paragraph (a)(1)(lvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lvii)(B) of this section for the map of this unit.

(cvi) Kauai 10—*Phyllostegia renovans*—b

(A) See paragraph (a)(1)(lix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lix)(B) of this section for the map of this unit.

* * * * *

(cviii) Kauai 10—*Platydesma rostrata*—c

(A) See paragraph (a)(1)(lvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lvii)(B) of this section for the map of this unit.

(cix) Kauai 10—*Platydesma rostrata*—d

(A) See paragraph (a)(1)(lix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lix)(B) of this section for the map of this unit.

(cx) Kauai 10—*Platydesma rostrata*—e

(A) See paragraph (a)(1)(lx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lx)(B) of this section for the map of this unit.

(cxi) Kauai 10—*Psychotria grandiflora*—a

(A) See paragraph (a)(1)(lvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lvii)(B) of this section for the map of this unit.

* * * * *

(cxiii) Kauai 10—*Stenogyne kealiae*—a

(A) See paragraph (a)(1)(lix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lix)(B) of this section for the map of this unit.

(cxiv) Kauai 10—*Tetraplasandra bisattenuata*—b

(A) See paragraph (a)(1)(lix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lix)(B) of this section for the map of this unit.

(cxv) Kauai 10—*Tetraplasandra flynnii*—a

(A) See paragraph (a)(1)(lvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lvii)(B) of this section for the map of this unit.

(cxvi) Kauai 10—*Tetraplasandra flynnii*—b

(A) See paragraph (a)(1)(lix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lix)(B) of this section for the map of this unit.

* * * * *

(cxxx) Kauai 11—*Astelia waialealae*—b

(A) This is a unit of the Montane Wet ecosystem and consists of 14,096 ac (5,704 ha). This unit is also critical habitat for Kauai 11—*Chamaesyce remyi* var. *remyi*—f, Kauai 11—*Dryopteris crinalis* var. *podosorus*—b, Kauai 11—*Dubautia kalalauensis*—b, Kauai 11—*Dubautia waialealae*—b, Kauai 11—*Geranium kauaiense*—b, Kauai 11—*Keysseria erici*—b, Kauai 11—*Keysseria helenae*—b, Kauai 11—*Labordia helleri*—d, Kauai 11—*Labordia pumila*—b, Kauai 11—*Lysimachia daphnoides*—b, Kauai 11—*Melicope degeneri*—b, Kauai 11—*Melicope puberula*—c, Kauai 11—*Myrsine mezii*—b, Kauai 11—*Phyllostegia renovans*—c, Kauai 11—*Platydesma rostrata*—f, Kauai 11—*Psychotria grandiflora*—b, and Kauai 11—*Tetraplasandra flynnii*—c (see paragraphs (a)(1)(clxlii), (a)(1)(clxxxvii), (a)(1)(clxxxix), (a)(1)(clxxxv), (a)(1)(cxcix), (a)(1)(ccxvi), (a)(1)(ccxvii), (a)(1)(ccxxii), (a)(1)(ccxxix), (a)(1)(ccxxxv), (a)(1)(ccxli), (a)(1)(ccxlix), (a)(1)(cclviii), (a)(1)(cclxvi), (a)(1)(cclxxvii), (a)(1)(ccxc), and (a)(1)(cccxxiv), respectively, of this section).

(1) This unit includes land bounded by the following UTM Zone 4, NAD83 coordinates (E, N): 441848, 2446265;

441620, 2446723; 442005, 2446171; 441982, 2446194; 441963, 2446219; 441943, 2446256; 441929, 2446268; 441897, 2446273; 441879, 2446263; 441852, 2446219; 442039, 2446165; 441834, 2446230; 442059, 2446159; 441855, 2446295; 441856, 2446328; 441868, 2446401; 441864, 2446424; 441847, 2446451; 441836, 2446475; 441829, 2446501; 441829, 2446505; 441674, 2446682; 440599, 2447501; 441838, 2446221; 442317, 2445917; 442501, 2445803; 442492, 2445803; 442467, 2445799; 442448, 2445805; 442444, 2445807; 442435, 2445813; 442430, 2445827; 442430, 2445830; 442428, 2445851; 442019, 2446165; 445907, 2442657; 441584, 2446741; 442273, 2445945; 442261, 2445949; 442202, 2445986; 442175, 2445995; 442100, 2446007; 442082, 2446029; 442072, 2446052; 442067, 2446082; 442073, 2446121; 442071, 2446146; 442381, 2445882; 440800, 2447339; 441648, 2446705; 441083, 2447147; 441058, 2447153; 441039, 2447168; 440969, 2447210; 440941, 2447230; 440888, 2447250; 440873, 2447265; 440865, 2447286; 441113, 2447170; 440842, 2447328; 441133, 2447183; 440740, 2447346; 440722, 2447354; 440710, 2447368; 440699, 2447389; 440693, 2447407; 440695, 2447430; 440703, 2447452; 440703, 2447461; 440693, 2447475; 443497, 2444548; 440858, 2447311; 441373, 2447026; 441549, 2446752; 441532, 2446763; 441521, 2446777; 441476, 2446797; 441455, 2446804; 441434, 2446820; 441405, 2446869; 441402, 2446899; 441403, 2446972; 441095, 2447154; 441398, 2446997; 442710, 2445647; 441363, 2447030; 441317, 2447043; 441283, 2447083; 441268, 2447104; 441240, 2447171; 441231, 2447186; 441219, 2447195; 441201, 2447195; 441172, 2447190; 441148, 2447188; 441399, 2446995; 443193, 2444946; 442711, 2445664; 443294, 2444870; 443290, 2444876; 443281, 2444890; 443271, 2444898; 443260, 2444907; 443252, 2444914; 443240, 2444927; 443234, 2444932; 443307, 2444833; 443196, 2444944; 443309, 2444829; 443177, 2444962; 443175, 2444965; 443163, 2444984; 443158, 2444995; 443156, 2445003; 443153, 2445020; 443153, 2445040; 443152, 2445059; 443150, 2445078; 443144, 2445096; 443215, 2444938; 443403, 2444695; 443483, 2444551; 443478, 2444555; 443464, 2444570; 443459, 2444579; 443452, 2444591; 443447, 2444608; 443444, 2444627; 443443, 2444647; 443440, 2444655; 443301, 2444851; 443423, 2444686; 443122, 2445132; 443385, 2444699; 443373, 2444702; 443366, 2444706; 443352, 2444721;

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439171, 2452514; 439201, 2452565;
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438490, 2452605; 439114, 2452513;
438484, 2451690; 438485, 2451346;
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438440, 2451600; 438425, 2451652;
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438680, 2451783; 438680, 2451858;
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440402, 2448352; 440391, 2448353;
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440329, 2448016; 440325, 2448033;
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440374, 2448123; 440384, 2448138;
440401, 2448191; 440395, 2447896;
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439146, 2449435; 439114, 2449463;
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439583, 2444266; 439456, 2444205;
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436212, 2450766; 435478, 2452345;
438386, 2452854; 445955, 2442594;
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444117, 2444107; 444088, 2444202;
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436189, 2452365; 438430, 2452817;
436235, 2450550; 438269, 2452930;
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438006, 2453313; 437935, 2453510;
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437592, 2453026; 437202, 2452948;
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439157, 2444829; 439238, 2444846;
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439480, 2445095; 439484, 2445120;
436230, 2450590; 439598, 2445317;
438580, 2444854; 439794, 2445352;

439883, 2445309; 439994, 2445245;
 440078, 2445204; 440165, 2445166;
 440214, 2445151; 440216, 2445150;
 440347, 2445106; 440289, 2445097;
 440216, 2445076; 442301, 2445924;
 437248, 2447657; 439699, 2445360;
 436250, 2450410; 436234, 2450237;
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 436566, 2449560; 436566, 2449559;
 436706, 2449252; 436739, 2449180;
 436811, 2449026; 438807, 2444845;
 437230, 2447713; 438677, 2444833;
 437232, 2447645; 438168, 2444734;
 438179, 2444732; 438263, 2444805;
 438343, 2444896; 438406, 2444952;
 438475, 2444955; 438523, 2444886;
 438536, 2444858; 436234, 2450558;
 437237, 2447714; 446348, 2441177;
 441656, 2441573; 445235, 2441328;
 445344, 2441376; 445392, 2441392;
 445510, 2441194; 445551, 2441162;
 445886, 2441308; 446122, 2441415;
 446214, 2441291; 444560, 2441032;
 446300, 2441227; 444480, 2440997;
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 446499, 2441271; 446610, 2441349;
 446673, 2441408; 446651, 2441424;
 446641, 2441436; 446587, 2441501;
 446587, 2441543; 446640, 2441627;
 446228, 2441279; 442977, 2441356;
 441659, 2441579; 441727, 2441586;
 441774, 2441575; 441900, 2441576;
 441968, 2441515; 442287, 2441225;
 442568, 2441274; 442723, 2441295;
 442843, 2441314; 445124, 2441205;
 442982, 2441350; 446591, 2442195;
 443016, 2441342; 443023, 2441344;
 443707, 2441132; 443889, 2441172;
 444062, 2441230; 444083, 2441215;
 444109, 2441224; 444113, 2441221;
 444124, 2441223; 444455, 2440990;
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 443985, 2444416; 443769, 2444440;
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 443732, 2444458; 443722, 2444464;
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 443677, 2444459; 446686, 2441764;
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 437697, 2441878; 439501, 2445220;
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 446373, 2442574; 446256, 2442602;
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 443984, 2444419; 445437, 2443077;
 444016, 2444444; 445045, 2443240;
 444824, 2443350; 444659, 2443447;
 444532, 2443516; 444456, 2443572;
 444423, 2443638; 444334, 2443811;
 444237, 2444013; 444161, 2444181;
 446694, 2442007; 445559, 2443010;
 438098, 2442237; 437996, 2442188;
 437998, 2442202; 437998, 2442205;

437999, 2442211; 438000, 2442216;
 438012, 2442229; 438030, 2442243;
 438049, 2442246; 438065, 2442246;
 438392, 2442294; 438095, 2442238;
 437954, 2442136; 438114, 2442232;
 438130, 2442234; 438157, 2442234;
 438219, 2442244; 438238, 2442248;
 438254, 2442248; 438305, 2442256;
 438355, 2442265; 438373, 2442277;
 438376, 2442278; 438088, 2442240;
 437791, 2442074; 437705, 2441878;
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 437745, 2441950; 437747, 2441961;
 437751, 2441981; 437754, 2441991;
 437758, 2441998; 437984, 2442167;
 437777, 2442052; 437973, 2442147;
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 437826, 2442106; 437839, 2442110;
 437873, 2442121; 445395, 2441389;
 437912, 2442123; 441650, 2441573;
 437939, 2442128; 437926, 2442125;
 437766, 2442017; 440002, 2440430;
 438866, 2442347; 438934, 2442351;
 438960, 2442270; 438967, 2442246;
 438976, 2442220; 439037, 2442031;
 439088, 2441871; 439096, 2441847;
 439491, 2440617; 438838, 2442340;
 439832, 2440430; 439556, 2440414;
 440014, 2440441; 440110, 2440524;
 440113, 2440527; 440114, 2440528;
 440464, 2440832; 440528, 2440844;
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 439551, 2440431; 438535, 2442314;
 438436, 2442321; 438453, 2442321;
 438453, 2442321; 439931, 2440426;
 438821, 2442339; 438460, 2442320;
 438496, 2442310; 438433, 2442319;
 438523, 2442310; 438536, 2442314;
 438561, 2442316; 438577, 2442315;
 438668, 2442322; 438704, 2442326;
 438517, 2442310; 438721, 2442329;
 438679, 2442324; 438656, 2442321;
 438626, 2442315; 438757, 2442331;
 438609, 2442314; 438694, 2442327.

(2) This unit includes land bounded by the following UTM Zone 4, NAD 83 coordinates (E, N): 433880, 2448827;
 434279, 2447951; 434073, 2448685;
 434228, 2448620; 434292, 2448479;
 433725, 2448994; 434318, 2448298;
 434357, 2447229; 434202, 2447345;
 434086, 2447693; 434254, 2447886;
 433546, 2449412; 434073, 2447500;
 434163, 2447783; 434318, 2448182;
 433545, 2449136; 433389, 2449256;
 433567, 2449260; 433588, 2449244;
 433599, 2449252; 433612, 2449262;
 433567, 2449398; 433525, 2449415;
 433448, 2449426; 434486, 2447126;
 434498, 2449522; 433367, 2449352;
 433339, 2449381; 433368, 2449293;
 433589, 2449323; 435236, 2449347;
 433313, 2449484; 434899, 2449305;
 434074, 2449972; 434124, 2449948;
 434137, 2449869; 434141, 2449863;
 434208, 2449767; 434338, 2449660;

434752, 2449405; 435080, 2449407;
 435183, 2449401; 435232, 2449399;
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 434627, 2447088; 435266, 2448909;
 435272, 2448835; 435282, 2448685;
 435360, 2447538; 435295, 2447440;
 435290, 2447449; 435093, 2447245;
 434994, 2447085; 434795, 2447069;
 434738, 2447030; 434738, 2447045;
 434713, 2447038; 434686, 2447020;
 435234, 2449384; 434884, 2449298;
 434026, 2449951; 434034, 2449950;
 434074, 2449972; 434844, 2449248;
 434848, 2449239; 434872, 2449246;
 434890, 2449251; 434908, 2449290;
 434908, 2449290; 434948, 2449300;
 435005, 2449310; 435010, 2449343;
 433969, 2449958; 434898, 2449304;
 435010, 2449343; 434881, 2449297;
 434872, 2449294; 434833, 2449281;
 434833, 2449280; 434833, 2449278;
 434833, 2449278; 434834, 2449277;
 434839, 2449258; 434842, 2449253;
 434844, 2449248; 433339, 2449600;
 434991, 2449344; 434938, 2449321;
 433440, 2449604; 433460, 2449707;
 433468, 2449706; 433484, 2449694;
 433419, 2449599; 433461, 2449623;
 433458, 2449707; 433455, 2449620;
 433480, 2449629; 433437, 2449592;
 433426, 2449556; 433903, 2449882;
 435011, 2449352; 433401, 2449697;
 433414, 2449628; 433457, 2449622;
 433493, 2449765; 433831, 2449767;
 433742, 2449724; 433461, 2449623;
 433633, 2449724; 433467, 2449787;
 433429, 2449741; 433408, 2449708;
 433436, 2449707; 433436, 2449707;
 433443, 2449707; 433444, 2449707;
 433426, 2449707; 433445, 2449707.

(3) This unit includes land bounded by the following UTM Zone 4, NAD83 coordinates (E, N): 448881, 2447609;
 449040, 2448659; 449045, 2448506;
 449032, 2448326; 449044, 2448132;
 449087, 2447916; 448981, 2446981;
 448979, 2446983; 448980, 2446982;
 448980, 2446980; 449012, 2448822;
 449105, 2447827; 448702, 2449395;
 448235, 2448042; 448931, 2447092;
 448577, 2449143; 448641, 2449184;
 448610, 2449255; 448623, 2449141;
 448613, 2449357; 448987, 2448959;
 448812, 2449420; 448906, 2449440;
 448959, 2449443; 448964, 2449425;
 448952, 2449316; 448954, 2449143;
 448593, 2449298; 448511, 2449199;
 448321, 2447795; 448887, 2447191;
 448577, 2449143; 448440, 2449296;
 448382, 2449406; 448328, 2449449;
 448242, 2449457; 448099, 2449454;
 448059, 2449434; 448056, 2449368;
 448091, 2449266; 448119, 2449134;
 448122, 2449037; 448288, 2447915;
 448834, 2447273; 448440, 2447342;
 448088, 2448897; 448412, 2447653;
 448669, 2447406; 448133, 2448200;
 448042, 2448338; 447976, 2448470;

447943, 2448562; 447961, 2448628;
448037, 2448780; 448516, 2447525.

(4) This unit includes land bounded by the following UTM Zone 4, NAD83 coordinates (E, N): 447249, 2443451; 447247, 2443586; 447295, 2443639; 447325, 2443651; 447556, 2443686; 447603, 2443646; 447616, 2443588; 447631, 2443389; 447645, 2443143; 447623, 2443445; 447287, 2443339; 447374, 2443275; 447631, 2443389;

447636, 2443160; 447645, 2443146;
447894, 2443371; 447865, 2443358;
447712, 2443351; 447481, 2443262.

(5) This unit includes land bounded by the following UTM Zone 4, NAD83 coordinates (E, N): 448470, 2443889; 448141, 2444294; 448479, 2443895; 448470, 2443888; 447864, 2444277; 448479, 2443895; 448609, 2443974; 448591, 2444072; 448566, 2444172; 448548, 2444233; 448510, 2444279;

448464, 2444284; 448299, 2444289;
447925, 2444320; 447843, 2444325;
448458, 2443882; 447942, 2444178;
448003, 2444015; 448008, 2443903;
447967, 2443867; 447932, 2443750;
447904, 2443646; 447921, 2443582;
447949, 2443460; 447939, 2443412;
447996, 2444312.

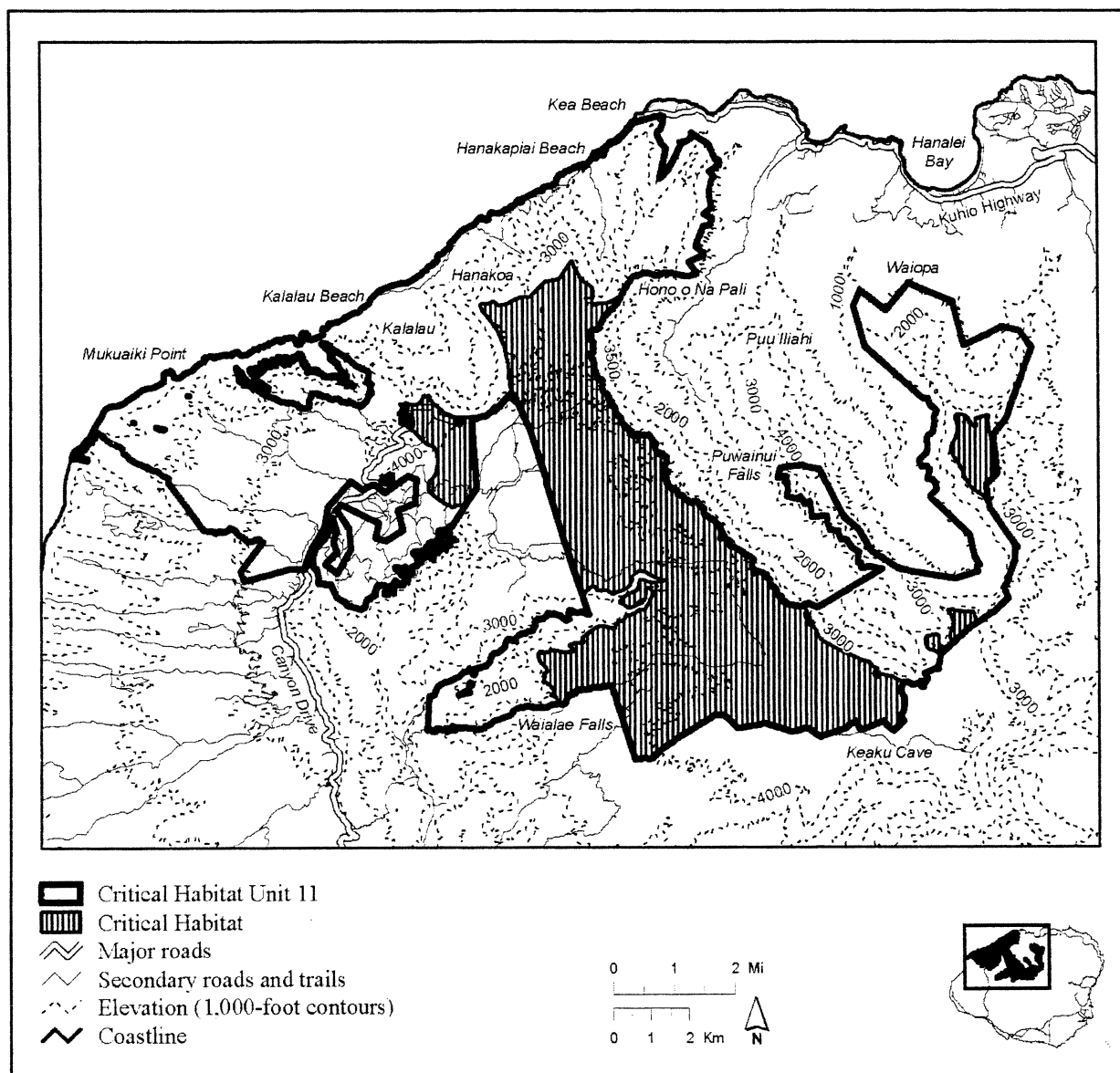
(B) Note: Map 64a follows:

BILLING CODE 4310-55-S

Map 64a

Kauai 11—*Astelia waialealae*—b, Kauai 11—*Chamaesyce remyi* var. *remyi*—f, Kauai 11—*Dryopteris crinalis* var. *podosorus*—b, Kauai 11—*Dubautia kalalauensis*—b, Kauai 11—*Dubautia waialealae*—b, Kauai 11—*Geranium kauaiense*—b, Kauai 11—*Keysseria erici*—b, Kauai 11—*Keysseria helenae*—b, Kauai 11—*Labordia helleri*—d, Kauai 11—*Labordia pumila*—b, Kauai 11—*Lysimachia daphnoides*—b, Kauai 11—*Melicope degeneri*—b, Kauai 11—*Melicope puberula*—c, Kauai 11—*Myrsine mezii*—b, Kauai 11—*Phyllostegia renovans*—c, Kauai 11—*Platydesma rostrata*—f, Kauai 11—*Psychotria grandiflora*—b, Kauai 11—*Tetraplasandra flynnii*—c

Montane Wet



* * * * *

(cxxxiii) Kauai 11—*Canavalia napaliensis*—b

(A) This is a unit of the Lowland Mesic ecosystem and consists of 2,590 ac (1,048 ha). This unit is also critical habitat for Kauai 11—*Chamaesyce eleanoriae*—b, Kauai 11—*Chamaesyce remyi* var. *remyi*—g, Kauai 11—*Charpentiera densiflora*—c, Kauai 11—*Doryopteris angelica*—b, Kauai 11—*Dubautia kenwoodii*—b, Kauai 11—*Labordia helleri*—e, Kauai 11—*Pittosporum napaliense*—b, Kauai 11—*Platydesma rostrata*—g, Kauai 11—*Psychotria hobbdi*—b, and Kauai 11—*Tetraplasandra bisattenuata*—c (see paragraphs (a)(1)(cxxxv), (a)(1)(cxlvi), (a)(1)(clxvii), (a)(1)(clxxx), (a)(1)(ccxxiii), (a)(1)(cclxxii), (a)(1)(cclxxviii), (a)(1)(ccxcii), and (a)(1)(cccxxxii), respectively, of this section).

(1) This unit includes land bounded by the following UTM Zone 4, NAD83 coordinates (E, N): 429310, 2448345; 429679, 2448361; 427873, 2448495; 429992, 2448363; 428727, 2448356; 428429, 2448252; 428229, 2448295; 428072, 2448380; 429040, 2448343; 427702, 2448480; 427616, 2448566; 427957, 2448626; 428640, 2448616; 428497, 2448745; 430177, 2448336; 429127, 2448025; 428184, 2448758; 427985, 2448814; 428413, 2448542; 429801, 2448080; 430583, 2449736; 428239, 2449004; 428246, 2447831; 428459, 2447934; 428558, 2447963; 428771, 2448066; 428927, 2448067; 429511, 2447984; 429626, 2447973; 430131, 2448232; 429914, 2448112; 429866, 2448131; 430049, 2448165; 430037, 2448217; 430042, 2448265; 430059, 2448285; 430092, 2448290; 430115, 2448276; 429340, 2447983; 430819, 2449646; 430408, 2449802; 430410, 2449802; 430405, 2449796; 428032, 2447946; 430527, 2449754; 427907, 2446845; 430635, 2449693; 430471, 2449787; 430720, 2449646; 430340, 2449778; 430899, 2449674; 430918, 2449717; 430904, 2449834; 430927, 2449905; 430948, 2449965; 431049, 2449934; 431249, 2449791; 430696, 2449656; 430016, 2449884; 429093, 2448894; 428893, 2449066; 428991, 2449270; 429489, 2449345; 429872, 2449507; 430071, 2449494; 430041, 2449682; 430392, 2449798; 430004, 2449889; 430365, 2449787; 430027, 2449878; 430068, 2449856; 430088, 2449848; 430172, 2449815; 430207, 2449804; 430261, 2449795; 430317, 2449781; 428666, 2448993; 429941, 2449841; 430191, 2446386;

428996, 2446347; 430671, 2447997; 430690, 2447765; 430393, 2447748; 430242, 2447664; 430107, 2447429; 430073, 2447126; 430793, 2448310; 430291, 2446570; 430886, 2448507; 429871, 2446234; 429547, 2446209; 429451, 2446226; 429357, 2446224; 429280, 2446207; 429242, 2446209; 429160, 2446277; 428149, 2446847; 430124, 2446907; 431362, 2449169; 431520, 2449691; 431720, 2449620; 431705, 2449569; 431769, 2449447; 431727, 2449372; 431403, 2449436; 431322, 2449418; 430764, 2448188; 431391, 2449273; 428979, 2446425; 431200, 2449070; 431205, 2448983; 431414, 2448890; 431629, 2448739; 431560, 2448675; 431171, 2448699; 430985, 2448705; 430903, 2448664; 431322, 2449372; 427039, 2447867; 429036, 2446320; 427161, 2447669; 427157, 2447676; 427157, 2447711; 427165, 2447729; 427158, 2447803; 427133, 2447817; 427520, 2447201; 427039, 2447866; 427535, 2447190; 427001, 2447889; 426958, 2448061; 426963, 2448149; 427064, 2448142; 427235, 2448086; 427563, 2447928; 427677, 2447929; 427733, 2448045; 427108, 2447853; 428047, 2446484; 428831, 2446497; 428775, 2446510; 428706, 2446470; 428620, 2446396; 428570, 2446443; 428493, 2446458; 428399, 2446395; 427178, 2447664; 428248, 2446467; 427932, 2448032; 427784, 2446844; 429744, 2449390; 427992, 2446846; 431520, 2449691; 428177, 2446890; 428105, 2447006; 427906, 2447077; 427734, 2447192; 428326, 2446439; 429333, 2449272.

(2) This unit includes land bounded by the following UTM Zone 4, NAD83 coordinates (E, N): 434084, 2450395; 434586, 2450652; 434573, 2450493; 434417, 2450376; 434288, 2450520; 434089, 2450518; 433962, 2450344; 435379, 2451538; 433998, 2450334; 434826, 2450972; 434156, 2450444; 434237, 2450456; 434288, 2450459; 434329, 2450469; 434298, 2450420; 434255, 2450337; 433951, 2450321; 435177, 2451612; 435402, 2451617; 435412, 2451678; 435318, 2451714; 435231, 2451780; 435178, 2451869; 435105, 2451886; 434656, 2450870; 435205, 2451713; 434640, 2451058; 435064, 2451510; 435050, 2451437; 435164, 2451394; 435165, 2451250; 435152, 2451105; 435053, 2450974; 434229, 2450100; 435091, 2451771; 435635, 2451403; 434201, 2450220; 435693, 2450581; 435744, 2450673; 435769, 2450813; 435762, 2450931; 435759, 2450963; 435608, 2450342; 435676, 2451273; 435567, 2450146; 435602, 2451485; 435568, 2451531;

435564, 2451535; 435526, 2451558; 435488, 2451543; 435455, 2451520; 435379, 2451538; 435724, 2451110; 434791, 2450099; 434415, 2450298; 434275, 2450082; 434315, 2450105; 434354, 2450189; 434458, 2450344; 434527, 2450344; 435649, 2450502; 434695, 2450176; 434198, 2450176; 434834, 2450015; 434933, 2449939; 435091, 2449882; 435257, 2449864; 435432, 2449887; 435496, 2449915; 435537, 2449994; 434578, 2450244; 434504, 2450369.

(3) This unit includes land bounded by the following UTM Zone 4, NAD83 coordinates (E, N): 434600, 2453100; 434431, 2452829; 434289, 2452715; 434275, 2452687; 434275, 2452765; 434274, 2452895; 435095, 2453567; 434458, 2453099; 434814, 2453088; 434628, 2453158; 434656, 2453260; 434769, 2453333; 434911, 2453349; 435025, 2453349; 434330, 2453055; 434735, 2453035; 435237, 2453582; 434890, 2453142; 434915, 2453139; 434902, 2452974; 434943, 2452791; 435055, 2452699; 435187, 2452668; 435284, 2452706; 435360, 2452826; 435353, 2452958; 435266, 2453062; 435177, 2453131; 435129, 2453220; 434569, 2452921; 435534, 2453517; 435067, 2453494; 435279, 2453583; 435145, 2453314; 435221, 2453373; 435488, 2453454; 435129, 2453220; 435626, 2453626; 435703, 2453748; 435563, 2453642; 435772, 2453903; 435792, 2453934; 435775, 2453963; 435675, 2453918; 435620, 2453730; 435741, 2453842; 435376, 2453408.

(4) This unit includes land bounded by the following UTM Zone 4, NAD83 coordinates (E, N): 439159, 2453759; 439171, 2453735; 439242, 2453562; 439244, 2453448; 439043, 2454237; 439466, 2454892; 439468, 2454903; 439115, 2453850; 439485, 2454824; 439087, 2453909; 439065, 2454132; 439121, 2454259; 439243, 2454297; 439360, 2454300; 439454, 2454376; 439498, 2454643; 439296, 2454804; 439268, 2454731; 439480, 2454475; 438791, 2453685; 439211, 2454615; 439381, 2454833; 439016, 2454063; 439016, 2453962; 439002, 2453918; 438904, 2453772; 438791, 2453608; 438833, 2453598; 438870, 2453588; 438962, 2453532; 439041, 2453446; 439145, 2453405; 439244, 2453448; 439085, 2454310; 439001, 2454179; 439085, 2454397; 439098, 2454498; 438982, 2453510; 438946, 2453845; 439183, 2454600.

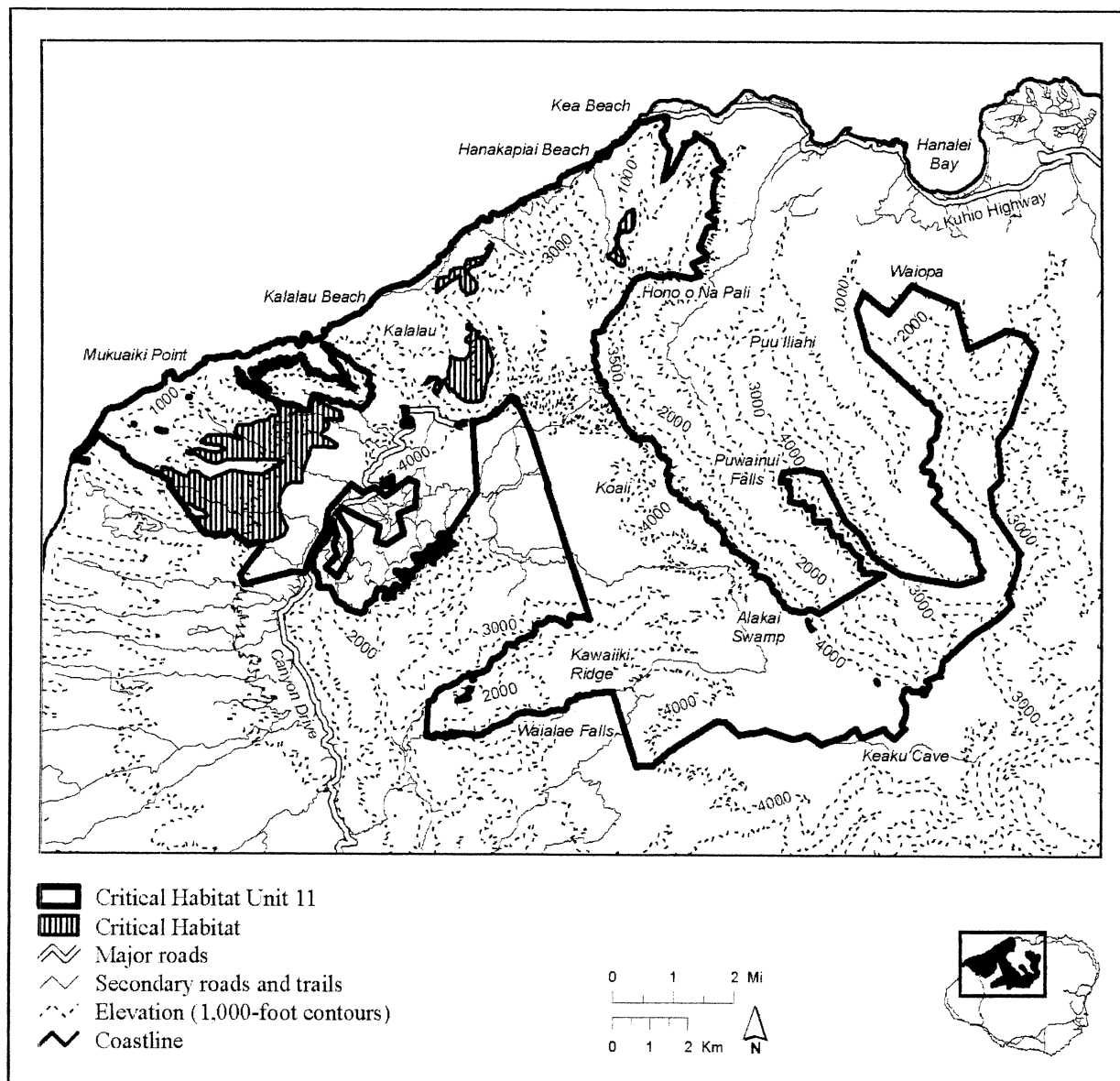
(B) Note: Map 66a follows:

BILLING CODE 4310-55-S

Map 66a

Kauai 11—*Canavalia napaliensis*—b, Kauai 11—*Chamaesyce eleanoriae*—b, Kauai 11—*Chamaesyce remyi* var. *remyi*—g, Kauai 11—*Charpentiera densiflora*—c, Kauai 11—*Doryopteris angelica*—b, Kauai 11—*Dubautia kenwoodii*—b, Kauai 11—*Labordia helleri*—e, Kauai 11—*Pittosporum napaliense*—b, Kauai 11—*Platydesma rostrata*—g, Kauai 11—*Psychotria hobdyi*—b, Kauai 11—*Tetraplasandra bisattenuata*—c

Lowland Mesic



* * * * *

(cxxxv) Kauai 11—*Chamaesyce eleanoriae*—b

(A) See paragraph (a)(1)(cxxxiii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxxiii)(B) of this section for the map of this unit.

(cxxxvi) Kauai 11—*Chamaesyce eleanoriae*—c

(A) This is a unit of the Dry Cliff ecosystem and consists of 712 ac (288 ha). This unit is also critical habitat for Kauai 11—*Lysimachia scopulensis*—a, Kauai 11—*Schiedea attenuata*—a, and Kauai 11—*Stenogyne kealiae*—b (see paragraphs (a)(1)(ccxxxviii), (a)(1)(cccix), and (a)(1)(cccxix), respectively, of this section).

(1) This unit includes land bounded by the following UTM Zone 4, NAD83 coordinates (E, N): 434920, 2449394; 434124, 2449948; 435916, 2450057; 434137, 2449869; 434141, 2449863; 434208, 2449767; 434338, 2449660; 434752, 2449405; 434074, 2449972; 433287, 2450063; 434498, 2449522; 434034, 2449950; 434026, 2449951; 433969, 2449958; 433903, 2449882; 433831, 2449767; 433742, 2449724; 433633, 2449724; 433493, 2449765; 435080, 2449407; 433353, 2449880; 435576, 2449421; 433196, 2450196; 433467, 2449787; 435716, 2449506; 435496, 2449915; 433046, 2450280; 435915, 2449832; 435916, 2450057; 435762, 2450931; 435853, 2450609; 435876, 2450522; 435906, 2450349; 435908, 2450232; 435913, 2450123;

435549, 2449426; 435728, 2449514; 435183, 2449401; 435669, 2449472; 435664, 2449469; 435598, 2449429; 435573, 2449422; 435517, 2449423; 435501, 2449420; 435498, 2449418; 435469, 2449405; 435420, 2449387; 435284, 2449396; 435232, 2449399; 435813, 2449619; 434834, 2450015; 434229, 2450100; 435257, 2449864; 434315, 2450105; 434354, 2450189; 434415, 2450298; 434458, 2450344; 435769, 2450813; 434504, 2450369; 434527, 2450344; 434578, 2450244; 432904, 2450341; 434791, 2450099; 434198, 2450176; 434933, 2449939; 435091, 2449882; 435892, 2449772; 435432, 2449887; 435537, 2449994; 435567, 2450146; 435608, 2450342; 435649, 2450502; 435693, 2450581; 435744, 2450673; 434695, 2450176; 433480, 2450152; 432882, 2450351; 432808, 2450383; 432852, 2450453; 432985, 2450649; 433015, 2450660; 433154, 2450657; 433185, 2450610; 433146, 2450539; 433093, 2450504; 434275, 2450082; 433237, 2450310; 434201, 2450220; 433807, 2450155; 433920, 2450257; 433951, 2450321; 433998, 2450334; 434084, 2450395; 434156, 2450444; 434237, 2450456; 434288, 2450459; 434329, 2450469; 434298, 2450420; 434255, 2450337; 433051, 2450468.

(2) This unit includes land bounded by the following UTM Zone 4, NAD83 coordinates (E, N): 435055, 2452699; 435912, 2452703; 435448, 2452106; 435379, 2451538; 435455, 2451520; 435488, 2451543; 435526, 2451558; 435564, 2451535; 435568, 2451531;

435537, 2451675; 435516, 2451752; 435744, 2452655; 435461, 2451989; 435318, 2451714; 435472, 2452346; 435476, 2452390; 435474, 2452446; 435495, 2452579; 435560, 2452671; 435574, 2452690; 435596, 2452692; 435668, 2452695; 435284, 2452706; 435483, 2451879; 435031, 2452321; 434814, 2453088; 434735, 2453035; 434569, 2452921; 434431, 2452829; 434289, 2452715; 434275, 2452687; 434275, 2452664; 434475, 2452549; 434646, 2452550; 435402, 2451617; 434902, 2452407; 435412, 2451678; 435003, 2452190; 435131, 2452148; 435118, 2451988; 435062, 2451915; 435105, 2451887; 435105, 2451886; 435178, 2451869; 435231, 2451780; 435859, 2452647; 434789, 2452406; 435858, 2453212; 435772, 2453903; 435792, 2453934; 435807, 2453891; 435744, 2452655; 435812, 2453641; 435817, 2453489; 435839, 2453341; 435741, 2453842; 435880, 2453252; 435805, 2453913; 435833, 2453129; 435816, 2453051; 435815, 2452963; 435839, 2452896; 435922, 2452711; 435914, 2452704; 435912, 2452703; 435880, 2453252; 435353, 2452958; 435881, 2452670; 434890, 2453142; 434915, 2453139; 434902, 2452974; 434943, 2452791; 435802, 2453804; 435360, 2452826; 435703, 2453748; 435266, 2453062; 435534, 2453517; 435187, 2452668; 435626, 2453626; 435177, 2453131; 435488, 2453454; 435376, 2453408; 435221, 2453373; 435145, 2453314; 435129, 2453220.

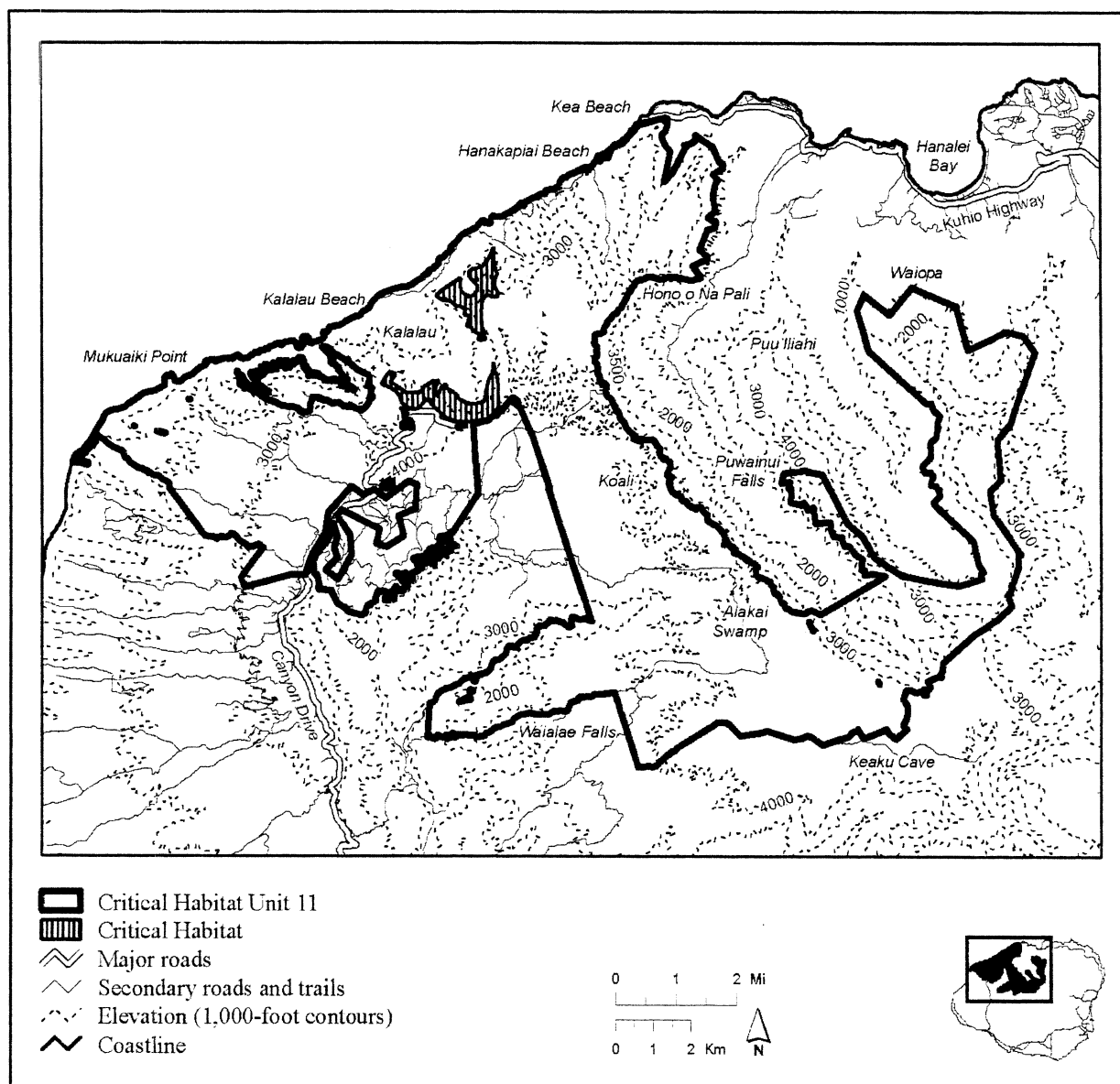
(B) Note: Map 67a follows:

BILLING CODE 4310-55-S

Map 67a

Kauai 11—*Chamaesyce eleanoriae*-c, Kauai 11—*Lysimachia scopulensis*-a, Kauai 11—*Schiedea attenuata*-a, Kauai 11—*Stenogyne kealiae*-b

Dry Cliff



* * * * *

(cxl) Kauai 11—*Chamaesyce remyi* var. *kauaiensis*—d

(A) This is a unit of the Lowland Wet ecosystem and consists of 2,618 ac (1,060 ha). This unit is also critical habitat for Kauai 11—*Chamaesyce remyi* var. *remyi*—h, Kauai 11—*Charpentiera densiflora*—d, Kauai 11—*Cyanea eleeleensis*—b, Kauai 11—*Cyanea kolekoleensis*—b, Kauai 11—*Cyanea kuhihewa*—b, Kauai 11—*Cyrtandra oenobarba*—d, Kauai 11—*Dubautia imbricata* ssp. *imbricata*—b, Kauai 11—*Labordia helleri*—f, Kauai 11—*Melicope paniculata*—b, Kauai 11—*Melicope puberula*—d, Kauai 11—*Phyllostegia renovans*—d, Kauai 11—*Platydesma rostrata*—h, Kauai 11—*Stenogyne kealiae*—c, Kauai 11—*Tetraplasandra bisattenuata*—d, and Kauai 11—*Tetraplasandra flynnii*—d (see paragraphs (a)(1)(cxliv), (a)(1)(cxlvi), (a)(1)(cli), (a)(1)(clii), (a)(1)(cliii), (a)(1)(clxviii), (a)(1)(ccxxiv), (a)(1)(ccxlviii), (a)(1)(ccl), (a)(1)(cclxvii), (a)(1)(cclxxix), (a)(1)(cccxxx), (a)(1)(cccxxxii), and (a)(1)(cccxxxv) respectively, of this section).

(1) This unit includes land bounded by the following UTM Zone 4, NAD83 coordinates (E, N): 439674, 2454816; 440829, 2456531; 440674, 2456209; 440674, 2456209; 440498, 2455883; 440318, 2455684; 440265, 2455650; 440437, 2456434; 441321, 2455601; 440968, 2454371; 441022, 2454452; 441060, 2454503; 441116, 2454605; 441175, 2454734; 441201, 2454902; 441196, 2455050; 441203, 2455144; 441204, 2455238; 439597, 2454271; 441257, 2455421; 440812, 2453929; 441354, 2455706; 441400, 2455825; 441459, 2455917; 441541, 2456046; 441561, 2456125; 441543, 2456184; 441556, 2456273; 441574, 2456339; 441574, 2456384; 441564, 2456402; 441227, 2455309; 439928, 2453312; 439377, 2452849; 439390, 2452876; 439414, 2452909; 439464, 2452963; 439473, 2452985; 439481, 2453022; 439503, 2453046; 439553, 2453082; 439600, 2453107; 439618, 2453112; 440902, 2454287; 439788, 2453246; 440828, 2454112; 440061, 2453330; 440216, 2453312; 440430, 2453245; 440521, 2453222; 440539, 2453242; 440554, 2453392; 440588, 2453586; 440685, 2453700; 440805, 2453832; 441338, 2456446; 439646, 2453139; 438605, 2452379; 441501, 2456407; 439055, 2453168; 439012, 2453084; 438938, 2452886; 438872, 2452703; 438787, 2452586; 439373, 2452840; 438691, 2452533; 438684, 2452527;

438617, 2452469; 439307, 2453234; 438540, 2452374; 439402, 2453308; 438669, 2452384; 438716, 2452393; 438779, 2452391; 438816, 2452396; 438851, 2452395; 438954, 2452430; 439114, 2452513; 439201, 2452565; 439225, 2452608; 439322, 2452763; 438550, 2452386; 439705, 2455362; 439372, 2452836; 441231, 2456494; 440834, 2456579; 440867, 2456555; 440437, 2456434; 440319, 2456582; 440302, 2456453; 440131, 2455839; 439992, 2455240; 439972, 2455227; 439183, 2453214; 439766, 2455332; 441434, 2456415; 439659, 2455337; 439664, 2455162; 439671, 2454996; 439635, 2454556; 439595, 2454252; 439571, 2454009; 439545, 2453798; 439499, 2453587; 439453, 2453425; 439827, 2455286.

(2) This unit includes land bounded by the following UTM Zone 4, NAD83 coordinates (E, N): 437020, 2453189; 435477, 2452358; 435941, 2452670; 435881, 2452670; 435859, 2452647; 435744, 2452655; 435744, 2452655; 435668, 2452695; 435596, 2452692; 435579, 2452684; 435560, 2452671; 435495, 2452579; 436027, 2452670; 435476, 2452390; 435810, 2452427; 435698, 2452376; 435719, 2452378; 435838, 2452443; 435955, 2452326; 436003, 2452334; 436189, 2452365; 436579, 2452559; 436804, 2452559; 437201, 2452932; 437201, 2452932; 435474, 2452446; 437541, 2453313; 435902, 2452378; 436122, 2452693; 437202, 2452948; 437592, 2453026; 437797, 2453318; 437675, 2453322; 437408, 2453303; 437279, 2453284; 437072, 2453217; 437144, 2453246; 436929, 2453132; 436865, 2453080; 436370, 2452779; 436152, 2452704; 436156, 2452702; 437746, 2453322; 436849, 2453037; 436289, 2452750; 436289, 2452751; 436230, 2452707; 436547, 2452854; 436556, 2452755; 436617, 2452681; 436668, 2452719; 436783, 2452859.

(3) This unit includes land bounded by the following UTM Zone 4, NAD83 coordinates (E, N): 446053, 2443486; 445952, 2443580; 446981, 2444484; 446142, 2443241; 445804, 2443684; 446282, 2443149; 446918, 2444619; 446104, 2443348; 447039, 2444332; 447126, 2444222; 447271, 2444151; 447573, 2443995; 447576, 2443919; 445601, 2443759; 446555, 2445050; 447507, 2443875; 447387, 2443832; 447525, 2444041; 444938, 2444714; 446880, 2443495; 447257, 2443817; 446806, 2444770; 446697, 2444890; 446605, 2444969; 446565, 2445119; 446615, 2445149; 446102, 2445409; 445418, 2443802; 444984, 2444620;

445009, 2444513; 445012, 2444375; 444988, 2444177; 445001, 2443989; 445072, 2443925; 445224, 2443866; 446305, 2445519; 446994, 2442927; 446674, 2443625; 446456, 2443857; 446573, 2443696; 446918, 2444619; 446771, 2443591; 446964, 2443367; 446176, 2444094; 447035, 2443034; 446024, 2444124; 446915, 2442876; 446884, 2442866; 446775, 2442871; 446694, 2442917; 446590, 2443009; 446526, 2443067; 446401, 2443101; 447022, 2443176; 446142, 2444537; 446985, 2443802; 446860, 2443759; 446738, 2443759; 446647, 2443816; 446614, 2443869; 446586, 2443953; 446533, 2444139; 446339, 2444002; 446342, 2444424; 447097, 2443835; 445951, 2444583; 445795, 2444540; 445727, 2444471; 445716, 2444349; 445736, 2444232; 445790, 2444143; 445920, 2444117; 446459, 2444299.

(4) This unit includes land bounded by the following UTM Zone 4, NAD83 coordinates (E, N): 448432, 2447019; 447903, 2444783; 448513, 2444734; 448070, 2445147; 447289, 2445280; 447290, 2445278; 447361, 2445143; 447455, 2445039; 448629, 2445470; 447763, 2444809; 448699, 2445511; 447992, 2444811; 448076, 2444859; 448152, 2444890; 448229, 2444872; 448272, 2444798; 448279, 2444742; 448386, 2444722; 447626, 2444886; 447985, 2447674; 448180, 2447012; 448099, 2447086; 448061, 2447208; 448030, 2447292; 447961, 2447328; 447898, 2447376; 448658, 2445334; 447964, 2447547; 447413, 2447271; 447960, 2447776; 447907, 2447792; 448254, 2446981; 447397, 2447323; 448180, 2447012; 448450, 2446319; 448577, 2445718; 447903, 2447455; 448762, 2446566; 449384, 2445679; 449351, 2445830; 449234, 2445954; 449125, 2446061; 449008, 2446171; 448932, 2446245; 449330, 2445539; 448871, 2446421; 448828, 2446507; 448696, 2446769; 448661, 2446881; 448582, 2446983; 448518, 2447032; 448345, 2446991; 448661, 2444721; 447568, 2447493; 448889, 2446339; 449086, 2444624; 448760, 2444688; 448714, 2446647; 449284, 2445379; 448923, 2444619; 448956, 2444594; 449025, 2444591; 448854, 2444652; 449177, 2444680; 449226, 2444703; 449340, 2444954; 449294, 2444695; 449376, 2444651; 449391, 2444608; 449459, 2444635; 449346, 2444938; 449302, 2445178; 448981, 2444568; 449312, 2445026.

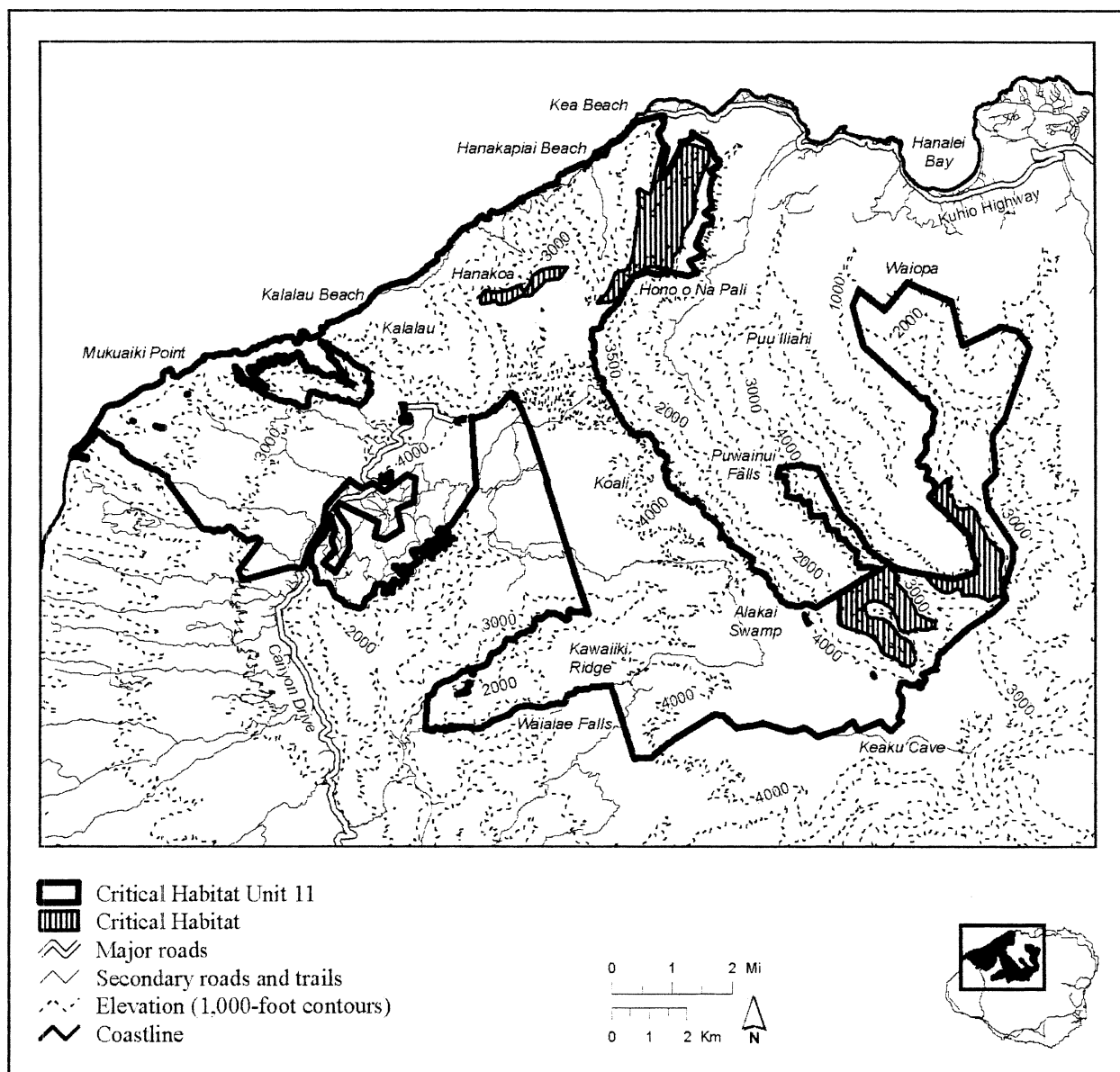
(B) Note: Map 70a follows:

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Map 70a

Kauai 11—*Chamaesyce remyi* var. *kauaiensis*—d, Kauai 11—*Chamaesyce remyi* var. *remyi*—h,
 Kauai 11—*Charpentiera densiflora*—d, Kauai 11—*Cyanea eleeleensis*—b, Kauai 11—*Cyanea
 kolekoleensis*—b, Kauai 11—*Cyanea kuhihewa*—b, Kauai 11—*Cyrtandra oenobarba*—d,
 Kauai 11—*Dubautia imbricata* ssp. *imbricata*—b, Kauai 11—*Labordia helleri*—f, Kauai 11—
Melicope paniculata—b, Kauai 11—*Melicope puberula*—d, Kauai 11—*Phyllostegia renovans*—d,
 Kauai 11—*Platydesma rostrata*—h, Kauai 11—*Stenogyne kealiae*—c,
 Kauai 11—*Tetraplasandra bisattenuata*—d, Kauai 11—*Tetraplasandra flynnii*—d

Lowland Wet



(cxli) Kauai 11—*Chamaesyce remyi* var. *kauaiensis*—e

(A) This is a unit of the Wet Cliff ecosystem and consists of 190 ac; 77 ha. This unit includes land bounded by the following UTM Zone 4, NAD83 coordinates (E, N): 436103, 2451262; 436027, 2451466; 435961, 2451591; 435895, 2451700; 435779, 2451881; 435540, 2452168; 435479, 2452304; 436162, 2451016; 435519, 2452190; 435517, 2452192; 435631, 2452072; 436212, 2450766; 436230, 2450590; 436234, 2450558; 436235, 2450550; 436250, 2450410; 436234, 2450237;

436107, 2450051; 436007, 2449993; 435478, 2452345; 435913, 2450123; 435941, 2449899; 436186, 2450120; 435635, 2451403; 435941, 2449899; 435915, 2449832; 435916, 2450057; 435908, 2450232; 435876, 2450522; 435853, 2450609; 435762, 2450931; 435759, 2450963; 435906, 2450349; 435676, 2451273; 435477, 2452358; 435602, 2451485; 435568, 2451531; 435537, 2451675; 435516, 2451752; 435483, 2451879; 435461, 2451989; 435448, 2452106; 435472, 2452346; 435476, 2452390; 435724, 2451110. This unit is also critical habitat for

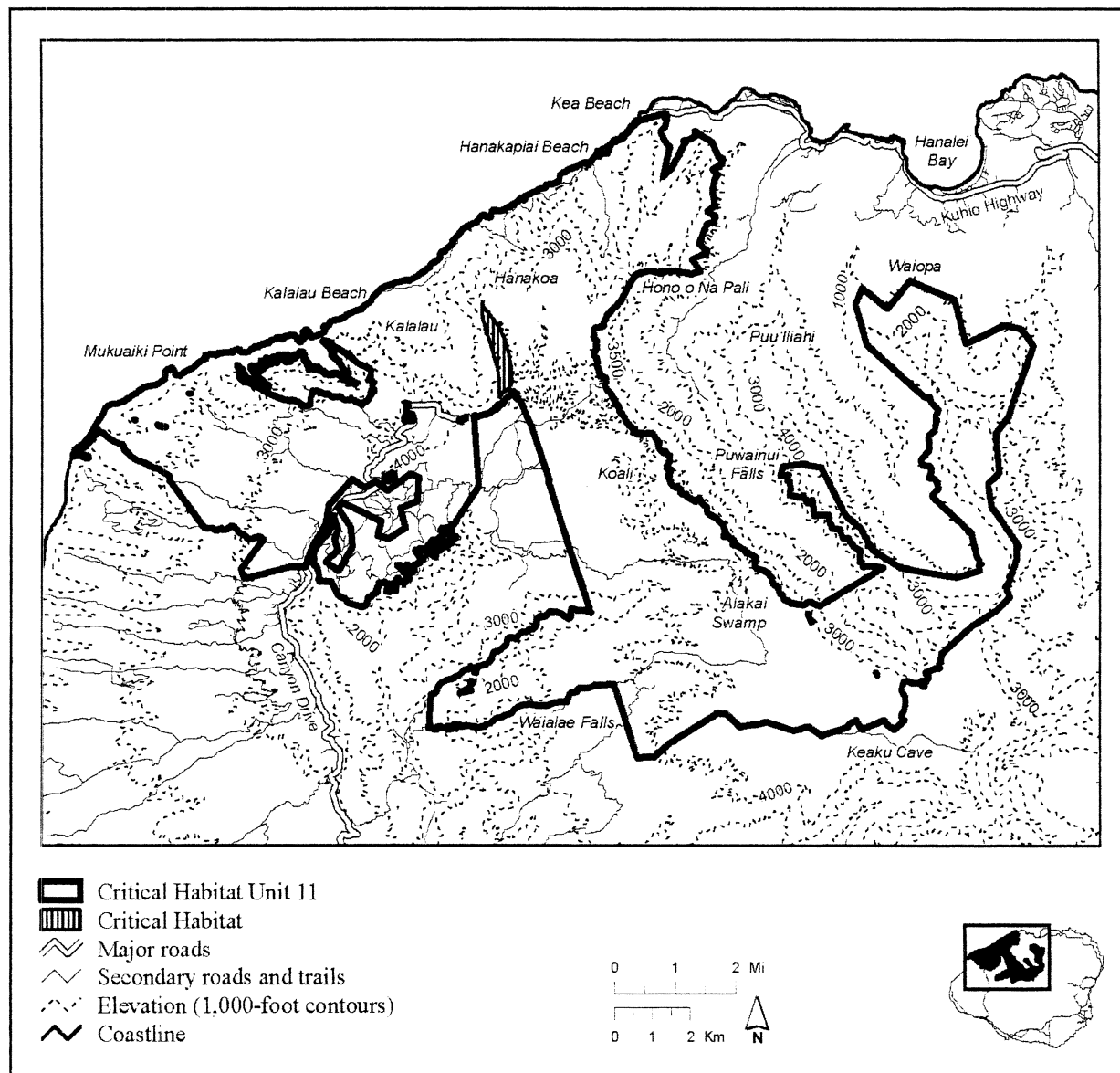
Kauai 11—*Chamaesyce remyi* var. *remyi*—i, Kauai 11—*Cyanea dolichopoda*—c, Kauai 11—*Cyrtandra oenobarba*—e, Kauai 11—*Cyrtandra paliku*—c, Kauai 11—*Dubautia plantaginea* ssp. *magnifolia*—c, Kauai 11—*Lysimachia iniki*—c, Kauai 11—*Lysimachia pendens*—c, Kauai 11—*Lysimachia venosa*—c, and Kauai 11—*Platydesma rostrata*—i (see paragraphs (a)(1)(cxlvi), (a)(1)(cl), (a)(1)(clxiv), (a)(1)(clxv), (a)(1)(clxxxiv), (a)(1)(ccxxxvi), (a)(1)(ccxxxvii), (a)(1)(ccxxxix), and (a)(1)(cclxxx), respectively, of this section).

(B) Note: Map 70b follows:

Map 70b

Kauai 11—*Chamaesyce remyi* var. *kauaiensis*-e, Kauai 11—*Chamaesyce remyi* var. *remyi*-i,
 Kauai 11—*Cyanea dolichopoda*-c, Kauai 11—*Cyrtandra oenobarba*-e, Kauai 11—*Cyrtandra*
paliku-c, Kauai 11—*Dubautia plantaginea* ssp. *magnifolia*-c, Kauai 11—*Lysimachia iniki*-c,
 Kauai 11—*Lysimachia pendens*-c, Kauai 11—*Lysimachia venosa*-c,
 Kauai 11—*Platydesma rostrata*-i

Wet Cliff



(cxlii) Kauai 11—*Chamaesyce remyi* var. *remyi-f*

(A) See paragraph (a)(1)(cxxx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxx)(B) of this section for the map of this unit.

(cxliii) Kauai 11—*Chamaesyce remyi* var. *remyi-g*

(A) See paragraph (a)(1)(cxxxiii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxxiii)(B) of this section for the map of this unit.

(cxliv) Kauai 11—*Chamaesyce remyi* var. *remyi-h*

(A) See paragraph (a)(1)(cxli)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxli)(B) of this section for the map of this unit.

(cxlv) Kauai 11—*Chamaesyce remyi* var. *remyi-i*

(A) See paragraph (a)(1)(cxli)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxli)(B) of this section for the map of this unit.

(cxlvi) Kauai 11—*Chamaesyce remyi* var. *remyi-j*

(A) This is a unit of the Montane Mesic ecosystem and consists of 2,790 ac (1,129 ha). This unit is also critical habitat for Kauai 11—*Diellia mannii*-a, Kauai 11—*Labordia helleri*-g, Kauai 11—*Myrsine knudsenii*-a, Kauai 11—*Myrsine mezii*-c, Kauai 11—*Platydesma rostrata*-j, Kauai 11—*Psychotria grandiflora*-c, Kauai 11—*Stenogyne kealiae*-d, and Kauai 11—*Tetraplasandra flynnii*-e (see paragraphs (a)(1)(clxxii), (a)(1)(ccxxv), (a)(1)(ccliii), (a)(1)(cclix), (a)(1)(cclxxxi), (a)(1)(ccxci), (a)(1)(ccxxxi), and (a)(1)(cccxxxvi), respectively, of this section).

(1) This unit includes land bounded by the following UTM Zone 4, NAD83

coordinates (E, N): 434254, 2447886; 430671, 2447997; 430191, 2445898; 429898, 2446100; 429871, 2446234; 430191, 2446386; 430291, 2446570; 430124, 2446907; 430073, 2447126; 430107, 2447429; 430242, 2447664; 431205, 2448983; 430690, 2447765; 430442, 2445640; 430764, 2448188; 430793, 2448310; 430886, 2448507; 430903, 2448664; 430985, 2448705; 431171, 2448699; 431560, 2448675; 431629, 2448739; 432609, 2447647; 430393, 2447748; 431069, 2446331; 432320, 2447497; 432195, 2447587; 432136, 2447629; 432133, 2447631; 432081, 2447668; 432073, 2447674; 432001, 2447726; 431323, 2447013; 431211, 2446394; 430204, 2445809; 431112, 2446394; 430323, 2445779; 431058, 2446300; 431007, 2446203; 430944, 2446145; 430939, 2446061; 430902, 2445976; 430854, 2445930; 430826, 2445805; 430857, 2445727; 430824, 2445631; 431200, 2449070; 431101, 2446447; 432882, 2450351; 432579, 2450036; 432552, 2450080; 432551, 2450083; 432531, 2450116; 432534, 2450174; 432530, 2450196; 432565, 2450262; 432560, 2450267; 432740, 2450249; 431414, 2448890; 432808, 2450383; 432486, 2449909; 432904, 2450341; 433046, 2450280; 432827, 2447751; 432932, 2447668; 433014, 2447717; 433109, 2447775; 433094, 2447922; 432827, 2447751; 434318, 2448182; 432796, 2450365; 431904, 2449665; 431362, 2449169; 431391, 2449273; 431322, 2449372; 431322, 2449418; 431403, 2449436; 431727, 2449372; 431769, 2449447; 431705, 2449569; 431720, 2449620; 432504, 2449961; 431919, 2449578; 432498, 2449952; 432046, 2449781; 432052, 2449783; 432113, 2449740; 432217, 2449712; 432251, 2449685; 432259, 2449679; 432344, 2449744; 432419, 2449806; 432441, 2449848; 431905, 2449660; 431805, 2449591; 434202, 2447345; 434612, 2446807; 434073, 2448685; 434228, 2448620;

434292, 2448479; 434318, 2448298; 434279, 2447951; 434163, 2447783; 433725, 2448994; 434073, 2447500; 433545, 2449136; 434357, 2447229; 434486, 2447126; 434627, 2447088; 434686, 2447020; 434682, 2447017; 434657, 2446977; 434652, 2446933; 434086, 2447693; 433401, 2449697; 431875, 2449780; 432639, 2447624; 433046, 2450280; 433196, 2450196; 433287, 2450063; 433353, 2449880; 433429, 2449741; 433880, 2448827; 433399, 2449709; 433408, 2449708; 433339, 2449600; 433313, 2449484; 433339, 2449381; 433368, 2449293; 433368, 2449292; 433369, 2449255; 433389, 2449256; 433407, 2449708; 433257, 2446958; 434392, 2446421; 434386, 2446429; 434103, 2446297; 434090, 2446098; 434086, 2446095; 433862, 2446165; 433606, 2446193; 434400, 2446429; 433397, 2446440; 432672, 2447598; 432918, 2447407; 433577, 2447086; 433467, 2449787; 433706, 2447138; 433746, 2447766; 433562, 2447841; 433527, 2447856; 434641, 2446663; 433449, 2446235; 434533, 2446441; 434631, 2446528; 434623, 2446526; 434620, 2446512; 434628, 2446479; 434625, 2446467; 434618, 2446459; 434201, 2446573; 434558, 2446439; 434403, 2446435; 434514, 2446449; 434423, 2446441; 434582, 2446443; 434416, 2446441; 434500, 2446448; 434434, 2446428; 434447, 2446420; 434457, 2446416; 434471, 2446422.

(2) This unit includes land bounded by the following UTM Zone 4, NAD83 coordinates (E, N): 431975, 2446280; 432548, 2444752; 432135, 2444807; 432674, 2444970; 431873, 2444849; 431730, 2445114; 431645, 2445326; 432001, 2445941; 431950, 2444792; 432559, 2446255; 432659, 2446240; 432948, 2446150; 433067, 2445928; 432912, 2445580; 432758, 2445304; 432674, 2444970; 432377, 2444722.

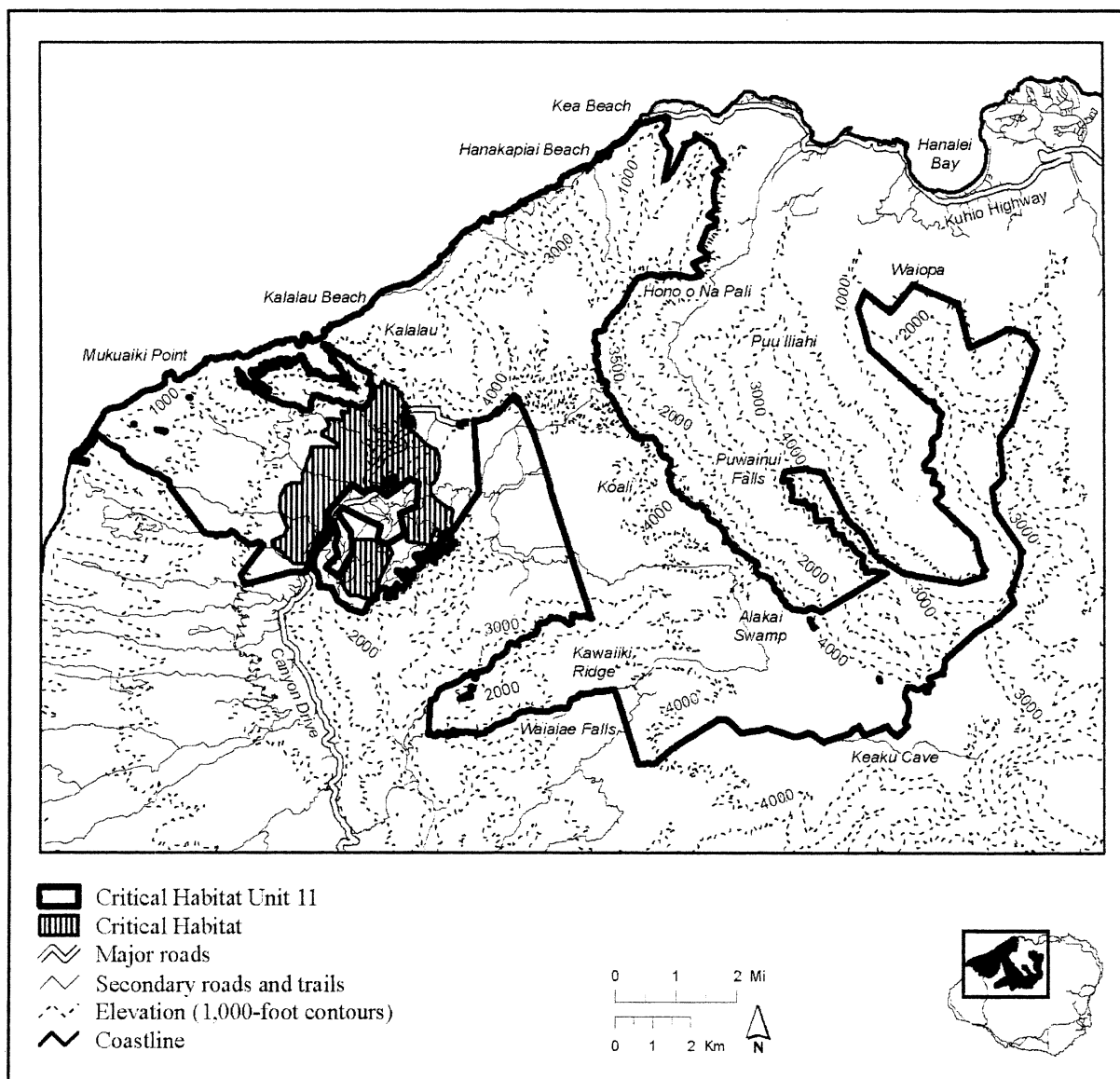
(B) Note: Map 70c follows:

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Map 70c

Kauai 11—*Chamaesyce remyi* var. *remyi*—j, Kauai 11—*Diellia mannii*—a, Kauai 11—*Labordia helleri*—g, Kauai 11—*Myrsine knudsenii*—a, Kauai 11—*Myrsine mezii*—c, Kauai 11—*Platydesma rostrata*—j, Kauai 11—*Psychotria grandiflora*—c, Kauai 11—*Stenogyne kealiae*—d, Kauai 11—*Tetraplasandra flynnii*—e

Montane Mesic



(cxlvi) Kauai 11—*Charpentiera densiflora*—c

(A) See paragraph (a)(1)(cxxxiii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxxiii)(B) of this section for the map of this unit.

(cxlvi) Kauai 11—*Charpentiera densiflora*—d

(A) See paragraph (a)(1)(cxl)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxl)(B) of this section for the map of this unit.

* * * * *

(cl) Kauai 11—*Cyanea dolichopoda*—c

(A) See paragraph (a)(1)(cxli)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxli)(B) of this section for the map of this unit.

(cli) Kauai 11—*Cyanea eleeleensis*—b

(A) See paragraph (a)(1)(cxl)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxl)(B) of this section for the map of this unit.

(clii) Kauai 11—*Cyanea kolekoleensis*—b

(A) See paragraph (a)(1)(cxl)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxl)(B) of this section for the map of this unit.

(cliii) Kauai 11—*Cyanea kuhihewa*—b

(A) See paragraph (a)(1)(cxl)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxl)(B) of this section for the map of this unit.

* * * * *

(clxiii) Kauai 11—*Cyrtandra oenobarba*—d

(A) See paragraph (a)(1)(cxl)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxl)(B) of this section for the map of this unit.

(clxiv) Kauai 11—*Cyrtandra oenobarba*—e

(A) See paragraph (a)(1)(cxli)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxli)(B) of this section for the map of this unit.

(clxv) Kauai 11—*Cyrtandra paliku*—c

(A) See paragraph (a)(1)(cxli)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxli)(B) of this section for the map of this unit.

* * * * *

(clxxii) Kauai 11—*Diellia mannii*—a

(A) See paragraph (a)(1)(cxlvi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxlvi)(B) of this section for the map of this unit.

* * * * *

(clxxvi) Kauai 11—*Doryopteris angelica*—b

(A) See paragraph (a)(1)(cxxxiii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxxiii)(B) of this section for the map of this unit.

(clxxvii) Kauai 11—*Dryopteris crinalis* var. *podosorus*—b

(A) See paragraph (a)(1)(cxxx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxx)(B) of this section for the map of this unit.

(clxxviii) Kauai 11—*Dubautia imbricata* ssp. *imbricata*—b

(A) See paragraph (a)(1)(cxl)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxl)(B) of this section for the map of this unit.

(clxxix) Kauai 11—*Dubautia kalalauensis*—b

(A) See paragraph (a)(1)(cxxx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxx)(B) of this section for the map of this unit.

(clxxx) Kauai 11—*Dubautia kenwoodii*—b

(A) See paragraph (a)(1)(cxxxiii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxxiii)(B) of this section for the map of this unit.

* * * * *

(clxxxiv) Kauai 11—*Dubautia plantaginea* ssp. *magnifolia*—c

(A) See paragraph (a)(1)(cxli)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxli)(B) of this section for the map of this unit.

(clxxxv) Kauai 11—*Dubautia waialealae*—b

(A) See paragraph (a)(1)(cxxx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxx)(B) of this section for the map of this unit.

* * * * *

(cxcix) Kauai 11—*Geranium kauaiense*—b

(A) See paragraph (a)(1)(cxxx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxx)(B) of this section for the map of this unit.

* * * * *

(ccxvi) Kauai 11—*Keysseria erici*—b

(A) See paragraph (a)(1)(cxxx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxx)(B) of this section for the map of this unit.

(ccxvii) Kauai 11—*Keysseria helenae*—b

(A) See paragraph (a)(1)(cxxx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxx)(B) of this section for the map of this unit.

* * * * *

(ccxxii) Kauai 11—*Labordia helleri*—d

(A) See paragraph (a)(1)(cxxx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxx)(B) of this section for the map of this unit.

(ccxxiii) Kauai 11—*Labordia helleri*—e

(A) See paragraph (a)(1)(cxxxiii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxxiii)(B) of this section for the map of this unit.

(ccxxiv) Kauai 11—*Labordia helleri*—f

(A) See paragraph (a)(1)(cxl)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxl)(B) of this section for the map of this unit.

(ccxxv) Kauai 11—*Labordia helleri*—g

(A) See paragraph (a)(1)(cxlvi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxlvi)(B) of this section for the map of this unit.

* * * * *

(ccxxix) Kauai 11—*Labordia pumila*—b

(A) See paragraph (a)(1)(cxxx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxx)(B) of this section for the map of this unit.

* * * * *

(ccxxxv) Kauai 11—*Lysimachia daphnoides*—b

(A) See paragraph (a)(1)(cxxx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxx)(B) of this section for the map of this unit.

(ccxxxvi) Kauai 11—*Lysimachia iniki*—c

(A) See paragraph (a)(1)(cxli)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxli)(B) of this section for the map of this unit.

(ccxxxvii) Kauai 11—*Lysimachia pendens*—c

(A) See paragraph (a)(1)(cxli)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxli)(B) of this section for the map of this unit.

(ccxxxviii) Kauai 11—*Lysimachia scopulensis*—a

(A) See paragraph (a)(1)(cxxxvi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxxvi)(B) of this section for the map of this unit.

(ccxxxix) Kauai 11—*Lysimachia venosa*—c

(A) See paragraph (a)(1)(cxli)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxli)(B) of this section for the map of this unit.

* * * * *

(ccxli) Kauai 11—*Melicope degeneri*—b

(A) See paragraph (a)(1)(cxxx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxx)(B) of this section for the map of this unit.

* * * * *

(ccxlviii) Kauai 11—*Melicope paniculata*—b

(A) See paragraph (a)(1)(cxl)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxl)(B) of this section for the map of this unit.

(ccxlix) Kauai 11—*Melicope puberula*—c

(A) See paragraph (a)(1)(cxxx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxx)(B) of this section for the map of this unit.

(ccl) Kauai 11—*Melicope puberula*—d

(A) See paragraph (a)(1)(cxl)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxl)(B) of this section for the map of this unit.

* * * * *

(ccliii) Kauai 11—*Myrsine knudsenii*—a

(A) See paragraph (a)(1)(cxlvi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxlvi)(B) of this section for the map of this unit.

* * * * *

(cclviii) Kauai 11—*Myrsine mezii*—b

(A) See paragraph (a)(1)(cxxx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxx)(B) of this section for the map of this unit.

(cclix) Kauai 11—*Myrsine mezii*—c

(A) See paragraph (a)(1)(cxlvi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxlvi)(B) of this section for the map of this unit.

* * * * *

(cclxvi) Kauai 11—*Phyllostegia renovans*—c

(A) See paragraph (a)(1)(cxxx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxx)(B) of this section for the map of this unit.

(cclxvii) Kauai 11—*Phyllostegia renovans*—d

(A) See paragraph (a)(1)(cxl)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxl)(B) of this section for the map of this unit.

* * * * *

(cclxxii) Kauai 11—*Pittosporum napaliense*—b

(A) See paragraph (a)(1)(cxxxiii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxxiii)(B) of this section for the map of this unit.

* * * * *

(cclxxvii) Kauai 11—*Platydesma rostrata*—f

(A) See paragraph (a)(1)(cxxx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxx)(B) of this section for the map of this unit.

(cclxxviii) Kauai 11—*Platydesma rostrata*—g

(A) See paragraph (a)(1)(cxxxiii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxxiii)(B) of this section for the map of this unit.

(cclxxix) Kauai 11—*Platydesma rostrata*—h

(A) See paragraph (a)(1)(cxl)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxl)(B) of this section for the map of this unit.

(cclxxx) Kauai 11—*Platydesma rostrata*—i

(A) See paragraph (a)(1)(cxli)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxli)(B) of this section for the map of this unit.

(cclxxxi) Kauai 11—*Platydesma rostrata*—j

(A) See paragraph (a)(1)(cxlvi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxlvi)(B) of this section for the map of this unit.

* * * * *

(ccxc) Kauai 11—*Psychotria grandiflora*—b

(A) See paragraph (a)(1)(cxxx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxx)(B) of this section for the map of this unit.

(ccxci) Kauai 11—*Psychotria grandiflora*—c

(A) See paragraph (a)(1)(cxlvi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxlvi)(B) of this section for the map of this unit.

(ccxcii) Kauai 11—*Psychotria hobdyi*—b

(A) See paragraph (a)(1)(cxxxiii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxxiii)(B) of this section for the map of this unit.

* * * * *

(cccix) Kauai 11—*Schiedea attenuata*—a

(A) See paragraph (a)(1)(cxxxvi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxxvi)(B) of this section for the map of this unit.

* * * * *

(cccxxix) Kauai 11—*Stenogyne kealiae*—b

(A) See paragraph (a)(1)(cxxxvi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxxvi)(B) of this section for the map of this unit.

(cccxxx) Kauai 11—*Stenogyne kealiae*—c

(A) See paragraph (a)(1)(cxl)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxl)(B) of this section for the map of this unit.

(cccxxxi) Kauai 11—*Stenogyne kealiae*—d

(A) See paragraph (a)(1)(cxlvi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxlvi)(B) of this section for the map of this unit.

(cccxixii) Kauai 11—*Tetraplasandra bisattenuata*—c

(A) See paragraph (a)(1)(cxxxiii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxxiii)(B) of this section for the map of this unit.

(cccxixiii) Kauai 11—*Tetraplasandra bisattenuata*—d

(A) See paragraph (a)(1)(cxl)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxl)(B) of this section for the map of this unit.

(cccxixiv) Kauai 11—*Tetraplasandra flynnii*—c

(A) See paragraph (a)(1)(cxxx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxx)(B) of this section for the map of this unit.

(cccxixv) Kauai 11—*Tetraplasandra flynnii*—d

(A) See paragraph (a)(1)(cxl)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxl)(B) of this section for the map of this unit.

(cccxixvi) Kauai 11—*Tetraplasandra flynnii*—e

(A) See paragraph (a)(1)(cxlvi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxlvi)(B) of this section for the map of this unit.

* * * * *

(cccli) Kauai 18—*Chamaesyce remyi* var. *kauaiensis*—f

(A) This is a unit of the Wet Cliff ecosystem and consists of 296 ac (120 ha). This unit includes lands bounded by the following UTM Zone 4, NAD83 coordinates (E, N): 450192, 2441100; 450045, 2441036; 449907, 2441014; 449732, 2441017; 449661, 2441029; 449662, 2441006; 449663, 2440988; 450391, 2441245; 449861, 2440726; 450358, 2441446; 449987, 2440561; 449861, 2440726; 450478, 2441377; 450009, 2440531; 450480, 2441446; 450309, 2440710; 450188, 2441428; 450030, 2441469; 449977, 2441622; 450043, 2441776; 450987, 2441509; 450061, 2441818; 451012, 2441536; 450204, 2441935; 450313, 2442034; 450493, 2441438; 450738, 2441687; 450390, 2442146; 450854, 2441404; 450786, 2441366; 450732, 2441298; 450694, 2441214; 450762, 2441153; 450892, 2441119; 450971, 2441101; 451006, 2441096; 451065, 2441045; 451024, 2440992; 450235, 2440578; 451009, 2440898; 450036, 2440543; 450976, 2440839; 450923, 2441455; 450866, 2440829; 450759, 2440839; 450630, 2440857; 450492, 2440870; 450439, 2440863; 450352, 2440802; 450263, 2440642; 450209, 2440565;

450148, 2440581; 450981, 2440954; 450959, 2441758; 450649, 2441819; 450519, 2441677; 450483, 2441603; 450567, 2441606; 450649, 2441639; 450942, 2442140; 450855, 2441735; 450807, 2441995; 451040, 2441587; 451048, 2441778; 451104, 2441763; 451135, 2441750; 451127, 2441727; 451071, 2441643; 450459, 2442263; 451207, 2442613; 450538, 2442344; 450573, 2442334; 450550, 2442082; 450540, 2442051; 450598, 2442069; 450759, 2442234; 450927, 2442387; 451072, 2442509; 451307, 2442664; 451370, 2442679; 451385, 2442651; 451299, 2442539; 451115, 2442323; 450942, 2442140. This unit is also critical habitat for Kauai 18—*Chamaesyce remyi* var. *remyi*—k, Kauai 18—*Cyanea dolichopoda*—d, Kauai 18—*Cyrtandra oenobarba*—f, Kauai 18—*Cyrtandra paliku*—d, Kauai 18—*Dubautia plantaginea* ssp. *magnifolia*—d, Kauai 18—*Lysimachia iniki*—d, Kauai 18—*Lysimachia pendens*—d, Kauai 18—*Lysimachia venosa*—d, and Kauai 18—*Platydesma rostrata*—k (see paragraphs (a)(1)(cccli), (a)(1)(cccliii), (a)(1)(cccliv), (a)(1)(ccclv), (a)(1)(ccclvi), (a)(1)(ccclvii), (a)(1)(ccclviii), (a)(1)(ccclix), and (a)(1)(ccclx), respectively, of this section).

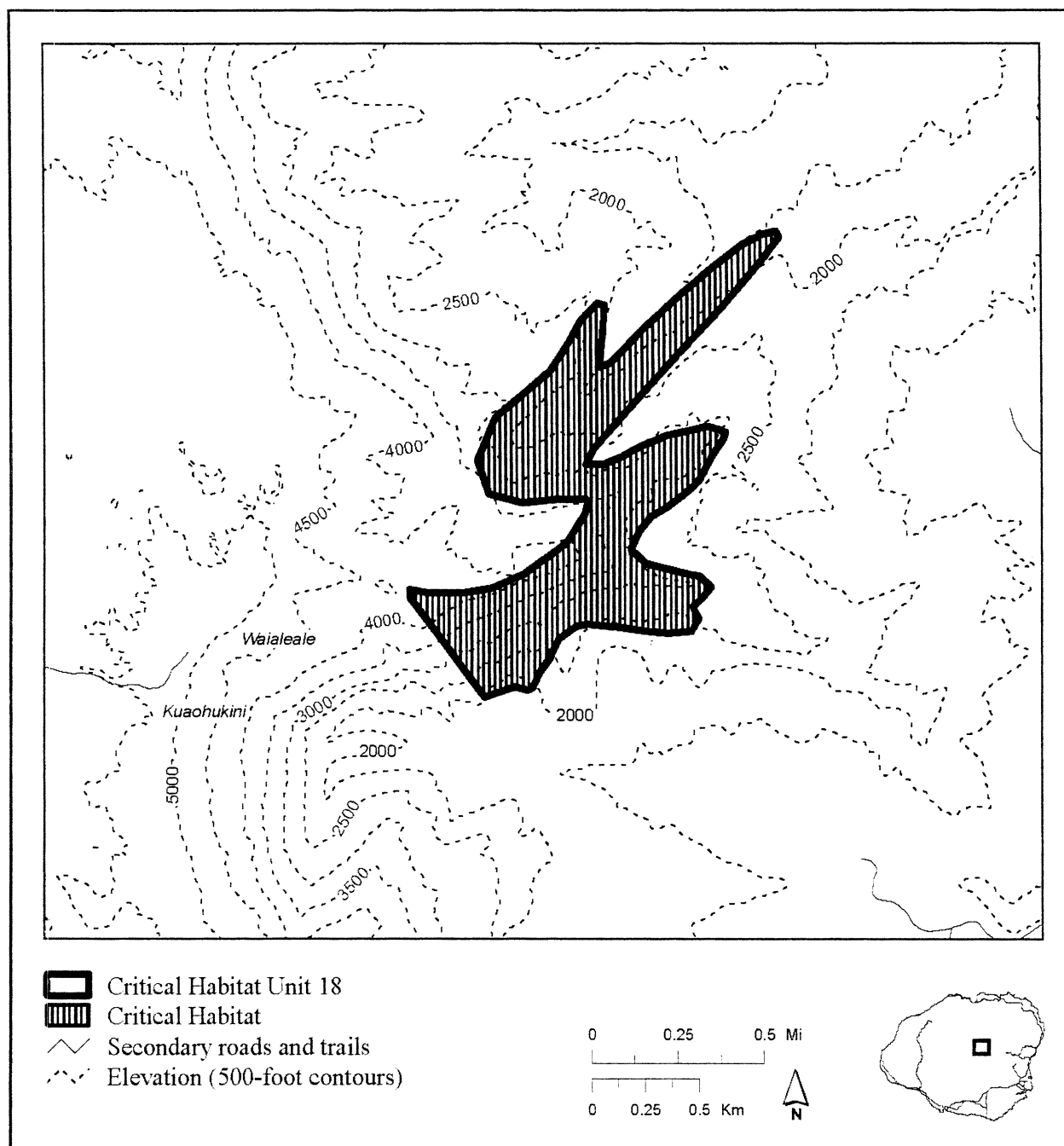
(B) Note: Map 217a follows:

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Map 217a

Kauai 18—*Chamaesyce remyi* var. *kauaiensis*-f, Kauai 18—*Chamaesyce remyi* var. *remyi*-k, Kauai 18—*Cyanea dolichopoda*-d, Kauai 18—*Cyrtandra oenobarba*-f, Kauai 18—*Cyrtandra paliku*-d, Kauai 18—*Dubautia plantaginea* ssp. *magnifolia*-d, Kauai 18—*Lysimachia iniki*-d, Kauai 18—*Lysimachia pendens*-d, Kauai 18—*Lysimachia venosa*-d, Kauai 18—*Platydesma rostrata*-k

Wet Cliff



(ccclii) Kauai 18—*Chamaesyce remyi* var. *remyi*—k

(A) See paragraph (a)(1)(cccli)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cccli)(B) of this section for the map of this unit.

(cccliii) Kauai 18—*Cyanea dolichopoda*—d

(A) See paragraph (a)(1)(cccli)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cccli)(B) of this section for the map of this unit.

(cccliv) Kauai 18—*Cyrtandra oenobarba*—f

(A) See paragraph (a)(1)(cccli)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cccli)(B) of this section for the map of this unit.

(ccclv) Kauai 18—*Cyrtandra paliku*—d

(A) See paragraph (a)(1)(cccli)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cccli)(B) of this section for the map of this unit.

(ccclvi) Kauai 18—*Dubautia plantaginea* ssp. *magnifolia*—d

(A) See paragraph (a)(1)(cccli)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cccli)(B) of this section for the map of this unit.

(ccclvii) Kauai 18—*Lysimachia iniki*—d

(A) See paragraph (a)(1)(cccli)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cccli)(B) of this section for the map of this unit.

(ccclviii) Kauai 18—*Lysimachia pendens*—d

(A) See paragraph (a)(1)(cccli)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cccli)(B) of this section for the map of this unit.

(ccclix) Kauai 18—*Lysimachia venosa*—d

(A) See paragraph (a)(1)(cccli)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cccli)(B) of this section for the map of this unit.

(ccclx) Kauai 18—*Platydesma rostrata*—k

(A) See paragraph (a)(1)(cccli)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cccli)(B) of this section for the map of this unit.

(ccclxi) Kauai 19—*Chamaesyce remyi* var. *kauaiensis*—g

(A) This is a unit of the Wet Cliff ecosystem and consists of 23 ac (9 ha).

This unit includes land bounded by the following UTM Zone 4, NAD83

coordinates (E, N): 457006, 2449562; 456297, 2449627; 456152, 2449645; 456213, 2449635; 456892, 2449577; 456297, 2449627; 456355, 2449622; 456429, 2449624; 456528, 2449621; 456587, 2449619; 456683, 2449611; 457144, 2449549; 456823, 2449588; 456116, 2449661; 457123, 2449562; 456901, 2449549; 456313, 2449442; 456256, 2449472; 456187, 2449533; 456154, 2449589; 456126, 2449635; 456742, 2449603. This unit is also critical habitat for Kauai 19—*Chamaesyce remyi* var. *remyi*—l, Kauai 19—*Cyanea dolichopoda*—e, Kauai 19—*Cyrtandra oenobarba*—g, Kauai 19—*Cyrtandra paliku*—e, Kauai 19—*Dubautia plantaginea* ssp. *magnifolia*—e, Kauai 19—*Lysimachia iniki*—e, Kauai 19—*Lysimachia pendens*—e, Kauai 19—*Lysimachia venosa*—e, and Kauai 19—*Platydesma rostrata*—l (see paragraphs (a)(1)(ccclxii), (a)(1)(ccclxiii), (a)(1)(ccclxiv), (a)(1)(ccclxv), (a)(1)(ccclxvi), (a)(1)(ccclxvii), (a)(1)(ccclxviii), (a)(1)(ccclxix), and (a)(1)(ccclxx), respectively, of this section).

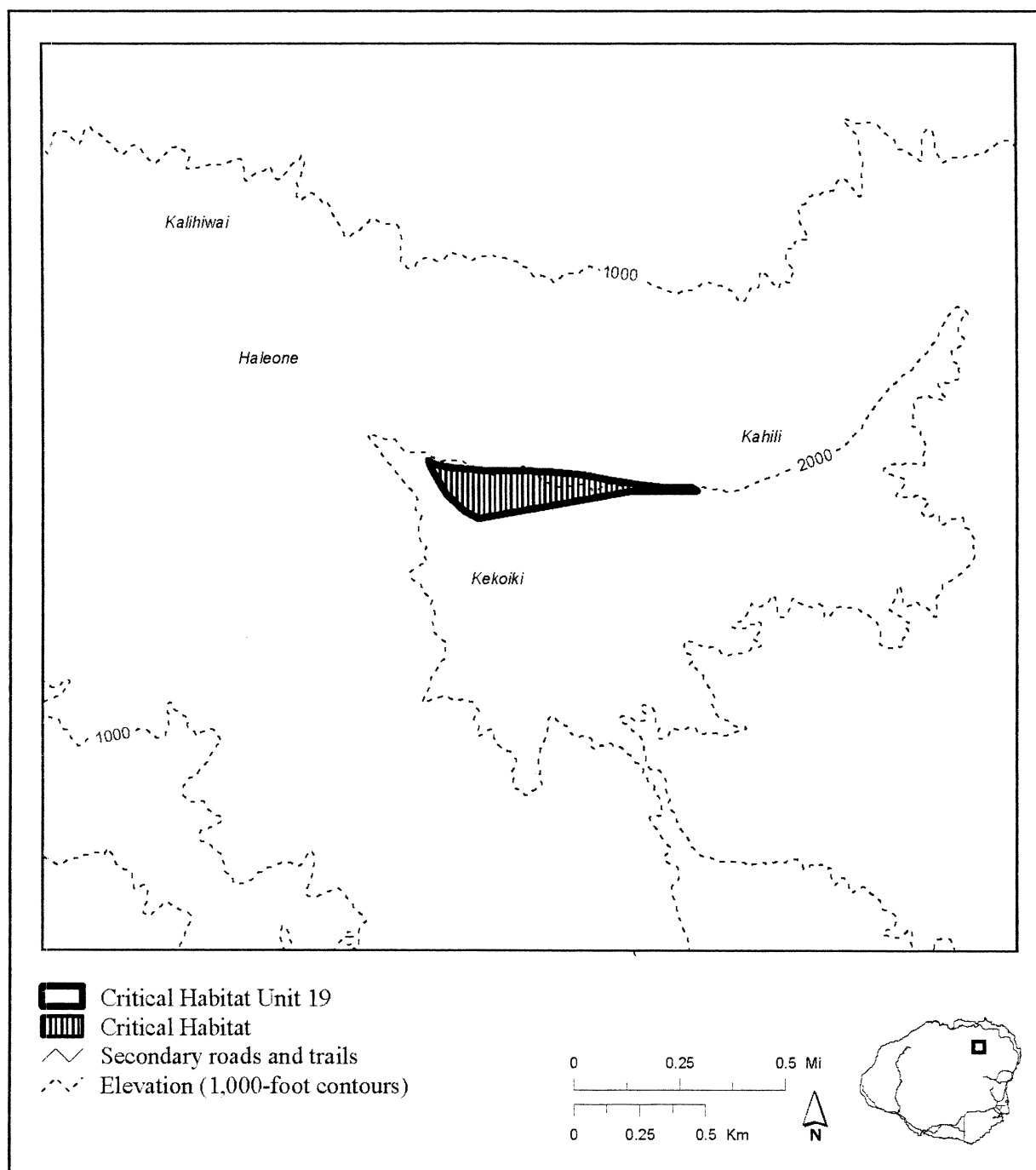
(B) Note: Map 217b follows:

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Map 217b

Kauai 19—*Chamaesyce remyi* var. *kauaiensis*—g, Kauai 19—*Chamaesyce remyi* var. *remyi*—l, Kauai 19—*Cyanea dolichopoda*—e, Kauai 19—*Cyrtandra oenobarba*—g, Kauai 19—*Cyrtandra paliku*—e, Kauai 19—*Dubautia plantaginea* ssp. *magnifolia*—e, Kauai 19—*Lysimachia iniki*—e, Kauai 19—*Lysimachia pendens*—e, Kauai 19—*Lysimachia venosa*—e, Kauai 19—*Platydesma rostrata*—l

Wet Cliff



(ccclxii) Kauai 19—*Chamaesyce remyi* var. *remyi*—l

(A) See paragraph (a)(1)(ccclxi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxi)(B) of this section for the map of this unit.

(ccclxiii) Kauai 19—*Cyanea dolichopoda*—e

(A) See paragraph (a)(1)(ccclxi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxi)(B) of this section for the map of this unit.

(ccclxiv) Kauai 19—*Cyrtandra oenobarba*—g

(A) See paragraph (a)(1)(ccclxi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxi)(B) of this section for the map of this unit.

(ccclxv) Kauai 19—*Cyrtandra paliku*—e

(A) See paragraph (a)(1)(ccclxi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxi)(B) of this section for the map of this unit.

(ccclxvi) Kauai 19—*Dubautia plantaginea* ssp. *magnifolia*—e

(A) See paragraph (a)(1)(ccclxi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxi)(B) of this section for the map of this unit.

(ccclxvii) Kauai 19—*Lysimachia iniki*—e

(A) See paragraph (a)(1)(ccclxi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxi)(B) of this section for the map of this unit.

(ccclxviii) Kauai 19—*Lysimachia pendens*—e

(A) See paragraph (a)(1)(ccclxi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxi)(B) of this section for the map of this unit.

(ccclxix) Kauai 19—*Lysimachia venosa*—e

(A) See paragraph (a)(1)(ccclxi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxi)(B) of this section for the map of this unit.

(ccclxx) Kauai 19—*Platydesma rostrata*—l

(A) See paragraph (a)(1)(ccclxi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxi)(B) of this section for the map of this unit.

(ccclxxi) Kauai 20—*Chamaesyce remyi* var. *kauaiensis*—h

(A) This is a unit of the Lowland Wet ecosystem and consists of 65 ac (26 ha). This unit includes land bounded by the following UTM Zone 4, NAD83

coordinates (E, N): 440498, 2455883; 440674, 2456209; 440674, 2456209; 440829, 2456531; 440867, 2456555; 440834, 2456579; 440382, 2456676; 440343, 2456672; 440329, 2456652; 440319, 2456582; 440437, 2456434; 440265, 2455650; 440318, 2455684; 440318, 2455684. This unit is also critical habitat for Kauai 20—*Chamaesyce remyi* var. *remyi*—m, Kauai 20—*Charpentiera densiflora*—e, Kauai 20—*Cyanea eleeleensis*—c, Kauai 20—*Cyanea kolekoleensis*—c, Kauai 20—*Cyanea kuhihewa*—c, Kauai 20—*Cyrtandra oenobarba*—h, Kauai 20—*Dubautia imbricata* ssp. *imbricata*—c, Kauai 20—*Labordia helleri*—h, Kauai 20—*Melicope paniculata*—c, Kauai 20—*Melicope puberula*—e, Kauai 20—*Phyllostegia renovans*—e, Kauai 20—*Platydesma rostrata*—m, Kauai 20—*Stenogyne kealiae*—e, Kauai 20—*Tetraplasandra bisattenuata*—e, and Kauai 20—*Tetraplasandra flynnii*—f, (see paragraphs (a)(1)(ccclxxii), (a)(1)(ccclxxiii), (a)(1)(ccclxxiv), (a)(1)(ccclxxv), (a)(1)(ccclxxvi), (a)(1)(ccclxxvii), (a)(1)(ccclxxviii), (a)(1)(ccclxxix), (a)(1)(ccclxxx), (a)(1)(ccclxxxi), (a)(1)(ccclxxxii), (a)(1)(ccclxxxiii), (a)(1)(ccclxxxiv), (a)(1)(ccclxxxv), and (a)(1)(ccclxxxvi), respectively, of this section).

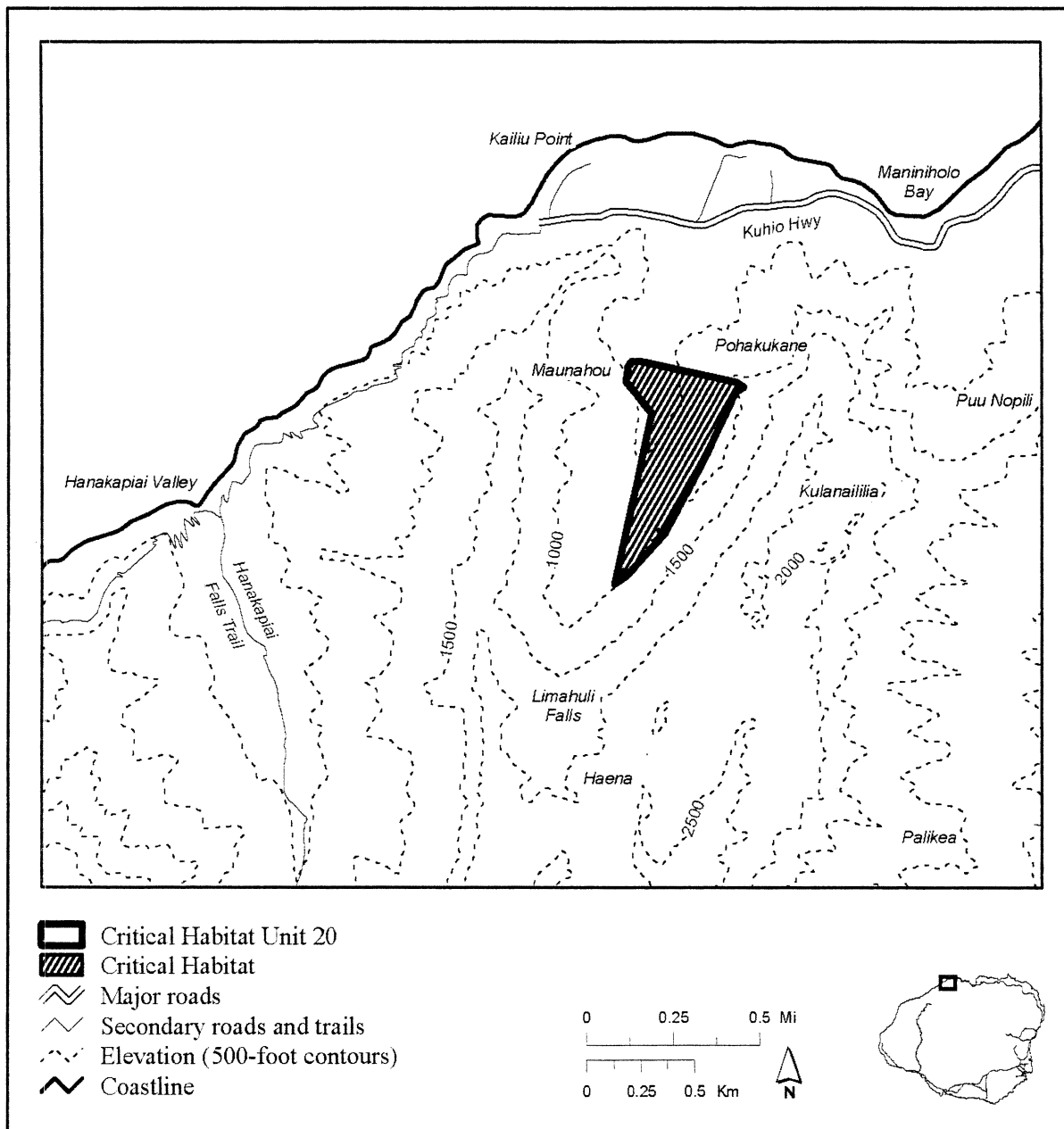
(B) Note: Map 217c follows:

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Map 217c

Kauai 20—*Chamaesyce remyi* var. *kauaiensis*—h, Kauai 20—*Chamaesyce remyi* var. *remyi*—m, Kauai 20—*Charpentiera densiflora*—e, Kauai 20—*Cyanea eleeleensis*—c, Kauai 20—*Cyanea kolekoleensis*—c, Kauai 20—*Cyanea kuhihewa*—c, Kauai 20—*Cyrtandra oenobarba*—h, Kauai 20—*Dubautia imbricata* ssp. *imbricata*—c, Kauai 20—*Labordia helleri*—h, Kauai 20—*Melicope paniculata*—c, Kauai 20—*Melicope puberula*—e, Kauai 20—*Phyllostegia renovans*—e, Kauai 20—*Platydesma rostrata*—m, Kauai 20—*Stenogyne kealiae*—e, Kauai 20—*Tetraplasandra bisattenuata*—e, Kauai 20—*Tetraplasandra flynnii*—f

Lowland Wet



(ccclxxii) Kauai 20—*Chamaesyce remyi* var. *remyi*—m

(A) See paragraph (a)(1)(ccclxxi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxi)(B) of this section for the map of this unit.

(ccclxxiii) Kauai 20—*Charpentiera densiflora*—e

(A) See paragraph (a)(1)(ccclxxi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxi)(B) of this section for the map of this unit.

(ccclxxiv) Kauai 20—*Cyanea eleleensis*—c

(A) See paragraph (a)(1)(ccclxxi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxi)(B) of this section for the map of this unit.

(ccclxxv) Kauai 20—*Cyanea kolekoleensis*—c

(A) See paragraph (a)(1)(ccclxxi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxi)(B) of this section for the map of this unit.

(ccclxxvi) Kauai 20—*Cyanea kuhihewa*—c

(A) See paragraph (a)(1)(ccclxxi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxi)(B) of this section for the map of this unit.

(ccclxxvii) Kauai 20—*Cyrtandra oenobarba*—h

(A) See paragraph (a)(1)(ccclxxi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxi)(B) of this section for the map of this unit.

(ccclxxviii) Kauai 20—*Dubautia imbricata* ssp. *imbricata*—c

(A) See paragraph (a)(1)(ccclxxi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxi)(B) of this section for the map of this unit.

(ccclxxix) Kauai 20—*Labordia helleri*—h

(A) See paragraph (a)(1)(ccclxxi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxi)(B) of this section for the map of this unit.

(ccclxxx) Kauai 20—*Melicope paniculata*—c

(A) See paragraph (a)(1)(ccclxxi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxi)(B) of this section for the map of this unit.

(ccclxxxi) Kauai 20—*Melicope puberula*—e

(A) See paragraph (a)(1)(ccclxxi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxi)(B) of this section for the map of this unit.

(ccclxxxii) Kauai 20—*Phyllostegia renovans*—e

(A) See paragraph (a)(1)(ccclxxi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxi)(B) of this section for the map of this unit.

(ccclxxxiii) Kauai 20—*Platydesma rostrata*—m

(A) See paragraph (a)(1)(ccclxxi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxi)(B) of this section for the map of this unit.

(ccclxxxiv) Kauai 20—*Stenogyne kealiae*—e

(A) See paragraph (a)(1)(ccclxxi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxi)(B) of this section for the map of this unit.

(ccclxxxv) Kauai 20—*Tetraplasandra bisattenuata*—e

(A) See paragraph (a)(1)(ccclxxi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxi)(B) of this section for the map of this unit.

(ccclxxxvi) Kauai 20—*Tetraplasandra flynnii*—f

(A) See paragraph (a)(1)(ccclxxi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxi)(B) of this section for the map of this unit.

(ccclxxxvii) Kauai 21—*Chamaesyce remyi* var. *remyi*—n

(A) This is a unit of the Montane Mesic ecosystem and consists of 8 ac (3 ha). This unit includes land bounded by the following UTM Zone 4, NAD83 coordinates (E, N): 431626, 2445435; 432001, 2445941; 431736, 2445617; 432001, 2445941; 431645, 2445326. This unit is also critical habitat for Kauai 21—*Diellia mannii*—b, Kauai 21—*Labordia helleri*—i, Kauai 21—*Myrsine knudsenii*—b, Kauai 21—*Myrsine mezii*—d, Kauai 21—*Platydesma rostrata*—n, Kauai 21—*Psychotria grandiflora*—d, Kauai 21—*Stenogyne kealiae*—f, and Kauai 21—*Tetraplasandra flynnii*—g (see paragraphs (a)(1)(ccclxxxviii), (a)(1)(ccclxxxix), (a)(1)(cccxc), (a)(1)(cccxcii), (a)(1)(cccxciii), (a)(1)(cccxciv), and (a)(1)(cccxcv), respectively, of this section).

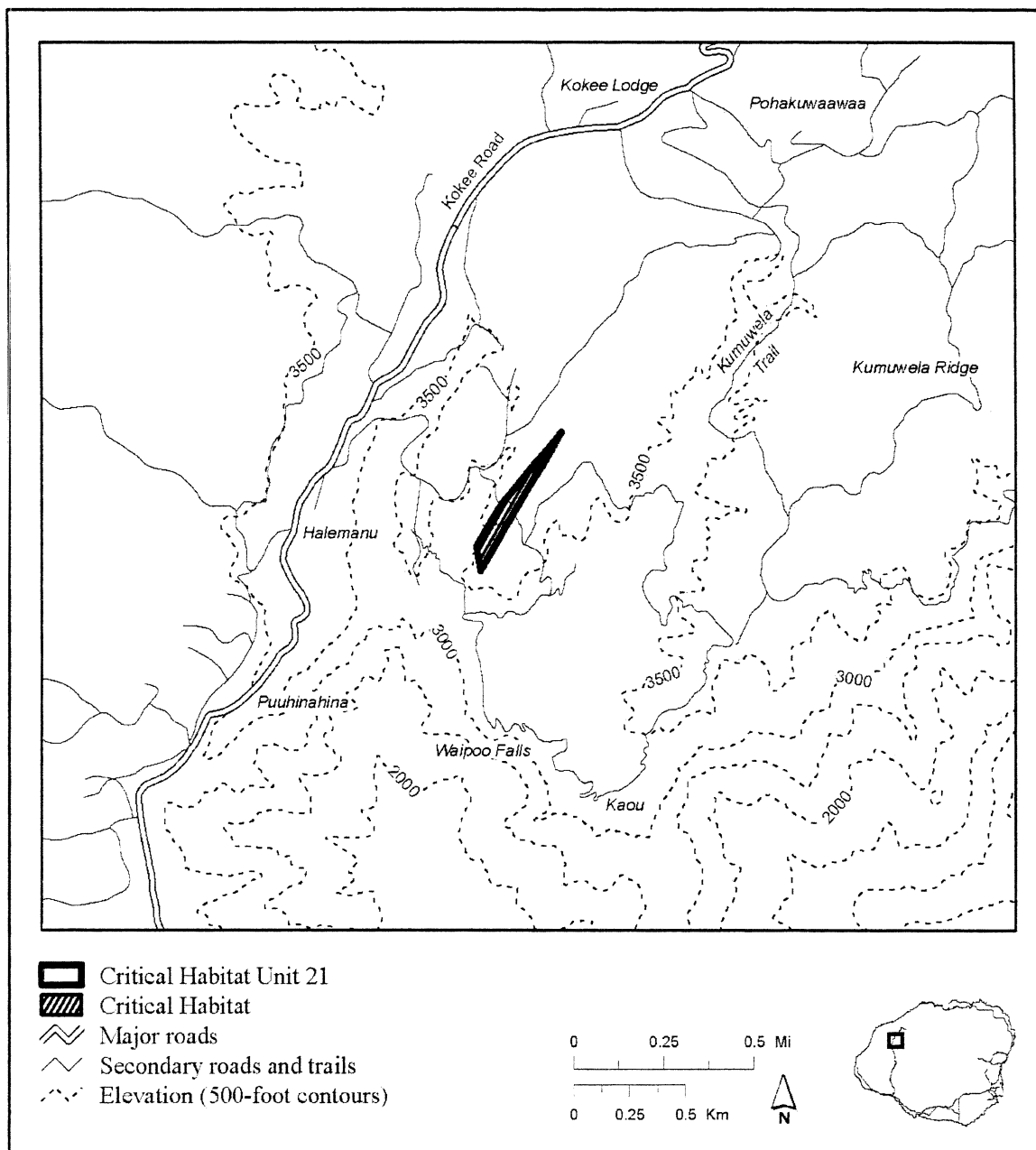
(B) Note: Map 217d follows:

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Map 217d

Kauai 21—*Chamaesyce remyi* var. *remyi*—n, Kauai 21—*Diellia mannii*—b, Kauai 21—*Labordia helleri*—i, Kauai 21—*Myrsine knudsenii*—b, Kauai 21—*Myrsine mezii*—d, Kauai 21—*Platydesma rostrata*—n, Kauai 21—*Psychotria grandiflora*—d, Kauai 21—*Stenogyne kealiae*—f, Kauai 21—*Tetraplasandra flynnii*—g

Montane Mesic



(ccclxxxviii) Kauai 21—*Diellia mannii*—b

(A) See paragraph

(a)(1)(ccclxxxvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxxvii)(B) of this section for the map of this unit.

(ccclxxxix) Kauai 21—*Labordia helleri*—i

(A) See paragraph

(a)(1)(ccclxxxvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxxvii)(B) of this section for the map of this unit.

(cccxc) Kauai 21—*Myrsine knudsenii*—b

(A) See paragraph

(a)(1)(ccclxxxvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxxvii)(B) of this section for the map of this unit.

(cccxc) Kauai 21—*Myrsine mezii*—d

(A) See paragraph

(a)(1)(ccclxxxvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxxvii)(B) of this section for the map of this unit.

(cccxcii) Kauai 21—*Platydesma rostrata*—o

(A) See paragraph

(a)(1)(ccclxxxvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxxvii)(B) of this section for the map of this unit.

(cccxciii) Kauai 21—*Psychotria grandiflora*—d

(A) See paragraph

(a)(1)(ccclxxxvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxxvii)(B) of this section for the map of this unit.

(cccxciv) Kauai 21—*Stenogyne kealiae*—f

(A) See paragraph

(a)(1)(ccclxxxvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxxvii)(B) of this section for the map of this unit.

(cccxcv) Kauai 21—*Tetraplasandra flynnii*—g

(A) See paragraph

(a)(1)(ccclxxxvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxxvii)(B) of this section for the map of this unit.

(cccxcvi) Kauai 22—*Chamaesyce remyi* var. *remyi*—o

(A) This is a unit of the Montane Mesic ecosystem and consists of 139 ac (56 ha). This unit includes land bounded by the following UTM Zone 4, NAD83 coordinates (E, N): 438012,

2440389; 437687, 2439960; 438227, 2440730; 438149, 2440714; 438111, 2440652; 438112, 2440588; 438028, 2440577; 438243, 2440830; 438014, 2440437; 438253, 2440854; 437922, 2440355; 437912, 2440201; 437870, 2440140; 437827, 2440132; 437817, 2440071; 437785, 2440013; 438023, 2440484; 437335, 2440180; 437586, 2439743; 437636, 2439819; 437586, 2439743; 437529, 2439721; 438287, 2440738; 437450, 2440047; 437335, 2440329; 437336, 2440335; 437602, 2440771; 437987, 2441027; 438159, 2440914; 438249, 2440857; 437545, 2439761. This unit is also critical habitat for Kauai 22—*Diellia mannii*—c, Kauai 22—*Labordia helleri*—j, Kauai 22—*Myrsine knudsenii*—c, Kauai 22—*Myrsine mezii*—e, Kauai 22—*Platydesma rostrata*—o, Kauai 22—*Psychotria grandiflora*—e, Kauai 22—*Stenogyne kealiae*—g, and Kauai 22—*Tetraplasandra flynnii*—h (see paragraphs (a)(1)(cccxcvii), (a)(1)(cccxcviii), (a)(1)(cccxcix), (a)(1)(cd), (a)(1)(cdi), (a)(1)(cdii), (a)(1)(cdiii), and (a)(1)(cdiv), respectively, of this section).

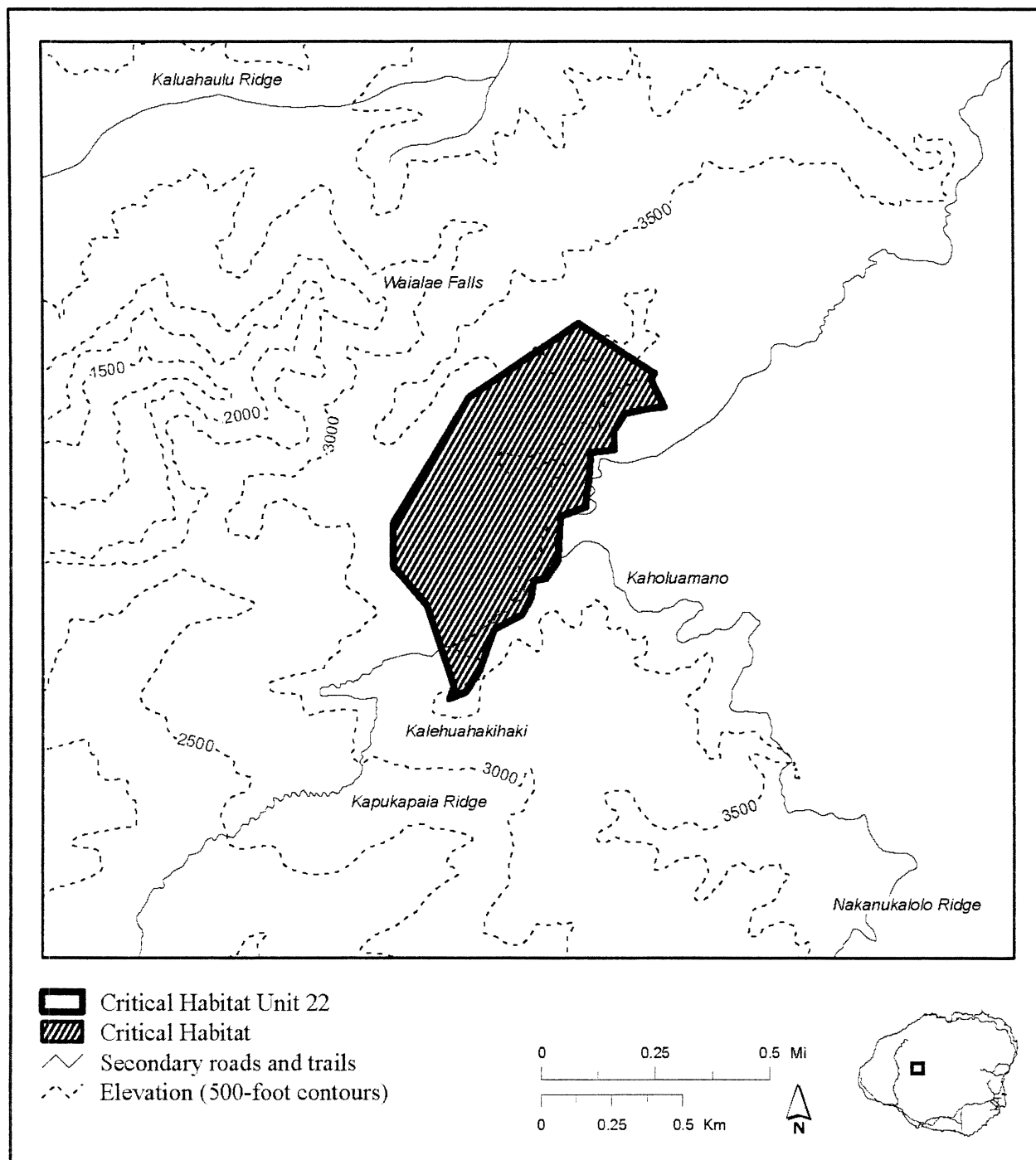
(B) Note: Map 217e follows:

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Map 217e

Kauai 22—*Chamaesyce remyi* var. *remyi*—o, Kauai 22—*Diellia mannii*—c, Kauai 22—*Labordia helleri*—j, Kauai 22—*Myrsine knudsenii*—c, Kauai 22—*Myrsine mezii*—e, Kauai 22—*Platydesma rostrata*—o, Kauai 22—*Psychotria grandiflora*—e, Kauai 22—*Stenogyne kealiae*—g, Kauai 22—*Tetraplasandra flynnii*—h

Montane Mesic



(ccxcvii) Kauai 22—*Diellia mannii*—c

(A) See paragraph (a)(1)(ccxcvi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccxcvi)(B) of this section for the map of this unit.

(ccxcviii) Kauai 22—*Labordia helleri*—j

(A) See paragraph (a)(1)(ccxcvi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccxcvi)(B) of this section for the map of this unit.

(ccxcix) Kauai 22—*Myrsine knudsenii*—c

(A) See paragraph (a)(1)(ccxcvi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccxcvi)(B) of this section for the map of this unit.

(cd) Kauai 22—*Myrsine mezii*—e

(A) See paragraph (a)(1)(ccxcvi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccxcvi)(B) of this section for the map of this unit.

(cdi) Kauai 22—*Platydesma rostrata*—o

(A) See paragraph (a)(1)(ccxcvi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccxcvi)(B) of this section for the map of this unit.

(cdii) Kauai 22—*Psychotria grandiflora*—e

(A) See paragraph (a)(1)(ccxcvi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccxcvi)(B) of this section for the map of this unit.

(cdiii) Kauai 22—*Stenogyne kealiae*—g

(A) See paragraph (a)(1)(ccxcvi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccxcvi)(B) of this section for the map of this unit.

(cdiv) Kauai 22—*Tetraplasandra flynnii*—h

(A) See paragraph (a)(1)(ccxcvi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccxcvi)(B) of this section for the map of this unit.

(cdv) Kauai 23—*Astelia waialealae*—c

(A) This is a unit of the Montane Wet ecosystem and consists of 0.4 ac (0.2 ha). This unit includes land bounded by the following UTM Zone 4, NAD83 coordinates (E, N): 444193, 2443965; 444088, 2444202; 444117, 2444107;

444088, 2444202. This unit is also critical habitat for Kauai 23—

Chamaesyce remyi var. *remyi*—p, Kauai 23—*Dryopteris crinalis* var. *podosorus*—c, Kauai 23—*Dubautia kalalauensis*—c, Kauai 23—*Dubautia waialealae*—c, Kauai 23—*Geranium kauaiense*—c, Kauai 23—*Keysseria erici*—c, Kauai 23—*Keysseria helenae*—c, Kauai 23—*Labordia helleri*—k, Kauai 23—*Labordia pumila*—c, Kauai 23—*Lysimachia daphnoides*—c, Kauai 23—*Melicope degeneri*—c, Kauai 23—*Melicope puberula*—f, Kauai 23—*Myrsine mezii*—f, Kauai 23—*Phyllostegia renovans*—f, Kauai 23—*Platydesma rostrata*—p, Kauai 23—*Psychotria grandiflora*—f, and Kauai 23—*Tetraplasandra flynnii*—i (see paragraphs (a)(1)(cdvi), (a)(1)(cdvii), (a)(1)(cdviii), (a)(1)(cdix), (a)(1)(cdx), (a)(1)(cdxi), (a)(1)(cdxii), (a)(1)(cdxiii), (a)(1)(cdxiv), (a)(1)(cdxv), (a)(1)(cdxvi), (a)(1)(cdxvii), (a)(1)(cdxviii), (a)(1)(cdxix), (a)(1)(cdxx), (a)(1)(cdxxi), and (a)(1)(cdxxii), respectively, of this section).

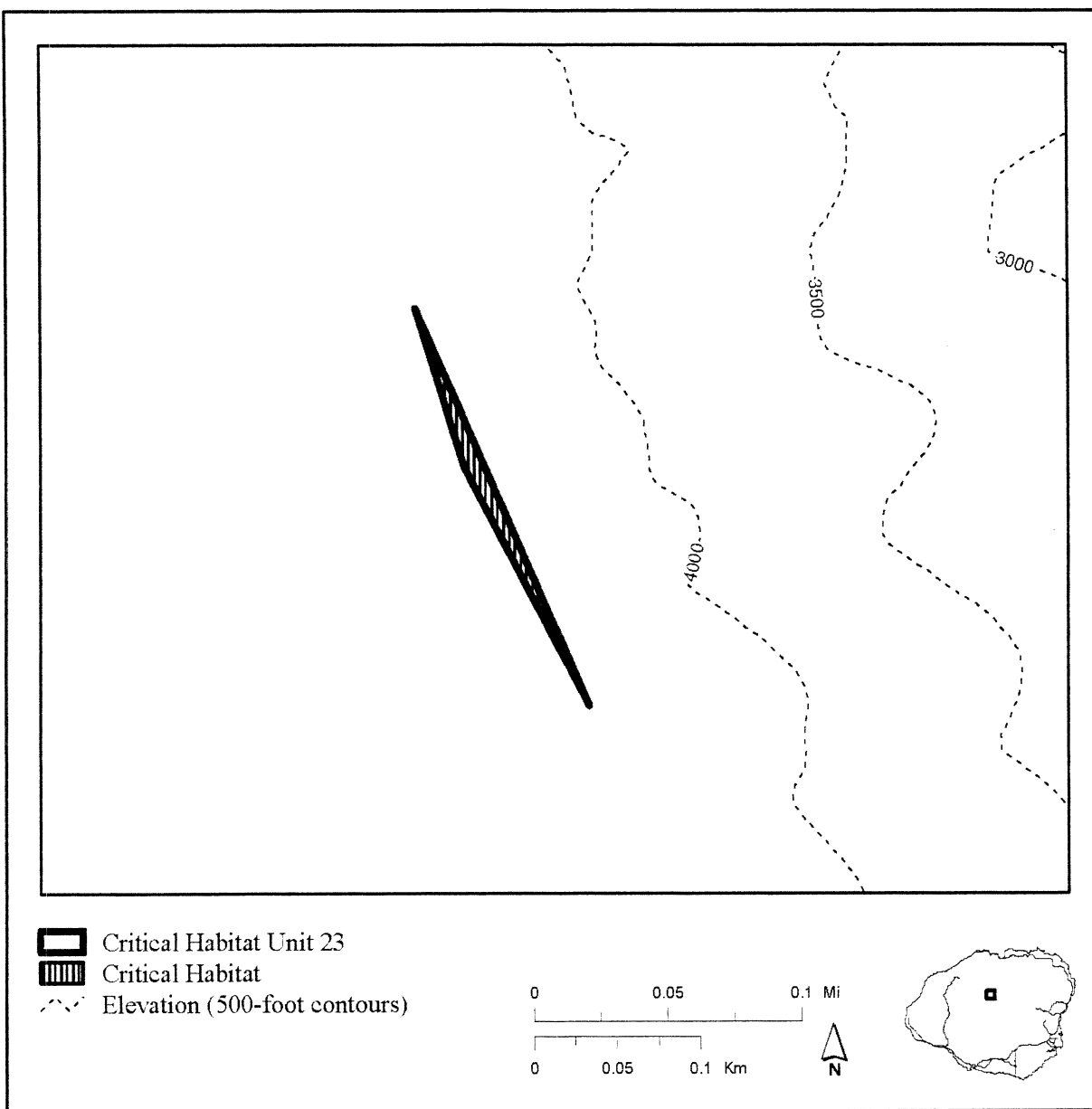
(B) Note: Map 217f follows:

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Map 217f

Kauai 23—*Astelia waialealae*—c, Kauai 23—*Chamaesyce remyi* var. *remyi*—p,
Kauai 23—*Dryopteris crinalis* var. *podosorus*—c, Kauai 23—*Dubautia*
kalalauensis—c, Kauai 23—*Dubautia waialealae*—c, Kauai 23—*Geranium*
kauaiense—c, Kauai 23—*Keysseria erici*—c, Kauai 23—*Keysseria helenae*—c,
Kauai 23—*Labordia helleri*—k, Kauai 23—*Labordia pumila*—c, Kauai 23—*Lysimachia*
daphnoides—c, Kauai 23—*Melicope degeneri*—c, Kauai 23—*Melicope*
puberula—f, Kauai 23—*Myrsine mezii*—f, Kauai 23—*Phyllostegia renovans*—f,
Kauai 23—*Platydesma rostrata*—p, Kauai 23—*Psychotria grandiflora*—f,
Kauai 23—*Tetraplasandra flynnii*—i

Montane Wet



(cdvi) Kauai 23—*Chamaesyce remyi* var. *remyi*—p

(A) See paragraph (a)(1)(cdv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdv)(B) of this section for the map of this unit.

(cdvii) Kauai 23—*Dryopteris crinalis* var. *podosorus*—c

(A) See paragraph (a)(1)(cdv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdv)(B) of this section for the map of this unit.

(cdviii) Kauai 23—*Dubautia kalalauensis*—c

(A) See paragraph (a)(1)(cdv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdv)(B) of this section for the map of this unit.

(cdix) Kauai 23—*Dubautia waialealae*—c

(A) See paragraph (a)(1)(cdv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdv)(B) of this section for the map of this unit.

(cdx) Kauai 23—*Geranium kauaiense*—c

(A) See paragraph (a)(1)(cdv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdv)(B) of this section for the map of this unit.

(cdxi) Kauai 23—*Keysseria erici*—c

(A) See paragraph (a)(1)(cdv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdv)(B) of this section for the map of this unit.

(cdxii) Kauai 23—*Keysseria helenae*—c

(A) See paragraph (a)(1)(cdv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdv)(B) of this section for the map of this unit.

(cdxiii) Kauai 23—*Labordia helleri*—k

(A) See paragraph (a)(1)(cdv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdv)(B) of this section for the map of this unit.

(cdxiv) Kauai 23—*Labordia pumila*—c

(A) See paragraph (a)(1)(cdv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdv)(B) of this section for the map of this unit.

(cdxv) Kauai 23—*Lysimachia daphnoides*—c

(A) See paragraph (a)(1)(cdv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdv)(B) of this section for the map of this unit.

(cdxvi) Kauai 23—*Melicope degeneri*—c

(A) See paragraph (a)(1)(cdv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdv)(B) of this section for the map of this unit.

(cdxvii) Kauai 23—*Melicope puberula*—f

(A) See paragraph (a)(1)(cdv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdv)(B) of this section for the map of this unit.

(cdxviii) Kauai 23—*Myrsine mezii*—f

(A) See paragraph (a)(1)(cdv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdv)(B) of this section for the map of this unit.

(cdxix) Kauai 23—*Phyllostegia renovans*—f

(A) See paragraph (a)(1)(cdv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdv)(B) of this section for the map of this unit.

(cdxx) Kauai 23—*Platydesma rostrata*—p

(A) See paragraph (a)(1)(cdv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdv)(B) of this section for the map of this unit.

(cdxxi) Kauai 23—*Psychotria grandiflora*—f

(A) See paragraph (a)(1)(cdv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdv)(B) of this section for the map of this unit.

(cdxxii) Kauai 23—*Tetraplasandra flynnii*—i

(A) See paragraph (a)(1)(cdv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdv)(B) of this section for the map of this unit.

(cdxxiii) Kauai 24—*Astelia waialealae*—d

(A) This is a unit of the Montane Wet ecosystem and consists of 0.04 ac (0.01 ha). This unit includes land bounded by the following UTM Zone 4, NAD83 coordinates (E, N): 445955, 2442594; 445955, 2442594; 445951, 2442593; 445907, 2442657. This unit is also critical habitat for Kauai 24—*Chamaesyce remyi* var. *remyi*—q, Kauai 24—*Dryopteris crinalis* var. *podosorus*—d, Kauai 24—*Dubautia kalalauensis*—d, Kauai 24—*Dubautia waialealae*—d, Kauai 24—*Geranium kauaiense*—d, Kauai 24—*Keysseria erici*—d, Kauai 24—*Keysseria helenae*—d, Kauai 24—*Labordia helleri*—l, Kauai 24—*Labordia pumila*—d, Kauai 24—*Lysimachia daphnoides*—d, Kauai 24—*Melicope degeneri*—d, Kauai 24—*Melicope puberula*—g, Kauai 24—*Myrsine mezii*—g, Kauai 24—*Phyllostegia renovans*—g, Kauai 24—*Platydesma rostrata*—q, Kauai 24—*Psychotria grandiflora*—g, and Kauai 24—*Tetraplasandra flynnii*—j (see paragraphs (a)(1)(cdxxiv), (a)(1)(cdxxv), (a)(1)(cdxxvi), (a)(1)(cdxxvii), (a)(1)(cdxxviii), (a)(1)(cdxxix), (a)(1)(cdxxx), (a)(1)(cdxxxi), (a)(1)(cdxxxii), (a)(1)(cdxxxiii), (a)(1)(cdxxxiv), (a)(1)(cdxxxv), (a)(1)(cdxxxvi), (a)(1)(cdxxxvii), (a)(1)(cdxxxviii), (a)(1)(cdxxxix), and (a)(1)(cdxli), respectively, of this section).

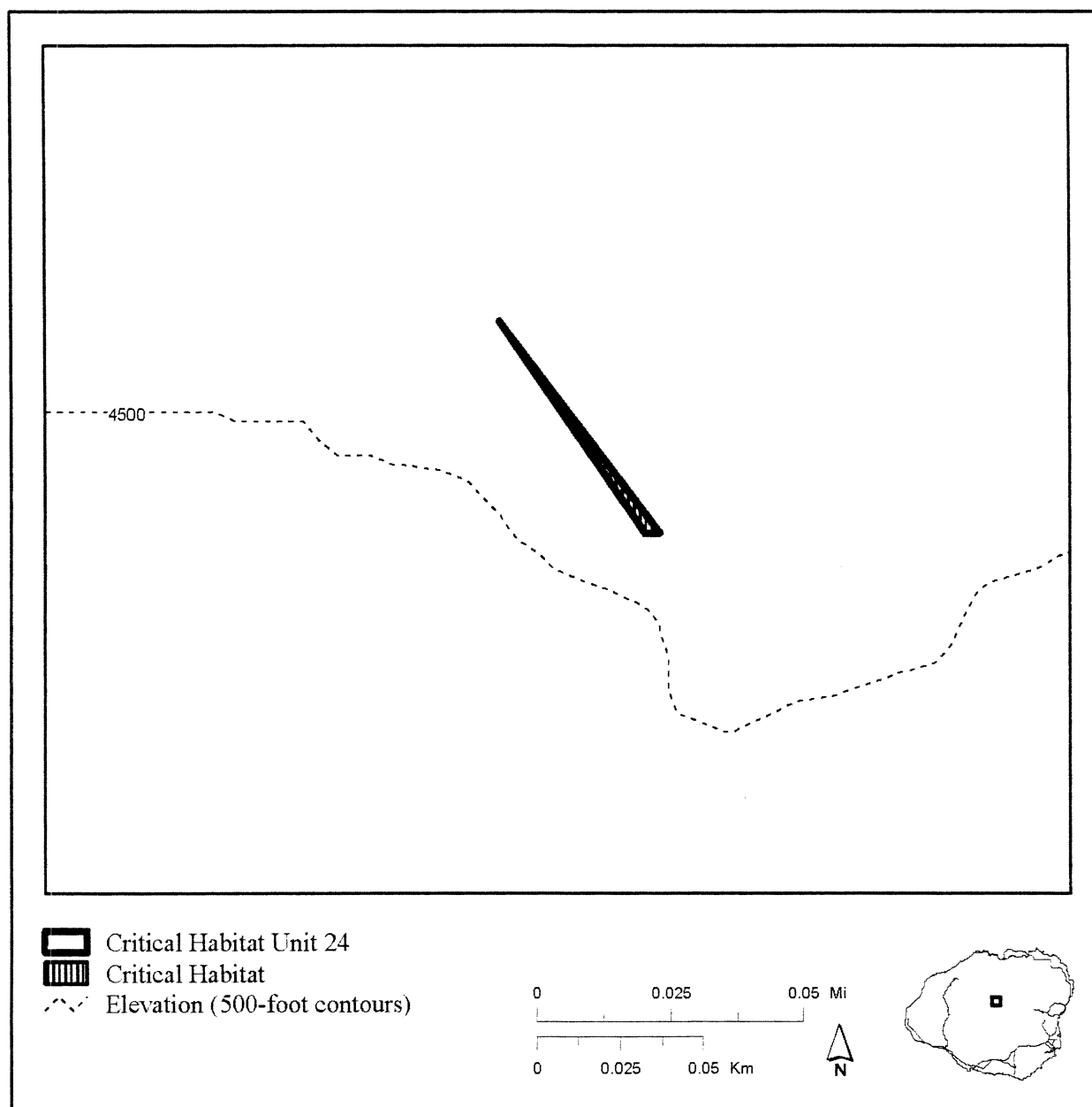
(B) Note: Map 217g follows:

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Map 217g

Kauai 24—*Astelia waialealae*—d, Kauai 24—*Chamaesyce remyi* var. *remyi*—q,
Kauai 24—*Dryopteris crinalis* var. *podosorus*—d, Kauai 24—*Dubautia kalalauensis*—d,
Kauai 24—*Dubautia waialealae*—d, Kauai 24—*Geranium kauaiense*—d, Kauai 24—
Keysseria erici—d, Kauai 24—*Keysseria helenae*—d, Kauai 24—*Labordia helleri*—l,
Kauai 24—*Labordia pumila*—d, Kauai 24—*Lysimachia daphnoides*—d, Kauai 24—
Melicope degeneri—d, Kauai 24—*Melicope puberula*—g, Kauai 24—*Myrsine mezii*—g,
Kauai 24—*Phyllostegia renovans*—g, Kauai 24—*Platydesma rostrata*—q,
Kauai 24—*Psychotria grandiflora*—g, Kauai 24—*Tetraplasandra flynnii*—j

Montane Wet



(cdxxiv) Kauai 24—*Chamaesyce remyi* var. *remyi*-q

(A) See paragraph (a)(1)(cdxxiii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxxiii)(B) of this section for the map of this unit.

(cdxxv) Kauai 24—*Dryopteris crinalis* var. *podosorus*-d

(A) See paragraph (a)(1)(cdxxiii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxxiii)(B) of this section for the map of this unit.

(cdxxvi) Kauai 24—*Dubautia kalalauensis*-d

(A) See paragraph (a)(1)(cdxxiii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxxiii)(B) of this section for the map of this unit.

(cdxxvii) Kauai 24—*Dubautia waialealae*-d

(A) See paragraph (a)(1)(cdxxiii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxxiii)(B) of this section for the map of this unit.

(cdxxviii) Kauai 24—*Geranium kauaiense*-e

(A) See paragraph (a)(1)(cdxxiii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxxiii)(B) of this section for the map of this unit.

(cdxxix) Kauai 24—*Keysseria erici*-d

(A) See paragraph (a)(1)(cdxxiii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxxiii)(B) of this section for the map of this unit.

(cdxxx) Kauai 24—*Keysseria helenae*-d

(A) See paragraph (a)(1)(cdxxiii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxxiii)(B) of this section for the map of this unit.

(cdxxxi) Kauai 24—*Labordia helleri*-l

(A) See paragraph (a)(1)(cdxxiii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxxiii)(B) of this section for the map of this unit.

(cdxxxii) Kauai 24—*Labordia pumila*-d

(A) See paragraph (a)(1)(cdxxiii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxxiii)(B) of this section for the map of this unit.

(cdxxxiii) Kauai 24—*Lysimachia daphnoides*-d

(A) See paragraph (a)(1)(cdxxiii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxxiii)(B) of this section for the map of this unit.

(cdxxxiv) Kauai 24—*Melicope degeneri*-d

(A) See paragraph (a)(1)(cdxxiii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxxiii)(B) of this section for the map of this unit.

(cdxxxv) Kauai 24—*Melicope puberula*-g

(A) See paragraph (a)(1)(cdxxiii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxxiii)(B) of this section for the map of this unit.

(cdxxxvi) Kauai 24—*Myrsine mezii*-g

(A) See paragraph (a)(1)(cdxxiii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxxiii)(B) of this section for the map of this unit.

(cdxxxvii) Kauai 24—*Phyllostegia renovans*-g

(A) See paragraph (a)(1)(cdxxiii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxxiii)(B) of this section for the map of this unit.

(cdxxxviii) Kauai 24—*Platydesma rostrata*-q

(A) See paragraph (a)(1)(cdxxiii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxxiii)(B) of this section for the map of this unit.

(cdxxxix) Kauai 24—*Psychotria grandiflora*-g

(A) See paragraph (a)(1)(cdxxiii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxxiii)(B) of this section for the map of this unit.

(cdxli) Kauai 24—*Tetraplasandra flynnii*-j

(A) See paragraph (a)(1)(cdxxiii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxxiii)(B) of this section for the map of this unit.

(cdxlii) Kauai 25—*Astelia waialealae*-e

(A) This is a unit of the Montane Wet ecosystem and consists of 64 ac (26 ha). This unit includes land bounded by the following UTM Zone 4, NAD83 coordinates (E, N): 448428, 2442750;

448440, 2442604; 448443, 2442627; 448443, 2442636; 448447, 2442663; 448447, 2442675; 448447, 2442688; 448443, 2442699; 448437, 2442711; 448438, 2442565; 448428, 2442738; 448464, 2442531; 448431, 2442766; 448432, 2442775; 448435, 2442791; 448437, 2442805; 448442, 2442821; 448462, 2442858; 448432, 2442727; 448536, 2442523; 448481, 2442894; 448637, 2442455; 448634, 2442459; 448623, 2442466; 448615, 2442472; 448602, 2442477; 448587, 2442486; 448449, 2442536; 448550, 2442513; 448441, 2442549; 448530, 2442527; 448515, 2442533; 448505, 2442534; 448488, 2442531; 448474, 2442530; 448455, 2442534; 448880, 2442563; 448566, 2442503; 448512, 2443792; 448522, 2443706; 448507, 2443727; 448504, 2443735; 448502, 2443743; 448504, 2443752; 448509, 2443760; 448513, 2443769; 448669, 2443477; 448512, 2443783; 448552, 2443643; 448500, 2443823; 448473, 2443878; 448470, 2443888; 448479, 2443895; 448609, 2443974; 448614, 2443950; 448634, 2443800; 448469, 2442871; 448513, 2443779; 448518, 2443559; 448588, 2443466; 448591, 2443484; 448589, 2443493; 448582, 2443508; 448577, 2443516; 448569, 2443527; 448560, 2443535; 448553, 2443539; 448538, 2443682; 448518, 2443552; 448546, 2443665; 448523, 2443570; 448527, 2443576; 448533, 2443587; 448544, 2443601; 448549, 2443613; 448551, 2443621; 448552, 2443630; 448674, 2443301; 448528, 2443546; 448579, 2443112; 448587, 2443214; 448586, 2443203; 448582, 2443190; 448582, 2443172; 448582, 2443162; 448583, 2443151; 448585, 2443140; 448657, 2443629; 448585, 2443122; 448592, 2443254; 448562, 2443086; 448545, 2443051; 448529, 2443019; 448507, 2442976; 448498, 2442952; 448490, 2442930; 448486, 2442910; 448585, 2443461; 448586, 2443129; 448584, 2443388; 448651, 2443187; 448653, 2443075; 448696, 2442955; 448765, 2442787; 448805, 2442677; 448861, 2442593; 448880, 2442563; 448578, 2443441; 448589, 2443224; 448576, 2443405; 448591, 2443241; 448590, 2443369; 448595, 2443352; 448593, 2443325; 448590, 2443306; 448591, 2443291; 448592, 2443277; 448592, 2443261; 448477, 2442887; 448572, 2443417. This unit is also critical habitat for Kauai 25—*Chamaesyce remyi* var. *remyi*-r, Kauai 25—*Dryopteris crinalis* var. *podosorus*-e, Kauai 25—*Dubautia kalalauensis*-e, Kauai 25—*Dubautia waialealae*-e, Kauai 25—*Geranium kauaiense*-e, Kauai 25—*Keysseria erici*-e, Kauai 25—*Keysseria helenae*-e, Kauai 25—*Labordia helleri*-

m, Kauai 25—*Labordia pumila*—e, Kauai 25—*Lysimachia daphnoides*—e, Kauai 25—*Melicope degeneri*—e, Kauai 25—*Melicope puberula*—h, Kauai 25—*Myrsine mezii*—h, Kauai 25—*Phyllostegia renovans*—h, Kauai 25—*Platydesma rostrata*—r, Kauai 25—*Psychotria*

grandiflora—h, and Kauai 25—*Tetraplasandra flynnii*—k (see paragraphs (a)(1)(cdxlii), (a)(1)(cdxliii), (a)(1)(cdxliv), (a)(1)(cdxlv), (a)(1)(cdxlvi), (a)(1)(cdxlvii), (a)(1)(cdxlvi), (a)(1)(cdxlviii), (a)(1)(cdxlix), (a)(1)(cdl), (a)(1)(cdli), (a)(1)(cdlii), (a)(1)(cdliii),

(a)(1)(cdliv), (a)(1)(cdlv), (a)(1)(cdlvi), (a)(1)(cdlvii), and (a)(1)(cdlviii), respectively, of this section).

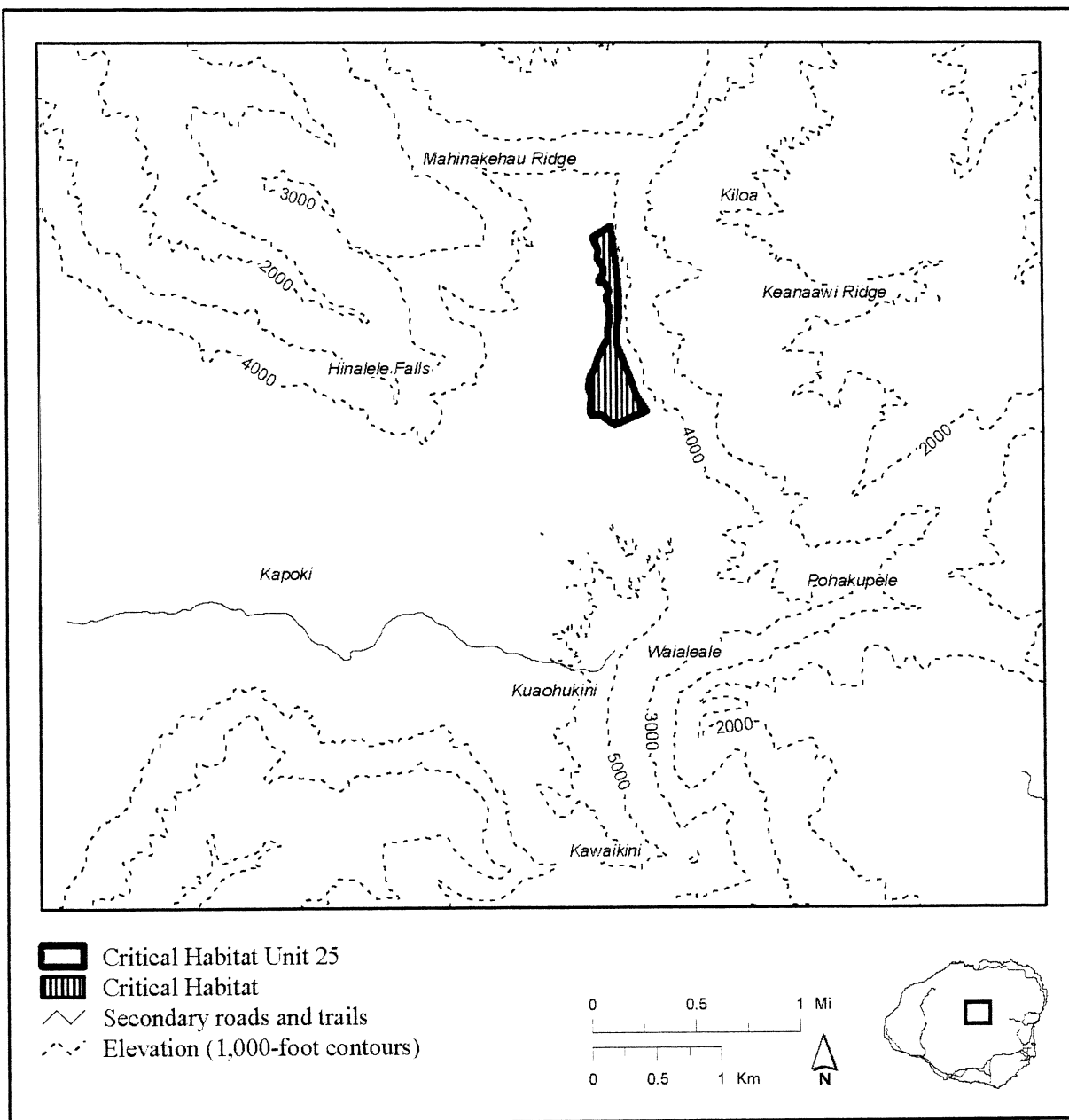
(B) Note: Map 217h follows:

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Map 217h

Kauai 25—*Astelia waialealae*—e, Kauai 25—*Chamaesyce remyi* var. *remyi*—r, Kauai 25—*Dryopteris crinalis* var. *podosorus*—e, Kauai 25—*Dubautia kalalauensis*—e, Kauai 25—*Dubautia waialealae*—e, Kauai 25—*Geranium kauaiense*—e, Kauai 25—*Keysseria erici*—e, Kauai 25—*Keysseria helenae*—e, Kauai 25—*Labordia helleri*—m, Kauai 25—*Labordia pumila*—e, Kauai 25—*Lysimachia daphnoides*—e, Kauai 25—*Melicope degeneri*—e, Kauai 25—*Melicope puberula*—h, Kauai 25—*Myrsine mezii*—h, Kauai 18—*Phyllostegia renovans*—h, Kauai 25—*Platydesma rostrata*—r, Kauai 25—*Psychotria grandiflora*—h, Kauai 25—*Tetraplasandra flynnii*—k

Montane Wet



(cdxlii) Kauai 25—*Chamaesyce remyi* var. *remyi*—r

(A) See paragraph (a)(1)(cdxli)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxli)(B) of this section for the map of this unit.

(cdxliiii) Kauai 25—*Dryopteris crinalis* var. *podosorus*—e

(A) See paragraph (a)(1)(cdxli)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxli)(B) of this section for the map of this unit.

(cdxliv) Kauai 25—*Dubautia kalalauensis*—d

(A) See paragraph (a)(1)(cdxli)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxli)(B) of this section for the map of this unit.

(cdxlv) Kauai 25—*Dubautia waialealae*—e

(A) See paragraph (a)(1)(cdxli)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxli)(B) of this section for the map of this unit.

(cdxlvi) Kauai 25—*Geranium kauaiense*—f

(A) See paragraph (a)(1)(cdxli)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxli)(B) of this section for the map of this unit.

(cdxlvii) Kauai 25—*Keysseria erici*—e

(A) See paragraph (a)(1)(cdxli)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxli)(B) of this section for the map of this unit.

(cdxlviii) Kauai 25—*Keysseria helenae*—e

(A) See paragraph (a)(1)(cdxli)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxli)(B) of this section for the map of this unit.

(cdxlxi) Kauai 25—*Labordia helleri*—m

(A) See paragraph (a)(1)(cdxli)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxli)(B) of this section for the map of this unit.

(cdl) Kauai 25—*Labordia pumila*—e

(A) See paragraph (a)(1)(cdxli)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxli)(B) of this section for the map of this unit.

(cdli) Kauai 25—*Lysimachia daphnoides*—e

(A) See paragraph (a)(1)(cdxli)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxli)(B) of this section for the map of this unit.

(cdlii) Kauai 25—*Melicope degeneri*—e

(A) See paragraph (a)(1)(cdxli)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxli)(B) of this section for the map of this unit.

(cdliii) Kauai 25—*Melicope puberula*—h

(A) See paragraph (a)(1)(cdxli)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxli)(B) of this section for the map of this unit.

(cdliv) Kauai 25—*Myrsine mezii*—h

(A) See paragraph (a)(1)(cdxli)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxli)(B) of this section for the map of this unit.

(cdlv) Kauai 25—*Phyllostegia renovans*—h

(A) See paragraph (a)(1)(cdxli)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxli)(B) of this section for the map of this unit.

(cdlvi) Kauai 25—*Platydesma rostrata*—r

(A) See paragraph (a)(1)(cdxli)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxli)(B) of this section for the map of this unit.

(cdlvii) Kauai 25—*Psychotria grandiflora*—h

(A) See paragraph (a)(1)(cdxli)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxli)(B) of this section for the map of this unit.

(cdlviii) Kauai 25—*Tetraplasandra flynnii*—k

(A) See paragraph (a)(1)(cdxli)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxli)(B) of this section for the map of this unit.

(CDLIX) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR KAUAI

Unit name	Species occupied	Species unoccupied
* * *	* *	* *
Kauai 4— <i>Chamaesyce remyi</i> var. <i>kauaiensis</i> —a		<i>Chamaesyce remyi</i> var. <i>kauaiensis</i>
Kauai 4— <i>Chamaesyce remyi</i> var. <i>remyi</i> —a		<i>Chamaesyce remyi</i> var. <i>remyi</i>
* * *	* *	* *
Kauai 4— <i>Cyanea dolichopoda</i> —a		<i>Cyanea dolichopoda</i>
* * *	* *	* *
Kauai 4— <i>Cyrtandra oenobarba</i> —a		<i>Cyrtandra oenobarba</i>
Kauai 4— <i>Cyrtandra paliku</i> —a	<i>Cyrtandra paliku</i>	<i>Cyrtandra paliku</i>
Kauai 4— <i>Dubautia plantaginea</i> ssp. <i>magnifolia</i> —a		<i>Dubautia plantaginea</i> ssp. <i>magnifolia</i>
* * *	* *	* *
Kauai 4— <i>Lysimachia iniki</i> —a		<i>Lysimachia iniki</i>

(CDLIX) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR KAUAI—Continued

Unit name	Species occupied	Species unoccupied
Kauai 4— <i>Lysimachia pendens</i> —a		<i>Lysimachia pendens</i>
Kauai 4— <i>Lysimachia venosa</i> —a		<i>Lysimachia venosa</i>
* * *	* *	* *
Kauai 4— <i>Platydesma rostrata</i> —a		<i>Platydesma rostrata</i>
* * *	* *	* *
Kauai 7— <i>Canavalia napaliensis</i> —a		<i>Canavalia napaliensis</i>
Kauai 7— <i>Chamaesyce eleanoriae</i> —a		<i>Chamaesyce eleanoriae</i>
Kauai 7— <i>Chamaesyce remyi</i> var. <i>remyi</i> —b	<i>Chamaesyce remyi</i> var. <i>remyi</i>	<i>Chamaesyce remyi</i> var. <i>remyi</i>
Kauai 7— <i>Charpentiera densiflora</i> —a		<i>Charpentiera densiflora</i>
* * *	* *	* *
Kauai 7— <i>Doryopteris angelica</i> —a		<i>Doryopteris angelica</i>
Kauai 7— <i>Dubautia kenwoodii</i> —a		<i>Dubautia kenwoodii</i>
* * *	* *	* *
Kauai 7— <i>Labordia helleri</i> —a		<i>Labordia helleri</i>
* * *	* *	* *
Kauai 7— <i>Pittosporum napaliense</i> —a		<i>Pittosporum napaliense</i>
Kauai 7— <i>Platydesma rostrata</i> —b		<i>Platydesma rostrata</i>
Kauai 7— <i>Psychotria hobdyi</i> —a		<i>Psychotria hobdyi</i>
* * *	* *	* *
Kauai 7— <i>Tetraplasandra bisattenuata</i> —a	<i>Tetraplasandra bisattenuata</i>	<i>Tetraplasandra bisattenuata</i>
* * *	* *	* *
Kauai 10— <i>Astelia waialealae</i> —a	<i>Astelia waialealae</i>	<i>Astelia waialealae</i>
* * *	* *	* *
Kauai 10— <i>Chamaesyce remyi</i> var. <i>kauaiensis</i> —b		<i>Chamaesyce remyi</i> var. <i>kauaiensis</i>
Kauai 10— <i>Chamaesyce remyi</i> var. <i>kauaiensis</i> —c	<i>Chamaesyce remyi</i> var. <i>kauaiensis</i>	<i>Chamaesyce remyi</i> var. <i>kauaiensis</i>
Kauai 10— <i>Chamaesyce remyi</i> var. <i>remyi</i> —c	<i>Chamaesyce remyi</i> var. <i>remyi</i>	<i>Chamaesyce remyi</i> var. <i>remyi</i>
Kauai 10— <i>Chamaesyce remyi</i> var. <i>remyi</i> —d	<i>Chamaesyce remyi</i> var. <i>remyi</i>	<i>Chamaesyce remyi</i> var. <i>remyi</i>
Kauai 10— <i>Chamaesyce remyi</i> var. <i>remyi</i> —e		<i>Chamaesyce remyi</i> var. <i>remyi</i>
Kauai 10— <i>Charpentiera densiflora</i> —b		<i>Charpentiera densiflora</i>
* * *	* *	* *
Kauai 10— <i>Cyanea dolichopoda</i> —b		<i>Cyanea dolichopoda</i>
Kauai 10— <i>Cyanea eleleensis</i> —a		<i>Cyanea eleleensis</i>
Kauai 10— <i>Cyanea kolekoleensis</i> —a		<i>Cyanea kolekoleensis</i>
Kauai 10— <i>Cyanea kuhihewa</i> —a		<i>Cyanea kuhihewa</i>
* * *	* *	* *
Kauai 10— <i>Cyrtandra oenobarba</i> —b	<i>Cyrtandra oenobarba</i>	<i>Cyrtandra oenobarba</i>

(CDLIX) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR KAUAI—Continued

Unit name	Species occupied	Species unoccupied
Kauai 10— <i>Cyrtandra oenobarba</i> —c	<i>Cyrtandra oenobarba</i>	<i>Cyrtandra oenobarba</i>
Kauai 10— <i>Cyrtandra paliku</i> —b		<i>Cyrtandra paliku</i>
Kauai 10— <i>Dryopteris crinalis</i> var. <i>podosorus</i> —a	<i>Dryopteris crinalis</i> var. <i>podosorus</i>	<i>Dryopteris crinalis</i> var. <i>podosorus</i>
Kauai 10— <i>Dubautia imbricata</i> ssp. <i>imbricata</i> —a	<i>Dubautia imbricata</i> ssp. <i>imbricata</i>	<i>Dubautia imbricata</i> ssp. <i>imbricata</i>
Kauai 10— <i>Dubautia kalalauensis</i> —a		<i>Dubautia kalalauensis</i>
* * *	* *	* *
Kauai 10— <i>Dubautia plantaginea</i> ssp. <i>magnifolia</i> —b	<i>Dubautia plantaginea</i> ssp. <i>magnifolia</i>	<i>Dubautia plantaginea</i> ssp. <i>magnifolia</i>
Kauai 10— <i>Dubautia waialealae</i> —a	<i>Dubautia waialealae</i>	<i>Dubautia waialealae</i>
* * *	* *	* *
Kauai 10— <i>Geranium kauaiense</i> —a	<i>Geranium kauaiense</i>	<i>Geranium kauaiense</i>
* * *	* *	* *
Kauai 10— <i>Keysseria erici</i> —a	<i>Keysseria erici</i>	<i>Keysseria erici</i>
Kauai 10— <i>Keysseria helenae</i> —a	<i>Keysseria helenae</i>	<i>Keysseria helenae</i>
Kauai 10— <i>Labordia helleri</i> —b	<i>Labordia helleri</i>	<i>Labordia helleri</i>
Kauai 10— <i>Labordia helleri</i> —c		<i>Labordia helleri</i>
* * *	* *	* *
Kauai 10— <i>Labordia pumila</i> —a	<i>Labordia pumila</i>	<i>Labordia pumila</i>
* * *	* *	* *
Kauai 10— <i>Lysimachia daphnoides</i> —a	<i>Lysimachia daphnoides</i>	<i>Lysimachia daphnoides</i>
* * *	* *	* *
Kauai 10— <i>Lysimachia iniki</i> —b	<i>Lysimachia iniki</i>	<i>Lysimachia iniki</i>
Kauai 10— <i>Lysimachia pendens</i> —b	<i>Lysimachia pendens</i>	<i>Lysimachia pendens</i>
Kauai 10— <i>Lysimachia venosa</i> —b		<i>Lysimachia venosa</i>
Kauai 10— <i>Melicope degeneri</i> —a	<i>Melicope paniculata</i>	<i>Melicope paniculata</i>
Kauai 10— <i>Melicope paniculata</i> —a	<i>Melicope paniculata</i>	<i>Melicope paniculata</i>
Kauai 10— <i>Melicope puberula</i> —a	<i>Melicope puberula</i>	<i>Melicope puberula</i>
Kauai 10— <i>Melicope puberula</i> —b		<i>Melicope puberula</i>
* * *	* *	* *
Kauai 10— <i>Myrsine mezii</i> —a	<i>Myrsine mezii</i>	<i>Myrsine mezii</i>
* * *	* *	* *
Kauai 10— <i>Phyllostegia renovans</i> —a	<i>Phyllostegia renovans</i>	<i>Phyllostegia renovans</i>
Kauai 10— <i>Phyllostegia renovans</i> —b	<i>Phyllostegia renovans</i>	<i>Phyllostegia renovans</i>
* * *	* *	* *
Kauai 10— <i>Platydesma rostrata</i> —c	<i>Platydesma rostrata</i>	<i>Platydesma rostrata</i>
Kauai 10— <i>Platydesma rostrata</i> —d	<i>Platydesma rostrata</i>	<i>Platydesma rostrata</i>
Kauai 10— <i>Platydesma rostrata</i> —e	<i>Platydesma rostrata</i>	<i>Platydesma rostrata</i>

(CDLIX) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR KAUAI—Continued

Unit name	Species occupied	Species unoccupied
Kauai 10— <i>Psychotria grandiflora</i> —a		<i>Psychotria grandiflora</i>
* * *	* *	* *
Kauai 10— <i>Stenogyne kealiae</i> —a		<i>Stenogyne kealiae</i>
Kauai 10— <i>Tetraplasandra bisattenuata</i> —b	<i>Tetraplasandra bisattenuata</i>	<i>Tetraplasandra bisattenuata</i>
Kauai 10— <i>Tetraplasandra flynnii</i> —a		<i>Tetraplasandra flynnii</i>
Kauai 10— <i>Tetraplasandra flynnii</i> —b		<i>Tetraplasandra flynnii</i>
* * *	* *	* *
Kauai 11— <i>Astelia waialealae</i> —b	<i>Astelia waialealae</i>	<i>Astelia waialealae</i>
* * *	* *	* *
Kauai 11— <i>Canavalia napaliensis</i> —b	<i>Canavalia napaliensis</i>	<i>Canavalia napaliensis</i>
* * *	* *	* *
Kauai 11— <i>Chamaesyce eleanoriae</i> —b	<i>Chamaesyce eleanoriae</i>	<i>Chamaesyce eleanoriae</i>
Kauai 11— <i>Chamaesyce eleanoriae</i> —c	<i>Chamaesyce eleanoriae</i>	<i>Chamaesyce eleanoriae</i>
* * *	* *	* *
Kauai 11— <i>Chamaesyce remyi</i> var. <i>kauaiensis</i> —d	<i>Chamaesyce remyi</i> var. <i>kauaiensis</i>	<i>Chamaesyce remyi</i> var. <i>kauaiensis</i>
Kauai 11— <i>Chamaesyce remyi</i> var. <i>kauaiensis</i> —e		<i>Chamaesyce remyi</i> var. <i>kauaiensis</i>
Kauai 11— <i>Chamaesyce remyi</i> var. <i>remyi</i> —f	<i>Chamaesyce remyi</i> var. <i>remyi</i>	<i>Chamaesyce remyi</i> var. <i>remyi</i>
Kauai 11— <i>Chamaesyce remyi</i> var. <i>remyi</i> —g	<i>Chamaesyce remyi</i> var. <i>remyi</i>	<i>Chamaesyce remyi</i> var. <i>remyi</i>
Kauai 11— <i>Chamaesyce remyi</i> var. <i>remyi</i> —h	<i>Chamaesyce remyi</i> var. <i>remyi</i>	<i>Chamaesyce remyi</i> var. <i>remyi</i>
Kauai 11— <i>Chamaesyce remyi</i> var. <i>remyi</i> —i	<i>Chamaesyce remyi</i> var. <i>remyi</i>	<i>Chamaesyce remyi</i> var. <i>remyi</i>
Kauai 11— <i>Chamaesyce remyi</i> var. <i>remyi</i> —j	<i>Chamaesyce remyi</i> var. <i>remyi</i>	<i>Chamaesyce remyi</i> var. <i>remyi</i>
Kauai 11— <i>Charpentiera densiflora</i> —c	<i>Charpentiera densiflora</i>	<i>Charpentiera densiflora</i>
Kauai 11— <i>Charpentiera densiflora</i> —d	<i>Charpentiera densiflora</i>	<i>Charpentiera densiflora</i>
* * *	* *	* *
Kauai 11— <i>Cyanea dolichopoda</i> —c		<i>Cyanea dolichopoda</i>
Kauai 11— <i>Cyanea eleleensis</i> —b		<i>Cyanea eleleensis</i>
Kauai 11— <i>Cyanea kolekoleensis</i> —b		<i>Cyanea kolekoleensis</i>
Kauai 11— <i>Cyanea kuhihewa</i> —b		<i>Cyanea kuhihewa</i>
* * *	* *	* *
Kauai 11— <i>Cyrtandra oenobarba</i> —d	<i>Cyrtandra oenobarba</i>	<i>Cyrtandra oenobarba</i>
Kauai 11— <i>Cyrtandra oenobarba</i> —e		<i>Cyrtandra oenobarba</i>
Kauai 11— <i>Cyrtandra paliku</i> —c		<i>Cyrtandra paliku</i>
* * *	* *	* *
Kauai 11— <i>Diellia mannii</i> —a	<i>Diellia mannii</i>	<i>Diellia mannii</i>
* * *	* *	* *
Kauai 11— <i>Doryopteris angelica</i> —b	<i>Doryopteris angelica</i>	<i>Doryopteris angelica</i>

(CDLIX) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR KAUAI—Continued

Unit name	Species occupied	Species unoccupied
Kauai 11— <i>Dryopteris crinalis</i> var. <i>podosorus</i> —b	<i>Dryopteris crinalis</i> var. <i>podosorus</i>	<i>Dryopteris crinalis</i> var. <i>podosorus</i>
Kauai 11— <i>Dubautia imbricata</i> ssp. <i>imbricata</i> —b		<i>Dubautia imbricata</i> ssp. <i>imbricata</i>
Kauai 11— <i>Dubautia kalalauensis</i> —b	<i>Dubautia kalalauensis</i>	<i>Dubautia kalalauensis</i>
Kauai 11— <i>Dubautia kenwoodii</i> —b		<i>Dubautia kenwoodii</i>
* * *	* *	* *
Kauai 11— <i>Dubautia plantaginea</i> ssp. <i>magnifolia</i> —c		<i>Dubautia plantaginea</i> ssp. <i>magnifolia</i>
Kauai 11— <i>Dubautia waialealae</i> —b	<i>Dubautia waialealae</i>	<i>Dubautia waialealae</i>
* * *	* *	* *
Kauai 11— <i>Geranium kauaiense</i> —b	<i>Geranium kauaiense</i>	<i>Geranium kauaiense</i>
* * *	* *	* *
Kauai 11— <i>Keysseria erici</i> —b	<i>Keysseria erici</i>	<i>Keysseria erici</i>
Kauai 11— <i>Keysseria helenae</i> —b	<i>Keysseria helenae</i>	<i>Keysseria helenae</i>
* * *	* *	* *
Kauai 11— <i>Labordia helleri</i> —d	<i>Labordia helleri</i>	<i>Labordia helleri</i>
Kauai 11— <i>Labordia helleri</i> —e	<i>Labordia helleri</i>	<i>Labordia helleri</i>
Kauai 11— <i>Labordia helleri</i> —f	<i>Labordia helleri</i>	<i>Labordia helleri</i>
Kauai 11— <i>Labordia helleri</i> —g	<i>Labordia helleri</i>	<i>Labordia helleri</i>
* * *	* *	* *
Kauai 11— <i>Labordia pumila</i> —b	<i>Labordia pumila</i>	<i>Labordia pumila</i>
* * *	* *	* *
Kauai 11— <i>Lysimachia daphnoides</i> —b	<i>Lysimachia daphnoides</i>	<i>Lysimachia daphnoides</i>
Kauai 11— <i>Lysimachia iniki</i> —c		<i>Lysimachia iniki</i>
Kauai 11— <i>Lysimachia pendens</i> —c		<i>Lysimachia pendens</i>
Kauai 11— <i>Lysimachia scopulensis</i> —a	<i>Lysimachia scopulensis</i>	<i>Lysimachia scopulensis</i>
Kauai 11— <i>Lysimachia venosa</i> —c		<i>Lysimachia venosa</i>
* * *	* *	* *
Kauai 11— <i>Melicope degeneri</i> —b	<i>Melicope degeneri</i>	<i>Melicope degeneri</i>
* * *	* *	* *
Kauai 11— <i>Melicope paniculata</i> —b	<i>Melicope paniculata</i>	<i>Melicope paniculata</i>
Kauai 11— <i>Melicope puberula</i> —c	<i>Melicope puberula</i>	<i>Melicope puberula</i>
Kauai 11— <i>Melicope puberula</i> —d	<i>Melicope puberula</i>	<i>Melicope puberula</i>
* * *	* *	* *
Kauai 11— <i>Myrsine knudsenii</i> —a	<i>Myrsine knudsenii</i>	<i>Myrsine knudsenii</i>
* * *	* *	* *
Kauai 11— <i>Myrsine mezii</i> —b	<i>Myrsine mezii</i>	<i>Myrsine mezii</i>
Kauai 11— <i>Myrsine mezii</i> —c		<i>Myrsine mezii</i>

(CDLIX) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR KAUAI—Continued

Unit name	Species occupied	Species unoccupied
* * *	* *	* *
Kauai 11— <i>Phyllostegia renovans</i> —c	<i>Phyllostegia renovans</i>	<i>Phyllostegia renovans</i>
Kauai 11— <i>Phyllostegia renovans</i> —d	<i>Phyllostegia renovans</i>	<i>Phyllostegia renovans</i>
* * *	* *	* *
Kauai 11— <i>Pittosporum napaliense</i> —b	<i>Pittosporum napaliense</i>	<i>Pittosporum napaliense</i>
* * *	* *	* *
Kauai 11— <i>Platydesma rostrata</i> —f	<i>Platydesma rostrata</i>	<i>Platydesma rostrata</i>
Kauai 11— <i>Platydesma rostrata</i> —g	<i>Platydesma rostrata</i>	<i>Platydesma rostrata</i>
Kauai 11— <i>Platydesma rostrata</i> —h	<i>Platydesma rostrata</i>	<i>Platydesma rostrata</i>
Kauai 11— <i>Platydesma rostrata</i> —i		<i>Platydesma rostrata</i>
Kauai 11— <i>Platydesma rostrata</i> —j	<i>Platydesma rostrata</i>	<i>Platydesma rostrata</i>
* * *	* *	* *
Kauai 11— <i>Psychotria grandiflora</i> —b	<i>Psychotria grandiflora</i>	<i>Psychotria grandiflora</i>
Kauai 11— <i>Psychotria grandiflora</i> —c	<i>Psychotria grandiflora</i>	<i>Psychotria grandiflora</i>
Kauai 11— <i>Psychotria hobdyi</i> —b	<i>Psychotria hobdyi</i>	<i>Psychotria hobdyi</i>
* * *	* *	* *
Kauai 11— <i>Schiedea attenuata</i> —a	<i>Schiedea attenuata</i>	<i>Schiedea attenuata</i>
* * *	* *	* *
Kauai 11— <i>Stenogyne kealiae</i> —b	<i>Stenogyne kealiae</i>	<i>Stenogyne kealiae</i>
Kauai 11— <i>Stenogyne kealiae</i> —c	<i>Stenogyne kealiae</i>	<i>Stenogyne kealiae</i>
Kauai 11— <i>Stenogyne kealiae</i> —d	<i>Stenogyne kealiae</i>	<i>Stenogyne kealiae</i>
Kauai 11— <i>Tetraplasandra bisattenuata</i> —c		<i>Tetraplasandra bisattenuata</i>
Kauai 11— <i>Tetraplasandra bisattenuata</i> —d		<i>Tetraplasandra bisattenuata</i>
Kauai 11— <i>Tetraplasandra flynnii</i> —c	<i>Tetraplasandra flynnii</i>	<i>Tetraplasandra flynnii</i>
Kauai 11— <i>Tetraplasandra flynnii</i> —d		<i>Tetraplasandra flynnii</i>
Kauai 11— <i>Tetraplasandra flynnii</i> —e	<i>Tetraplasandra flynnii</i>	<i>Tetraplasandra flynnii</i>
* * *	* *	* *
Kauai 18— <i>Chamaesyce remyi</i> var. <i>kauaiensis</i> —f	<i>Chamaesyce remyi</i> var. <i>kauaiensis</i>	<i>Chamaesyce remyi</i> var. <i>kauaiensis</i>
Kauai 18— <i>Chamaesyce remyi</i> var. <i>remyi</i> —k		<i>Chamaesyce remyi</i> var. <i>remyi</i>
Kauai 18— <i>Cyanea dolichopoda</i> —d		<i>Cyanea dolichopoda</i>
Kauai 18— <i>Cyrtandra oenobarba</i> —f	<i>Cyrtandra oenobarba</i>	<i>Cyrtandra oenobarba</i>
Kauai 18— <i>Cyrtandra paliku</i> —d		<i>Cyrtandra paliku</i>
Kauai 18— <i>Dubautia plantaginea</i> ssp. <i>magnifolia</i> —d	<i>Dubautia plantaginea</i> ssp. <i>magnifolia</i>	<i>Dubautia plantaginea</i> ssp. <i>magnifolia</i>
Kauai 18— <i>Lysimachia iniki</i> —d	<i>Lysimachia iniki</i>	<i>Lysimachia iniki</i>
Kauai 18— <i>Lysimachia pendens</i> —d	<i>Lysimachia pendens</i>	<i>Lysimachia pendens</i>
Kauai 18— <i>Lysimachia venosa</i> —d		<i>Lysimachia venosa</i>

(CDLIX) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR KAUAI—Continued

Unit name	Species occupied	Species unoccupied
Kauai 18— <i>Platydesma rostrata</i> —k	<i>Platydesma rostrata</i>	<i>Platydesma rostrata</i>
Kauai 19— <i>Chamaesyce remyi</i> var. <i>kauaiensis</i> —g		<i>Chamaesyce remyi</i> var. <i>kauaiensis</i>
Kauai 19— <i>Chamaesyce remyi</i> var. <i>remyi</i> —l		<i>Chamaesyce remyi</i> var. <i>remyi</i>
Kauai 19— <i>Cyanea dolichopoda</i> —e		<i>Cyanea dolichopoda</i>
Kauai 19— <i>Cyrtandra oenobarba</i> —g		<i>Cyrtandra oenobarba</i>
Kauai 19— <i>Cyrtandra paliku</i> —e	<i>Cyrtandra paliku</i>	<i>Cyrtandra paliku</i>
Kauai 19— <i>Dubautia plantaginea</i> ssp. <i>magnifolia</i> —e		<i>Dubautia plantaginea</i> ssp. <i>magnifolia</i>
Kauai 19— <i>Lysimachia iniki</i> —e		<i>Lysimachia iniki</i>
Kauai 19— <i>Lysimachia pendens</i> —e		<i>Lysimachia pendens</i>
Kauai 19— <i>Lysimachia venosa</i> —e		<i>Lysimachia venosa</i>
Kauai 19— <i>Platydesma rostrata</i> —l		<i>Platydesma rostrata</i>
Kauai 20— <i>Chamaesyce remyi</i> var. <i>kauaiensis</i> —h		<i>Chamaesyce remyi</i> var. <i>kauaiensis</i>
Kauai 20— <i>Chamaesyce remyi</i> var. <i>remyi</i> —m	<i>Chamaesyce remyi</i> var. <i>remyi</i>	<i>Chamaesyce remyi</i> var. <i>remyi</i>
Kauai 20— <i>Charpentiera densiflora</i> —e	<i>Charpentiera densiflora</i>	<i>Charpentiera densiflora</i>
Kauai 20— <i>Cyanea eleeleensis</i> —c		<i>Cyanea eleeleensis</i>
Kauai 20— <i>Cyanea kolekoleensis</i> —c		<i>Cyanea kolekoleensis</i>
Kauai 20— <i>Cyanea kuhihewa</i> —c		<i>Cyanea kuhihewa</i>
Kauai 20— <i>Cyrtandra oenobarba</i> —h		<i>Cyrtandra oenobarba</i>
Kauai 20— <i>Dubautia imbricata</i> ssp. <i>imbricata</i> —c	<i>Dubautia imbricata</i> ssp. <i>imbricata</i>	<i>Dubautia imbricata</i> ssp. <i>imbricata</i>
Kauai 20— <i>Labordia helleri</i> —h	<i>Labordia helleri</i>	<i>Labordia helleri</i>
Kauai 20— <i>Melicope paniculata</i> —c		<i>Melicope paniculata</i>
Kauai 20— <i>Melicope puberula</i> —e		<i>Melicope puberula</i>
Kauai 20— <i>Phyllostegia renovans</i> —e	<i>Phyllostegia renovans</i>	<i>Phyllostegia renovans</i>
Kauai 20— <i>Platydesma rostrata</i> —m		<i>Platydesma rostrata</i>
Kauai 20— <i>Stenogyne kealiae</i> —e		<i>Stenogyne kealiae</i>
Kauai 20— <i>Tetraplasandra bisattenuata</i> —e		<i>Tetraplasandra bisattenuata</i>
Kauai 20— <i>Tetraplasandra flynnii</i> —f		<i>Tetraplasandra flynnii</i>
Kauai 21— <i>Chamaesyce remyi</i> var. <i>remyi</i> —n		<i>Chamaesyce remyi</i> var. <i>remyi</i>
Kauai 21— <i>Diellia mannii</i> —b	<i>Diellia mannii</i>	<i>Diellia mannii</i>
Kauai 21— <i>Labordia helleri</i> —i		<i>Labordia helleri</i>
Kauai 21— <i>Myrsine knudsenii</i> —b		<i>Myrsine knudsenii</i>
Kauai 21— <i>Myrsine mezii</i> —d		<i>Myrsine mezii</i>
Kauai 21— <i>Platydesma rostrata</i> —n		<i>Platydesma rostrata</i>
Kauai 21— <i>Psychotria grandiflora</i> —d		<i>Psychotria grandiflora</i>
Kauai 21— <i>Stenogyne kealiae</i> —f		<i>Stenogyne kealiae</i>

(CDLIX) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR KAUAI—Continued

Unit name	Species occupied	Species unoccupied
Kauai 21— <i>Tetraplasandra flynnii</i> -g		<i>Tetraplasandra flynnii</i>
Kauai 22— <i>Chamaesyce remyi</i> var. <i>remyi</i> -o		<i>Chamaesyce remyi</i> var. <i>remyi</i>
Kauai 22— <i>Diellia mannii</i> -c		<i>Diellia mannii</i>
Kauai 22— <i>Labordia helleri</i> -j		<i>Labordia helleri</i>
Kauai 22— <i>Myrsine knudsenii</i> -c		<i>Myrsine knudsenii</i>
Kauai 22— <i>Myrsine mezii</i> -e	<i>Myrsine mezii</i>	<i>Myrsine mezii</i>
Kauai 22— <i>Platydesma rostrata</i> -o		<i>Platydesma rostrata</i>
Kauai 22— <i>Psychotria grandiflora</i> -e		<i>Psychotria grandiflora</i>
Kauai 22— <i>Stenogyne kealiae</i> -g		<i>Stenogyne kealiae</i>
Kauai 22— <i>Tetraplasandra flynnii</i> -h		<i>Tetraplasandra flynnii</i>
Kauai 23— <i>Astelia waialealae</i> -c	<i>Astelia waialealae</i>	<i>Astelia waialealae</i>
Kauai 23— <i>Chamaesyce remyi</i> var. <i>remyi</i> -p	<i>Chamaesyce remyi</i> var. <i>remyi</i>	<i>Chamaesyce remyi</i> var. <i>remyi</i>
Kauai 23— <i>Dryopteris crinalis</i> var. <i>podosorus</i> -c	<i>Dryopteris crinalis</i> var. <i>podosorus</i>	<i>Dryopteris crinalis</i> var. <i>podosorus</i>
Kauai 23— <i>Dubautia kalalauensis</i> -c		<i>Dubautia kalalauensis</i>
Kauai 23— <i>Dubautia waialealae</i> -c	<i>Dubautia waialealae</i>	<i>Dubautia waialealae</i>
Kauai 23— <i>Geranium kauaiense</i> -c	<i>Geranium kauaiense</i>	<i>Geranium kauaiense</i>
Kauai 23— <i>Keysseria erici</i> -c	<i>Keysseria erici</i>	<i>Keysseria erici</i>
Kauai 23— <i>Keysseria helenae</i> -c	<i>Keysseria helenae</i>	<i>Keysseria helenae</i>
Kauai 23— <i>Labordia helleri</i> -k	<i>Labordia helleri</i>	<i>Labordia helleri</i>
Kauai 23— <i>Labordia pumila</i> -c	<i>Labordia pumila</i>	<i>Labordia pumila</i>
Kauai 23— <i>Lysimachia daphnoides</i> -c	<i>Lysimachia daphnoides</i>	<i>Lysimachia daphnoides</i>
Kauai 23— <i>Melicope degeneri</i> -c	<i>Melicope degeneri</i>	<i>Melicope degeneri</i>
Kauai 23— <i>Melicope puberula</i> -f	<i>Melicope puberula</i>	<i>Melicope puberula</i>
Kauai 23— <i>Myrsine mezii</i> -f	<i>Myrsine mezii</i>	<i>Myrsine mezii</i>
Kauai 23— <i>Phyllostegia renovans</i> -f	<i>Phyllostegia renovans</i>	<i>Phyllostegia renovans</i>
Kauai 23— <i>Platydesma rostrata</i> -p	<i>Platydesma rostrata</i>	<i>Platydesma rostrata</i>
Kauai 23— <i>Psychotria grandiflora</i> -f		<i>Psychotria grandiflora</i>
Kauai 23— <i>Tetraplasandra flynnii</i> -i		<i>Tetraplasandra flynnii</i>
Kauai 24— <i>Astelia waialealae</i> -d	<i>Astelia waialealae</i>	<i>Astelia waialealae</i>
Kauai 24— <i>Chamaesyce remyi</i> var. <i>remyi</i> -q	<i>Chamaesyce remyi</i> var. <i>remyi</i>	<i>Chamaesyce remyi</i> var. <i>remyi</i>
Kauai 24— <i>Dryopteris crinalis</i> var. <i>podosorus</i> -d	<i>Dryopteris crinalis</i> var. <i>podosorus</i>	<i>Dryopteris crinalis</i> var. <i>podosorus</i>
Kauai 24— <i>Dubautia kalalauensis</i> -d		<i>Dubautia kalalauensis</i>
Kauai 24— <i>Dubautia waialealae</i> -d	<i>Dubautia waialealae</i>	<i>Dubautia waialealae</i>
Kauai 24— <i>Geranium kauaiense</i> -d	<i>Geranium kauaiense</i>	<i>Geranium kauaiense</i>
Kauai 24— <i>Keysseria erici</i> -d	<i>Keysseria erici</i>	<i>Keysseria erici</i>
Kauai 24— <i>Keysseria helenae</i> -d	<i>Keysseria helenae</i>	<i>Keysseria helenae</i>
Kauai 24— <i>Labordia helleri</i> -l	<i>Labordia helleri</i>	<i>Labordia helleri</i>

(CDLIX) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR KAUAI—Continued

Unit name	Species occupied	Species unoccupied
Kauai 24— <i>Labordia pumila</i> -d	<i>Labordia pumila</i>	<i>Labordia pumila</i>
Kauai 24— <i>Lysimachia daphnoides</i> -d	<i>Lysimachia daphnoides</i>	<i>Lysimachia daphnoides</i>
Kauai 24— <i>Melicope degeneri</i> -d	<i>Melicope degeneri</i>	<i>Melicope degeneri</i>
Kauai 24— <i>Melicope puberula</i> -g	<i>Melicope puberula</i>	<i>Melicope puberula</i>
Kauai 24— <i>Myrsine mezii</i> -g	<i>Myrsine mezii</i>	<i>Myrsine mezii</i>
Kauai 24— <i>Phyllostegia renovans</i> -g	<i>Phyllostegia renovans</i>	<i>Phyllostegia renovans</i>
Kauai 24— <i>Platydesma rostrata</i> -q	<i>Platydesma rostrata</i>	<i>Platydesma rostrata</i>
Kauai 24— <i>Psychotria grandiflora</i> -g		<i>Psychotria grandiflora</i>
Kauai 24— <i>Tetraplasandra flynnii</i> -j		<i>Tetraplasandra flynnii</i>
Kauai 25— <i>Astelia waialealae</i> -e	<i>Astelia waialealae</i>	<i>Astelia waialealae</i>
Kauai 25— <i>Chamaesyce remyi</i> var. <i>remyi</i> -r	<i>Chamaesyce remyi</i> var. <i>remyi</i>	<i>Chamaesyce remyi</i> var. <i>remyi</i>
Kauai 25— <i>Dryopteris crinalis</i> var. <i>podosorus</i> -e	<i>Dryopteris crinalis</i> var. <i>podosorus</i>	<i>Dryopteris crinalis</i> var. <i>podosorus</i>
Kauai 25— <i>Dubautia kalalauensis</i> -e		<i>Dubautia kalalauensis</i>
Kauai 25— <i>Dubautia waialealae</i> -e	<i>Dubautia waialealae</i>	<i>Dubautia waialealae</i>
Kauai 25— <i>Geranium kauaiense</i> -e	<i>Geranium kauaiense</i>	<i>Geranium kauaiense</i>
Kauai 25— <i>Keysseria erici</i> -e	<i>Keysseria erici</i>	<i>Keysseria erici</i>
Kauai 25— <i>Keysseria helenae</i> -e	<i>Keysseria helenae</i>	<i>Keysseria helenae</i>
Kauai 25— <i>Labordia helleri</i> -m	<i>Labordia helleri</i>	<i>Labordia helleri</i>
Kauai 25— <i>Labordia pumila</i> -e	<i>Labordia pumila</i>	<i>Labordia pumila</i>
Kauai 25— <i>Lysimachia daphnoides</i> -e	<i>Lysimachia daphnoides</i>	<i>Lysimachia daphnoides</i>
Kauai 25— <i>Melicope degeneri</i> -e	<i>Melicope degeneri</i>	<i>Melicope degeneri</i>
Kauai 25— <i>Melicope puberula</i> -h	<i>Melicope puberula</i>	<i>Melicope puberula</i>
Kauai 25— <i>Myrsine mezii</i> -h	<i>Myrsine mezii</i>	<i>Myrsine mezii</i>
Kauai 25— <i>Phyllostegia renovans</i> -h	<i>Phyllostegia renovans</i>	<i>Phyllostegia renovans</i>
Kauai 25— <i>Platydesma rostrata</i> -r	<i>Platydesma rostrata</i>	<i>Platydesma rostrata</i>
Kauai 25— <i>Psychotria grandiflora</i> -h		<i>Psychotria grandiflora</i>
Kauai 25— <i>Tetraplasandra flynnii</i> -k		<i>Tetraplasandra flynnii</i>

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(b) * * *

(1) * * *

FAMILY AMARANATHACEAE:
Charpentiera densiflora (PAPALA)

Kauai 7—*Charpentiera densiflora*-a, Kauai 10—*Charpentiera densiflora*-b, Kauai 11—*Charpentiera densiflora*-c, Kauai 11—*Charpentiera densiflora*-d, and Kauai 20—*Charpentiera densiflora*-e, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Charpentiera densiflora* on Kauai.

(i) In units Kauai 7—*Charpentiera densiflora*-a, and Kauai 11—*Charpentiera densiflora*-c, the primary constituent elements of critical habitat are:

(A) Elevation: Less than 3,000 ft (914 m).

(B) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia*, *Diospyros*, *Metrosideros*, *Myrsine*, *Pouteria*, *Santalum*.

(E) Subcanopy: *Dodonaea*, *Freycinetia*, *Leptecophylla*, *Melanthera*, *Osteomeles*, *Pleomele*, *Psydrax*.

(F) Understory: *Carex*, *Dicranopteris*, *Diplazium*, *Elaphoglossum*, *Peperomia*.

(ii) In units Kauai 10—*Charpentiera densiflora*-b, Kauai 11—*Charpentiera densiflora*-d, and Kauai 20—*Charpentiera densiflora*-e, the primary constituent elements of critical habitat are:

(A) Elevation: Less than 3,000 ft (914 m).

(B) Annual precipitation: Greater than 75 inches (190 centimeters).

(C) Substrate: Clays, ashbeds, deep well-drained soils, lowland bogs.

(D) Canopy: *Antidesma*, *Metrosideros*, *Myrsine*, *Pisonia*, *Psychotria*.

(E) Subcanopy: *Cibotium*, *Claoxylon*, *Kadua*, *Melicope*.

(F) Understory: *Alyxia*, *Cyrtandra*, *Dicranopteris*, *Diplazium*, *Machaerina*, *Microlepia*.

* * * *

FAMILY ARALIACEAE: *Tetraplasandra bisattenuata* (NCN)

Kauai 7–*Tetraplasandra bisattenuata*–a, Kauai 10–*Tetraplasandra bisattenuata*–b, Kauai 11–*Tetraplasandra bisattenuata*–c, Kauai 11–*Tetraplasandra bisattenuata*–d, and Kauai 20–*Tetraplasandra bisattenuata*–e, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Tetraplasandra bisattenuata* on Kauai.

(i) In units Kauai 7–*Tetraplasandra bisattenuata*–a, and Kauai 11–*Tetraplasandra bisattenuata*–c, the primary constituent elements of critical habitat are:

(A) Elevation: Less than 3,000 ft (914 m).

(B) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia*, *Diospyros*, *Metrosideros*, *Myrsine*, *Pouteria*, *Santalum*.

(E) Subcanopy: *Dodonaea*, *Freyinetia*, *Leptecophylla*, *Melanthera*, *Osteomeles*, *Pleomele*, *Psydrax*.

(F) Understory: *Carex*, *Dicranopteris*, *Diplazium*, *Elaphoglossum*, *Peperomia*.

(ii) In units Kauai 10–*Tetraplasandra bisattenuata*–b, Kauai 11–*Tetraplasandra bisattenuata*–d, and Kauai 20–*Tetraplasandra bisattenuata*–e, the primary constituent elements of critical habitat are:

(A) Elevation: Less than 3,000 ft (914 m).

(B) Annual precipitation: Greater than 75 inches (190 centimeters).

(C) Substrate: Clays, ashbeds, deep well-drained soils, lowland bogs.

(D) Canopy: *Antidesma*, *Metrosideros*, *Myrsine*, *Pisonia*, *Psychotria*.

(E) Subcanopy: *Cibotium*, *Claoxylon*, *Kadua*, *Melicope*.

(F) Understory: *Alyxia*, *Cyrtandra*, *Dicranopteris*, *Diplazium*, *Machaerina*, *Microlepia*.

FAMILY ARALIACEAE: *Tetraplasandra flynnii* (NCN)

Kauai 10–*Tetraplasandra flynnii*–a, Kauai 10–*Tetraplasandra flynnii*–b, Kauai 11–*Tetraplasandra flynnii*–c, Kauai 11–*Tetraplasandra flynnii*–d, Kauai 11–*Tetraplasandra flynnii*–e,

Kauai 20–*Tetraplasandra flynnii*–f, Kauai 21–*Tetraplasandra flynnii*–g, Kauai 22–*Tetraplasandra flynnii*–h, Kauai 23–*Tetraplasandra flynnii*–i, Kauai 24–*Tetraplasandra flynnii*–j, and Kauai 25–*Tetraplasandra flynnii*–k, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Tetraplasandra flynnii* on Kauai.

(i) In units Kauai 11–*Tetraplasandra flynnii*–e, Kauai 21–*Tetraplasandra flynnii*–g, and Kauai 22–*Tetraplasandra flynnii*–h, the primary constituent elements of critical habitat are:

(A) Elevation: 3,000 to 5,243 ft (914 to 1,598 m).

(B) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).

(C) Substrate: Weathered aa lava flows, rocky mucks, thin silty loams, deep volcanic ash soils.

(D) Canopy: *Acacia*, *Metrosideros*, *Psychotria*, *Tetraplasandra*, *Zanthoxylum*.

(E) Subcanopy: *Cheirodendron*, *Coprosma*, *Kadua*, *Ilex*, *Myoporum*, *Myrsine*.

(F) Understory: *Bidens*, *Dryopteris*, *Leptecophylla*, *Poa*, *Scaevola*, *Sophora*.

(ii) In units Kauai 10–*Tetraplasandra flynnii*–a, Kauai 11–*Tetraplasandra flynnii*–c, Kauai 23–*Tetraplasandra flynnii*–i, Kauai 24–*Tetraplasandra flynnii*–j, and Kauai 25–*Tetraplasandra flynnii*–k, the primary constituent elements of critical habitat are:

(A) Elevation: 3,000 to 5,243 ft (914 to 1,598 m).

(B) Annual precipitation: Greater than 75 inches (190 centimeters).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia*, *Charpentiera*, *Cheirodendron*, *Metrosideros*.

(E) Subcanopy: *Broussaisia*, *Cibotium*, *Eurya*, *Ilex*, *Myrsine*.

(F) Understory: Ferns, *Carex*, *Coprosma*, *Leptecophylla*, *Oreobolus*, *Rhynchospora*, *Vaccinium*.

(iii) In units Kauai 10–*Tetraplasandra flynnii*–b, Kauai 11–*Tetraplasandra flynnii*–d, and Kauai 20–*Tetraplasandra flynnii*–f, the primary constituent elements of critical habitat are:

(A) Elevation: Less than 3,000 ft (914 m).

(B) Annual precipitation: Greater than 75 inches (190 centimeters).

(C) Substrate: Clays, ashbeds, deep well-drained soils, lowland bogs.

(D) Canopy: *Antidesma*, *Metrosideros*, *Myrsine*, *Pisonia*, *Psychotria*.

(E) Subcanopy: *Cibotium*, *Claoxylon*, *Kadua*, *Melicope*.

(F) Understory: *Alyxia*, *Cyrtandra*, *Dicranopteris*, *Diplazium*, *Machaerina*, *Microlepia*.

FAMILY ASTELIACEAE: *Astelia waialealae* (PAINIU)

Kauai 10–*Astelia waialealae*–a, Kauai 11–*Astelia waialealae*–b, Kauai 23–*Astelia waialealae*–c, Kauai 24–*Astelia waialealae*–d, and Kauai 25–*Astelia waialealae*–e, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Astelia waialealae* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Elevation: 3,000 to 5,243 ft (914 to 1,598 m).

(ii) Annual precipitation: Greater than 75 inches (190 centimeters).

(iii) Substrate: Well-developed soils, montane bogs.

(iv) Canopy: *Acacia*, *Charpentiera*, *Cheirodendron*, *Metrosideros*.

(v) Subcanopy: *Broussaisia*, *Cibotium*, *Eurya*, *Ilex*, *Myrsine*.

(vi) Understory: Ferns, *Carex*, *Coprosma*, *Leptecophylla*, *Oreobolus*, *Rhynchospora*, *Vaccinium*.

(vii) Hummocks in bogs.

FAMILY ASTERACEAE: *Dubautia imbricata* ssp. *imbricata* (NAENAE)

Kauai 10–*Dubautia imbricata* ssp. *imbricata*–a, Kauai 11–*Dubautia imbricata* ssp. *imbricata*–b, and Kauai 20–*Dubautia imbricata* ssp. *imbricata*–c, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Dubautia imbricata* ssp. *imbricata* on Kauai.

Within these units, the primary constituent elements of critical habitat are:

(i) Elevation: Less than 3,000 ft (914 m).

(ii) Annual precipitation: Greater than 75 inches (190 centimeters).

(iii) Substrate: Clays, ashbeds, deep well-drained soils, lowland bogs.

(iv) Canopy: *Antidesma*, *Metrosideros*, *Myrsine*, *Pisonia*, *Psychotria*.

(v) Subcanopy: *Cibotium*, *Claoxylon*, *Kadua*, *Melicope*.

(vi) Understory: *Alyxia*, *Cyrtandra*, *Dicranopteris*, *Diplazium*, *Machaerina*, *Microlepia*.

FAMILY ASTERACEAE: *Dubautia kalalauensis* (NAENAE)

Kauai 10–*Dubautia kalalauensis*–a, Kauai 11–*Dubautia kalalauensis*–b, Kauai 23–*Dubautia kalalauensis*–c, Kauai 24–*Dubautia kalalauensis*–d, and Kauai 25–*Dubautia kalalauensis*–e, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Dubautia kalalauensis* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Elevation: 3,000 to 5,243 ft (914 to 1,598 m).

(ii) Annual precipitation: Greater than 75 inches (190 centimeters).

(iii) Substrate: Well-developed soils, montane bogs.

(iv) Canopy: *Acacia*, *Charpentiera*, *Cheirodendron*, *Metrosideros*.

(v) Subcanopy: *Broussaisia*, *Cibotium*, *Eurya*, *Ilex*, *Myrsine*.

(vi) Understory: Ferns, *Carex*, *Coprosma*, *Leptecophylla*, *Oreobolus*, *Rhynchospora*, *Vaccinium*.

FAMILY ASTERACEAE: *Dubautia kenwoodii* (NAENAE)

Kauai 7–*Dubautia kenwoodii*–a and Kauai 11–*Dubautia kenwoodii*–b, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Dubautia kenwoodii* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Elevation: Less than 3,000 ft (914 m).

(ii) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).

(iii) Substrate: Shallow soils, little to no herbaceous layer.

(iv) Canopy: *Acacia*, *Diospyros*, *Metrosideros*, *Myrsine*, *Pouteria*, *Santalum*.

(v) Subcanopy: *Dodonaea*, *Freycinetia*, *Leptecophylla*, *Melanthera*, *Osteomeles*, *Pleomele*, *Psydrax*.

(vi) Understory: *Carex*, *Dicranopteris*, *Diplazium*, *Elaphoglossum*, *Peperomia*.

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FAMILY ASTERACEAE: *Dubautia plantaginea* ssp. *magnifolia* (NAENAE)

Kauai 4–*Dubautia plantaginea* ssp. *magnifolia*–a, Kauai 10–*Dubautia plantaginea* ssp. *magnifolia*–b, Kauai 11–*Dubautia plantaginea* ssp. *magnifolia*–c, Kauai 18–*Dubautia plantaginea* ssp. *magnifolia*–d, and Kauai 19–*Dubautia plantaginea* ssp. *magnifolia*–e, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Dubautia plantaginea* ssp. *magnifolia* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Annual precipitation: Greater than 75 inches (190 centimeters).

(ii) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(iii) Subcanopy: *Broussaisia*, *Cheirodendron*, *Leptecophylla*, *Metrosideros*.

(iv) Understory: Ferns, Bryophytes, *Coprosoma*, *Dubautia*, *Kadua*, *Peperomia*.

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FAMILY ASTERACEAE: *Dubautia waialealae* (NAENAE)

Kauai 10–*Dubautia waialealae*–a, Kauai 11–*Dubautia waialealae*–b, Kauai

23–*Dubautia waialealae*–c, Kauai 24–*Dubautia waialealae*–d, and Kauai 25–*Dubautia waialealae*–e, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Dubautia waialealae* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Elevation: 3,000 to 5,243 ft (914 to 1,598 m).

(ii) Annual precipitation: Greater than 75 inches (190 centimeters).

(iii) Substrate: Well-developed soils, montane bogs.

(iv) Canopy: *Acacia*, *Charpentiera*, *Cheirodendron*, *Metrosideros*.

(v) Subcanopy: *Broussaisia*, *Cibotium*, *Eurya*, *Ilex*, *Myrsine*.

(vi) Understory: Ferns, *Carex*, *Coprosma*, *Leptecophylla*, *Oreobolus*, *Rhynchospora*, *Vaccinium*.

(vii) Bogs.

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FAMILY ASTERACEAE: *Keysseria erici* (NCN)

Kauai 10–*Keysseria erici*–a, Kauai 11–*Keysseria erici*–b, Kauai 23–*Keysseria erici*–c, Kauai 24–*Keysseria erici*–d, and Kauai 25–*Keysseria erici*–e, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Keysseria erici* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Elevation: 3,000 to 5,243 ft (914 to 1,598 m).

(ii) Annual precipitation: Greater than 75 inches (190 centimeters).

(iii) Substrate: Well-developed soils, montane bogs.

(iv) Canopy: *Acacia*, *Charpentiera*, *Cheirodendron*, *Metrosideros*.

(v) Subcanopy: *Broussaisia*, *Cibotium*, *Eurya*, *Ilex*, *Myrsine*.

(vi) Understory: Ferns, *Carex*, *Coprosma*, *Leptecophylla*, *Oreobolus*, *Rhynchospora*, *Vaccinium*.

(vii) Bogs.

FAMILY ASTERACEAE: *Keysseria helenae* (NCN)

Kauai 10–*Keysseria helenae*–a, Kauai 11–*Keysseria helenae*–b, Kauai 23–*Keysseria helenae*–c, Kauai 24–*Keysseria helenae*–d, and Kauai 25–*Keysseria helenae*–e, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Keysseria helenae* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Elevation: 3,000 to 5,243 ft (914 to 1,598 m).

(ii) Annual precipitation: Greater than 75 inches (190 centimeters).

(iii) Substrate: Well-developed soils, montane bogs.

(iv) Canopy: *Acacia*, *Charpentiera*, *Cheirodendron*, *Metrosideros*.

(v) Subcanopy: *Broussaisia*, *Cibotium*, *Eurya*, *Ilex*, *Myrsine*.

(vi) Understory: Ferns, *Carex*, *Coprosma*, *Leptecophylla*, *Oreobolus*, *Rhynchospora*, *Vaccinium*.

(vii) Bogs.

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FAMILY CAMPANULACEAE: *Cyanea dolichopoda* (HAHA)

Kauai 4–*Cyanea dolichopoda*–a, Kauai 10–*Cyanea dolichopoda*–b, Kauai 11–*Cyanea dolichopoda*–c, Kauai 18–*Cyanea dolichopoda*–d, and Kauai 19–*Cyanea dolichopoda*–e, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Cyanea dolichopoda* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Annual precipitation: Greater than 75 inches (190 centimeters).

(ii) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(iii) Subcanopy: *Broussaisia*, *Cheirodendron*, *Leptecophylla*, *Metrosideros*.

(iv) Understory: Ferns, Bryophytes, *Coprosoma*, *Dubautia*, *Kadua*, *Peperomia*.

FAMILY CAMPANULACEAE: *Cyanea eleeleensis* (HAHA)

Kauai 10–*Cyanea eleeleensis*–a, Kauai 11–*Cyanea eleeleensis*–b, and Kauai 20–*Cyanea eleeleensis*–c, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Cyanea eleeleensis* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Elevation: Less than 3,000 ft (914 m).

(ii) Annual precipitation: Greater than 75 inches (190 centimeters).

(iii) Substrate: Clays, ashbeds, deep well-drained soils, lowland bogs.

(iv) Canopy: *Antidesma*, *Metrosideros*, *Myrsine*, *Pisonia*, *Psychotria*.

(v) Subcanopy: *Cibotium*, *Claoxylon*, *Kadua*, *Melicope*.

(vi) Understory: *Alyxia*, *Cyrtandra*, *Dicranopteris*, *Diplazium*, *Machaerina*, *Microlepia*.

FAMILY CAMPANULACEAE: *Cyanea kolekoleensis* (HAHA)

Kauai 10–*Cyanea kolekoleensis*–a, Kauai 11–*Cyanea kolekoleensis*–b, and Kauai 20–*Cyanea kolekoleensis*–c, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Cyanea kolekoleensis* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Elevation: Less than 3,000 ft (914 m).

(ii) Annual precipitation: Greater than 75 inches (190 centimeters).

(iii) Substrate: Clays, ashbeds, deep well-drained soils, lowland bogs.

(iv) Canopy: *Antidesma*, *Metrosideros*, *Myrsine*, *Pisonia*, *Psychotria*.

(v) Subcanopy: *Cibotium*, *Claoxylon*, *Kadua*, *Melicope*.

(vi) Understory: *Alyxia*, *Cyrtandra*, *Dicranopteris*, *Diplazium*, *Machaerina*, *Microlepia*.

FAMILY CAMPANULACEAE: *Cyanea kuhihewa* (HAHA)

Kauai 10—*Cyanea kuhihewa*—a, Kauai 11—*Cyanea kuhihewa*—b, and Kauai 20—*Cyanea kuhihewa*—c, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Cyanea kuhihewa* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Elevation: Less than 3,000 ft (914 m).

(ii) Annual precipitation: Greater than 75 inches (190 centimeters).

(iii) Substrate: Clays, ashbeds, deep well-drained soils, lowland bogs.

(iv) Canopy: *Antidesma*, *Metrosideros*, *Myrsine*, *Pisonia*, *Psychotria*.

(v) Subcanopy: *Cibotium*, *Claoxylon*, *Kadua*, *Melicope*.

(vi) Understory: *Alyxia*, *Cyrtandra*, *Dicranopteris*, *Diplazium*, *Machaerina*, *Microlepia*.

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FAMILY CARYOPHYLLACEAE: *Schiedea attenuata* (NCN)

Kauai 11—*Schiedea attenuata*—a, identified in the legal description in paragraph (a)(1) of this section, constitutes critical habitat for *Schiedea attenuata* on Kauai. Within this unit, the primary constituent elements of critical habitat are:

(i) Annual precipitation: Less than 75 inches (190 centimeters).

(ii) Substrate: Greater than 65 degree slope, rocky talus.

(iii) Subcanopy: *Antidesma*, *Chamaesyce*, *Diospyros*, *Dodonaea*.

(iv) Understory: *Bidens*, *Eragrostis*, *Melanthera*, *Schiedea*.

* * * * *

FAMILY EUPHORBIACEAE: *Chamaesyce eleanoriae* (AKOKO)

Kauai 7—*Chamaesyce eleanoriae*—a, Kauai 11—*Chamaesyce eleanoriae*—b, and Kauai 11—*Chamaesyce eleanoriae*—c, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Chamaesyce eleanoriae* on Kauai.

(i) In units Kauai 7—*Chamaesyce eleanoriae*—a and Kauai 11—*Chamaesyce*

eleanoriae—b, the primary constituent elements of critical habitat are:

(A) Elevation: Less than 3,000 ft (914 m).

(B) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia*, *Diospyros*, *Metrosideros*, *Myrsine*, *Pouteria*, *Santalum*.

(E) Subcanopy: *Dodonaea*, *Freycinetia*, *Leptecophylla*, *Melanthera*, *Osteomeles*, *Pleomele*, *Psydrax*.

(F) Understory: *Carex*, *Dicranopteris*, *Diplazium*, *Elaphoglossum*, *Peperomia*.

(ii) In unit Kauai 11—*Chamaesyce eleanoriae*—c, the primary constituent elements of critical habitat are:

(A) Annual precipitation: Less than 75 inches (190 centimeters).

(B) Substrate: Greater than 65 degree slope, rocky talus.

(C) Subcanopy: *Antidesma*, *Chamaesyce*, *Diospyros*, *Dodonaea*.

(D) Understory: *Bidens*, *Eragrostis*, *Melanthera*, *Schiedea*.

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FAMILY EUPHORBIACEAE:

Chamaesyce remyi var. *kauaiensis* (AKOKO)

Kauai 4—*Chamaesyce remyi* var. *kauaiensis*—a, Kauai 10—*Chamaesyce remyi* var. *kauaiensis*—b, Kauai 10—*Chamaesyce remyi* var. *kauaiensis*—c, Kauai 11—*Chamaesyce remyi* var. *kauaiensis*—d, Kauai 11—*Chamaesyce remyi* var. *kauaiensis*—e, Kauai 18—*Chamaesyce remyi* var. *kauaiensis*—f, Kauai 19—*Chamaesyce remyi* var. *kauaiensis*—g, and Kauai 20—*Chamaesyce remyi* var. *kauaiensis*—h, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Chamaesyce remyi* var. *kauaiensis* on Kauai.

(i) In units Kauai 10—*Chamaesyce remyi* var. *kauaiensis*—b, Kauai 11—*Chamaesyce remyi* var. *kauaiensis*—d, and Kauai 20—*Chamaesyce remyi* var. *kauaiensis*—h, the primary constituent elements of critical habitat are:

(A) Elevation: Less than 3,000 ft (914 m).

(B) Annual precipitation: Greater than 75 inches (190 centimeters).

(C) Substrate: Clays, ashbeds, deep well-drained soils, lowland bogs.

(D) Canopy: *Antidesma*, *Metrosideros*, *Myrsine*, *Pisonia*, *Psychotria*.

(E) Subcanopy: *Cibotium*, *Claoxylon*, *Kadua*, *Melicope*.

(F) Understory: *Alyxia*, *Cyrtandra*, *Dicranopteris*, *Diplazium*, *Machaerina*, *Microlepia*.

(ii) In units Kauai 4—*Chamaesyce remyi* var. *kauaiensis*—a, Kauai 10—

Chamaesyce remyi var. *kauaiensis*—c, Kauai 11—*Chamaesyce remyi* var. *kauaiensis*—e, Kauai 18—*Chamaesyce remyi* var. *kauaiensis*—f, and Kauai 19—*Chamaesyce remyi* var. *kauaiensis*—g, the primary constituent elements of critical habitat are:

(A) Annual precipitation: Greater than 75 inches (190 centimeters).

(B) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(C) Subcanopy: *Broussaisia*, *Cheirodendron*, *Leptecophylla*, *Metrosideros*.

(D) Understory: Ferns, Bryophytes, *Coprosoma*, *Dubautia*, *Kadua*, *Peperomia*.

FAMILY EUPHORBIACEAE:

Chamaesyce remyi var. *remyi* (AKOKO)

Kauai 4—*Chamaesyce remyi* var. *remyi*—a, Kauai 7—*Chamaesyce remyi* var. *remyi*—b, Kauai 10—*Chamaesyce remyi* var. *remyi*—c, Kauai 10—*Chamaesyce remyi* var. *remyi*—d, Kauai 10—*Chamaesyce remyi* var. *remyi*—e, Kauai 11—*Chamaesyce remyi* var. *remyi*—f, Kauai 11—*Chamaesyce remyi* var. *remyi*—g, Kauai 11—*Chamaesyce remyi* var. *remyi*—h, Kauai 11—*Chamaesyce remyi* var. *remyi*—i, Kauai 11—*Chamaesyce remyi* var. *remyi*—j, Kauai 18—*Chamaesyce remyi* var. *remyi*—k, Kauai 19—*Chamaesyce remyi* var. *remyi*—l, Kauai 20—*Chamaesyce remyi* var. *remyi*—m, Kauai 21—*Chamaesyce remyi* var. *remyi*—n, Kauai 22—*Chamaesyce remyi* var. *remyi*—o, Kauai 23—*Chamaesyce remyi* var. *remyi*—p, Kauai 24—*Chamaesyce remyi* var. *remyi*—q, and Kauai 25—*Chamaesyce remyi* var. *remyi*—r, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Chamaesyce remyi* var. *remyi* on Kauai.

(i) In units Kauai 7—*Chamaesyce remyi* var. *remyi*—b and Kauai 11—*Chamaesyce remyi* var. *remyi*—g, the primary constituent elements of critical habitat are:

(A) Elevation: Less than 3,000 ft (914 m).

(B) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia*, *Diospyros*, *Metrosideros*, *Myrsine*, *Pouteria*, *Santalum*.

(E) Subcanopy: *Dodonaea*, *Freycinetia*, *Leptecophylla*, *Melanthera*, *Osteomeles*, *Pleomele*, *Psydrax*.

(F) Understory: *Carex*, *Dicranopteris*, *Diplazium*, *Elaphoglossum*, *Peperomia*.

(ii) In units Kauai 10—*Chamaesyce remyi* var. *remyi*—d, Kauai 11—*Chamaesyce remyi* var. *remyi*—h, and Kauai 20—*Chamaesyce remyi* var. *remyi*—

m, the primary constituent elements of critical habitat are:

(A) Elevation: Less than 3,000 ft (914 m).

(B) Annual precipitation: Greater than 75 inches (190 centimeters).

(C) Substrate: Clays, ashbeds, deep well-drained soils, lowland bogs.

(D) Canopy: *Antidesma*, *Metrosideros*, *Myrsine*, *Pisonia*, *Psychotria*.

(E) Subcanopy: *Cibotium*, *Claoxylon*, *Kadua*, *Melicope*.

(F) Understory: *Alyxia*, *Cyrtandra*, *Dicranopteris*, *Diplazium*, *Machaerina*, *Microlepia*.

(iii) In units Kauai 11–*Chamaesyce remyi* var. *remyi*-j, Kauai 21–*Chamaesyce remyi* var. *remyi*-n, and Kauai 22–*Chamaesyce remyi* var. *remyi*-o, the primary constituent elements of critical habitat are:

(A) Elevation: 3,000 to 5,243 ft (914 to 1,598 m).

(B) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).

(C) Substrate: Weathered aa lava flows, rocky mucks, thin silty loams, deep volcanic ash soils.

(D) Canopy: *Acacia*, *Metrosideros*, *Psychotria*, *Tetraplasandra*, *Zanthoxylum*.

(E) Understory: *Cheirodendron*, *Coprosma*, *Kadua*, *Ilex*, *Myoporum*, *Myrsine*.

(F) Understory: *Bidens*, *Dryopteris*, *Leptecophylla*, *Poa*, *Scaevola*, *Sophora*.

(iv) In units Kauai 10–*Chamaesyce remyi* var. *remyi*-c, Kauai 11–*Chamaesyce remyi* var. *remyi*-f, Kauai 23–*Chamaesyce remyi* var. *remyi*-p, Kauai 24–*Chamaesyce remyi* var. *remyi*-q, and Kauai 25–*Chamaesyce remyi* var. *remyi*-r, the primary constituent elements of critical habitat are:

(A) Elevation: 3,000 to 5,243 ft (914 to 1,598 m).

(B) Annual precipitation: Greater than 75 inches (190 centimeters).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia*, *Charpentiera*, *Cheirodendron*, *Metrosideros*.

(E) Subcanopy: *Broussaisia*, *Cibotium*, *Eurya*, *Ilex*, *Myrsine*.

(F) Understory: Ferns, *Carex*, *Coprosma*, *Leptecophylla*, *Oreobolus*, *Rhynchospora*, *Vaccinium*.

(v) In units Kauai 4–*Chamaesyce remyi* var. *remyi*-a, Kauai 10–*Chamaesyce remyi* var. *remyi*-e, Kauai 11–*Chamaesyce remyi* var. *remyi*-i, Kauai 18–*Chamaesyce remyi* var. *remyi*-k, and Kauai 19–*Chamaesyce remyi* var. *remyi*-l, the primary constituent elements of critical habitat are:

(A) Annual precipitation: Greater than 75 inches (190 centimeters).

(B) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(C) Subcanopy: *Broussaisia*, *Cheirodendron*, *Leptecophylla*, *Metrosideros*.

(D) Understory: Ferns, Bryophytes, *Coprosoma*, *Dubautia*, *Kadua*, *Peperomia*.

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FAMILY FABACEAE: *Canavalia napaliensis* (AWIKIWIKI)

Kauai 7–*Canavalia napaliensis*-a and Kauai 11–*Canavalia napaliensis*-b, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Canavalia napaliensis* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Elevation: Less than 3,000 ft (914 m).

(ii) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).

(iii) Substrate: Shallow soils, little to no herbaceous layer.

(iv) Canopy: *Acacia*, *Diospyros*, *Metrosideros*, *Myrsine*, *Pouteria*, *Santalum*.

(v) Subcanopy: *Dodonaea*, *Freycinetia*, *Leptecophylla*, *Melanthera*, *Osteomeles*, *Pleomele*, *Psydrax*.

(vi) Understory: *Carex*, *Dicranopteris*, *Diplazium*, *Elaphoglossum*, *Peperomia*.

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FAMILY GERANIACEAE: *Geranium kauaiense* (NOHOANU)

Kauai 10–*Geranium kauaiense*-a, Kauai 11–*Geranium kauaiense*-b, Kauai 23–*Geranium kauaiense*-c, Kauai 24–*Geranium kauaiense*-d, and Kauai 25–*Geranium kauaiense*-e, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Geranium kauaiense* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Elevation: 3,000 to 5,243 ft (914 to 1,598 m).

(ii) Annual precipitation: Greater than 75 inches (190 centimeters).

(iii) Substrate: Well-developed soils, montane bogs.

(iv) Canopy: *Acacia*, *Charpentiera*, *Cheirodendron*, *Metrosideros*.

(v) Subcanopy: *Broussaisia*, *Cibotium*, *Eurya*, *Ilex*, *Myrsine*.

(vi) Understory: Ferns, *Carex*, *Coprosma*, *Leptecophylla*, *Oreobolus*, *Rhynchospora*, *Vaccinium*.

(vii) Bogs.

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FAMILY GESNERIACEAE: *Cyrtandra oenobarba* (HAIWALE)

Kauai 4–*Cyrtandra oenobarba*-a, Kauai 10–*Cyrtandra oenobarba*-b, Kauai 10–*Cyrtandra oenobarba*-c, Kauai

11–*Cyrtandra oenobarba*-d, Kauai 11–*Cyrtandra oenobarba*-e, Kauai 18–*Cyrtandra oenobarba*-f, Kauai 19–*Cyrtandra oenobarba*-g, and Kauai 20–*Cyrtandra oenobarba*-h, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Cyrtandra oenobarba* on Kauai.

(i) In units Kauai 10–*Cyrtandra oenobarba*-b, Kauai 11–*Cyrtandra oenobarba*-d, and Kauai 20–*Cyrtandra oenobarba*-h, the primary constituent elements of critical habitat are:

(A) Elevation: Less than 3,000 ft (914 m).

(B) Annual precipitation: Greater than 75 inches (190 centimeters).

(C) Substrate: Clays, ashbeds, deep well-drained soils, lowland bogs.

(D) Canopy: *Antidesma*, *Metrosideros*, *Myrsine*, *Pisonia*, *Psychotria*.

(E) Subcanopy: *Cibotium*, *Claoxylon*, *Kadua*, *Melicope*.

(F) Understory: *Alyxia*, *Cyrtandra*, *Dicranopteris*, *Diplazium*, *Machaerina*, *Microlepia*.

(ii) In units Kauai 4–*Cyrtandra oenobarba*-a, Kauai 10–*Cyrtandra oenobarba*-c, Kauai 11–*Cyrtandra oenobarba*-e, Kauai 18–*Cyrtandra oenobarba*-f, and Kauai 19–*Cyrtandra oenobarba*-g, the primary constituent elements of critical habitat are:

(A) Annual precipitation: Greater than 75 inches (190 centimeters).

(B) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(C) Subcanopy: *Broussaisia*, *Cheirodendron*, *Leptecophylla*, *Metrosideros*.

(D) Understory: Ferns, Bryophytes, *Coprosoma*, *Dubautia*, *Kadua*, *Peperomia*.

FAMILY GESNERIACEAE: *Cyrtandra paliku* (HAIWALE)

Kauai 4–*Cyrtandra paliku*-a, Kauai 10–*Cyrtandra paliku*-b, Kauai 11–*Cyrtandra paliku*-c, Kauai 18–*Cyrtandra paliku*-d, and Kauai 19–*Cyrtandra paliku*-e, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Cyrtandra paliku* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Annual precipitation: Greater than 75 inches (190 centimeters).

(ii) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(iii) Subcanopy: *Broussaisia*, *Cheirodendron*, *Leptecophylla*, *Metrosideros*.

(iv) Understory: Ferns, Bryophytes, *Coprosoma*, *Dubautia*, *Kadua*, *Peperomia*.

* * * * *

FAMILY LAMIACEAE: *Phyllostegia renovans* (NCN)

Kauai 10–*Phyllostegia renovans*–a, Kauai 10–*Phyllostegia renovans*–b, Kauai 11–*Phyllostegia renovans*–c, Kauai 11–*Phyllostegia renovans*–d, Kauai 20–*Phyllostegia renovans*–e, Kauai 23–*Phyllostegia renovans*–f, Kauai 24–*Phyllostegia renovans*–g, and Kauai 25–*Phyllostegia renovans*–h, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Phyllostegia renovans* on Kauai.

(i) In units Kauai 10–*Phyllostegia renovans*–b, Kauai 11–*Phyllostegia renovans*–d, and Kauai 20–*Phyllostegia renovans*–e, the primary constituent elements of critical habitat are:

(A) Elevation: Less than 3,000 ft (914 m).

(B) Annual precipitation: Greater than 75 inches (190 centimeters).

(C) Substrate: Clays, ashbeds, deep well-drained soils, lowland bogs.

(D) Canopy: *Antidesma*, *Metrosideros*, *Myrsine*, *Pisonia*, *Psychotria*.

(E) Subcanopy: *Cibotium*, *Claoxylon*, *Kadua*, *Melicope*.

(F) Understory: *Alyxia*, *Cyrtandra*, *Dicranopteris*, *Diplazium*, *Machaerina*, *Microlepia*.

(ii) In units Kauai 10–*Phyllostegia renovans*–a, Kauai 11–*Phyllostegia renovans*–c, Kauai 23–*Phyllostegia renovans*–f, Kauai 24–*Phyllostegia renovans*–g, and Kauai 25–*Phyllostegia renovans*–h, the primary constituent elements of critical habitat are:

(A) Elevation: 3,000 to 5,243 ft (914 to 1,598 m).

(B) Annual precipitation: Greater than 75 inches (190 centimeters).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia*, *Charpentiera*, *Cheirodendron*, *Metrosideros*.

(E) Subcanopy: *Broussaisia*, *Cibotium*, *Eurya*, *Ilex*, *Myrsine*.

(F) Understory: Ferns, *Carex*, *Coprosma*, *Leptecophylla*, *Oreobolus*, *Rhynchospora*, *Vaccinium*.

* * * * *

FAMILY LAMIACEAE: *Stenogyne kealiae* (NCN)

Kauai 10–*Stenogyne kealiae*–a, Kauai 11–*Stenogyne kealiae*–b, Kauai 11–*Stenogyne kealiae*–c, Kauai 11–*Stenogyne kealiae*–d, Kauai 20–*Stenogyne kealiae*–e, Kauai 21–*Stenogyne kealiae*–f, and Kauai 22–*Stenogyne kealiae*–g, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Stenogyne kealiae* on Kauai.

(i) In units Kauai 10–*Stenogyne kealiae*–a, Kauai 11–*Stenogyne kealiae*–

c, and Kauai 20–*Stenogyne kealiae*–e, the primary constituent elements of critical habitat are:

(A) Elevation: Less than 3,000 ft (914 m).

(B) Annual precipitation: Greater than 75 inches (190 centimeters).

(C) Substrate: Clays, ashbeds, deep well-drained soils, lowland bogs.

(D) Canopy: *Antidesma*, *Metrosideros*, *Myrsine*, *Pisonia*, *Psychotria*.

(E) Subcanopy: *Cibotium*, *Claoxylon*, *Kadua*, *Melicope*.

(F) Understory: *Alyxia*, *Cyrtandra*, *Dicranopteris*, *Diplazium*, *Machaerina*, *Microlepia*.

(ii) In units Kauai 11–*Stenogyne kealiae*–d, Kauai 21–*Stenogyne kealiae*–f, and Kauai 22–*Stenogyne kealiae*–g, the primary constituent elements of critical habitat are:

(A) Elevation: 3,000 to 5,243 ft (914 to 1,598 m).

(B) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).

(C) Substrate: Weathered aa lava flows, rocky mucks, thin silty loams, deep volcanic ash soils.

(D) Canopy: *Acacia*, *Metrosideros*, *Psychotria*, *Tetraplasandra*, *Zanthoxylum*.

(E) Subcanopy: *Cheirodendron*, *Coprosma*, *Kadua*, *Ilex*, *Myoporum*, *Myrsine*.

(F) Understory: *Bidens*, *Dryopteris*, *Leptecophylla*, *Poa*, *Scaevola*, *Sophora*.

(iii) In unit Kauai 11–*Stenogyne kealiae*–b, the primary constituent elements of critical habitat are:

(A) Annual precipitation: Less than 75 inches (190 centimeters).

(B) Substrate: Greater than 65 degree slope, rocky talus.

(C) Subcanopy: *Antidesma*, *Chamaesyce*, *Diospyros*, *Dodonaea*.

(D) Understory: *Bidens*, *Eragrostis*, *Melanthera*, *Schiedea*.

FAMILY LOGANIACEAE: *Labordia helleri* (KAMAKAHALA)

Kauai 7–*Labordia helleri*–a, Kauai 10–*Labordia helleri*–b, Kauai 10–*Labordia helleri*–c, Kauai 11–*Labordia helleri*–d, Kauai 11–*Labordia helleri*–e, Kauai 11–*Labordia helleri*–f, Kauai 11–*Labordia helleri*–g, Kauai 20–*Labordia helleri*–h, Kauai 21–*Labordia helleri*–i, Kauai 22–*Labordia helleri*–j, Kauai 23–*Labordia helleri*–k, Kauai 24–*Labordia helleri*–l, and Kauai 25–*Labordia helleri*–m, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Labordia helleri* on Kauai.

(i) In units Kauai 7–*Labordia helleri*–a and Kauai 11–*Labordia helleri*–e, the primary constituent elements of critical habitat are:

(A) Elevation: Less than 3,000 ft (914 m).

(B) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia*, *Diospyros*, *Metrosideros*, *Myrsine*, *Pouteria*, *Santalum*.

(E) Subcanopy: *Dodonaea*, *Freycinetia*, *Leptecophylla*, *Melanthera*, *Osteomeles*, *Pleomele*, *Psydrax*.

(F) Understory: *Carex*, *Dicranopteris*, *Diplazium*, *Elaphoglossum*, *Peperomia*.

(ii) In units Kauai 10–*Labordia helleri*–c, Kauai 11–*Labordia helleri*–f, and Kauai 20–*Labordia helleri*–h, the primary constituent elements of critical habitat are:

(A) Elevation: Less than 3,000 ft (914 m).

(B) Annual precipitation: Greater than 75 inches (190 centimeters).

(C) Substrate: Clays, ashbeds, deep well-drained soils, lowland bogs.

(D) Canopy: *Antidesma*, *Metrosideros*, *Myrsine*, *Pisonia*, *Psychotria*.

(E) Subcanopy: *Cibotium*, *Claoxylon*, *Kadua*, *Melicope*.

(F) Understory: *Alyxia*, *Cyrtandra*, *Dicranopteris*, *Diplazium*, *Machaerina*, *Microlepia*.

(iii) In units Kauai 11–*Labordia helleri*–g, Kauai 21–*Labordia helleri*–i, and Kauai 22–*Labordia helleri*–j, the primary constituent elements of critical habitat are:

(A) Elevation: 3,000 to 5,243 ft (914 to 1,598 m).

(B) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).

(C) Substrate: Weathered aa lava flows, rocky mucks, thin silty loams, deep volcanic ash soils.

(D) Canopy: *Acacia*, *Metrosideros*, *Psychotria*, *Tetraplasandra*, *Zanthoxylum*.

(E) Subcanopy: *Cheirodendron*, *Coprosma*, *Kadua*, *Ilex*, *Myoporum*, *Myrsine*.

(F) Understory: *Bidens*, *Dryopteris*, *Leptecophylla*, *Poa*, *Scaevola*, *Sophora*.

(iv) In units Kauai 10–*Labordia helleri*–b, Kauai 11–*Labordia helleri*–d, Kauai 23–*Labordia helleri*–k, Kauai 24–*Labordia helleri*–l, and Kauai 25–*Labordia helleri*–m, the primary constituent elements of critical habitat are:

(A) Elevation: 3,000 to 5,243 ft (914 to 1,598 m).

(B) Annual precipitation: Greater than 75 inches (190 centimeters).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia*, *Charpentiera*, *Cheirodendron*, *Metrosideros*.

(E) Subcanopy: *Broussaisia*, *Cibotium*, *Eurya*, *Ilex*, *Myrsine*.

(F) Understory: Ferns, *Carex*, *Coprosma*, *Leptecophylla*, *Oreobolus*, *Rhynchospora*, *Vaccinium*.

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FAMILY LOGANIACEAE: *Labordia pumila* (KAMAKAHALA)

Kauai 10–*Labordia pumila*–a, Kauai 11–*Labordia pumila*–b, Kauai 23–*Labordia pumila*–c, Kauai 24–*Labordia pumila*–d, and Kauai 25–*Labordia pumila*–e, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Labordia pumila* on Kauai. Within these units, the primary constituent elements of critical habitat are:

- (i) Elevation: 3,000 to 5,243 ft (914 to 1,598 m).
- (ii) Annual precipitation: Greater than 75 inches (190 centimeters).
- (iii) Substrate: Well-developed soils, montane bogs.
- (iv) Canopy: *Acacia*, *Charpentiera*, *Cheirodendron*, *Metrosideros*.
- (v) Subcanopy: *Broussaisia*, *Cibotium*, *Eurya*, *Ilex*, *Myrsine*.
- (vi) Understory: Ferns, *Carex*, *Coprosma*, *Leptecophylla*, *Oreobolus*, *Rhynchospora*, *Vaccinium*.
- (vii) Bogs.

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FAMILY MYRSINACEAE: *Lysimachia daphnoides* (LEHUA MAKANOE)

Kauai 10–*Lysimachia daphnoides*–a, Kauai 11–*Lysimachia daphnoides*–b, Kauai 23–*Lysimachia daphnoides*–c, Kauai 24–*Lysimachia daphnoides*–d, and Kauai 25–*Lysimachia daphnoides*–e, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Lysimachia daphnoides* on Kauai. Within these units, the primary constituent elements of critical habitat are:

- (i) Elevation: 3,000 to 5,243 ft (914 to 1,598 m).
- (ii) Annual precipitation: Greater than 75 inches (190 centimeters).
- (iii) Substrate: Well-developed soils, montane bogs.
- (iv) Canopy: *Acacia*, *Charpentiera*, *Cheirodendron*, *Metrosideros*.
- (v) Subcanopy: *Broussaisia*, *Cibotium*, *Eurya*, *Ilex*, *Myrsine*.
- (vi) Understory: Ferns, *Carex*, *Coprosma*, *Leptecophylla*, *Oreobolus*, *Rhynchospora*, *Vaccinium*.
- (vii) Hummocks in bogs.

FAMILY MYRSINACEAE: *Lysimachia iniki* (NCN)

Kauai 4–*Lysimachia iniki*–a, Kauai 10–*Lysimachia iniki*–b, Kauai 11–*Lysimachia iniki*–c, Kauai 18–*Lysimachia iniki*–d, and Kauai 19–*Lysimachia iniki*–e, identified in the legal descriptions in paragraph (a)(1) of

this section, constitute critical habitat for *Lysimachia iniki* on Kauai. Within these units, the primary constituent elements of critical habitat are:

- (i) Annual precipitation: Greater than 75 inches (190 centimeters).
- (ii) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.
- (iii) Subcanopy: *Broussaisia*, *Cheirodendron*, *Leptecophylla*, *Metrosideros*.
- (iv) Understory: Ferns, Bryophytes, *Coprosoma*, *Dubautia*, *Kadua*, *Peperomia*.

FAMILY MYRSINACEAE: *Lysimachia pendens* (NCN)

Kauai 4–*Lysimachia pendens*–a, Kauai 10–*Lysimachia pendens*–b, Kauai 11–*Lysimachia pendens*–c, Kauai 18–*Lysimachia pendens*–d, and Kauai 19–*Lysimachia pendens*–e, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Lysimachia pendens* on Kauai. Within these units, the primary constituent elements of critical habitat are:

- (i) Annual precipitation: Greater than 75 inches (190 centimeters).
- (ii) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.
- (iii) Subcanopy: *Broussaisia*, *Cheirodendron*, *Leptecophylla*, *Metrosideros*.
- (iv) Understory: Ferns, Bryophytes, *Coprosoma*, *Dubautia*, *Kadua*, *Peperomia*.

FAMILY MYRSINACEAE: *Lysimachia scopulensis* (NCN)

Kauai 11–*Lysimachia scopulensis*–a, identified in the legal description in paragraph (a)(1) of this section, constitutes critical habitat for *Lysimachia scopulensis* on Kauai. Within this unit, the primary constituent elements of critical habitat are:

- (i) Annual precipitation: Less than 75 inches (190 centimeters).
- (ii) Substrate: Greater than 65 degree slope, rocky talus.
- (iii) Subcanopy: *Antidesma*, *Chamaesyce*, *Diospyros*, *Dodonaea*.
- (iv) Understory: *Bidens*, *Eragrostis*, *Melanthera*, *Schiedea*.

FAMILY MYRSINACEAE: *Lysimachia venosa* (NCN)

Kauai 4–*Lysimachia venosa*–a, Kauai 10–*Lysimachia venosa*–b, Kauai 11–*Lysimachia venosa*–c, Kauai 18–*Lysimachia venosa*–d, and Kauai 19–*Lysimachia venosa*–e, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Lysimachia venosa* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Annual precipitation: Greater than 75 inches (190 centimeters).

(ii) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(iii) Subcanopy: *Broussaisia*, *Cheirodendron*, *Leptecophylla*, *Metrosideros*.

(iv) Understory: Ferns, Bryophytes, *Coprosoma*, *Dubautia*, *Kadua*, *Peperomia*.

FAMILY MYRSINACEAE: *Myrsine knudsenii* (KOLEA)

Kauai 11–*Myrsine knudsenii*–a, Kauai 21–*Myrsine knudsenii*–b, and Kauai 22–*Myrsine knudsenii*–c, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Myrsine knudsenii* on Kauai. Within these units, the primary constituent elements of critical habitat are:

- (i) Elevation: 3,000 to 5,243 ft (914 to 1,598 m).
- (ii) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).
- (iii) Substrate: Weathered aa lava flows, rocky mucks, thin silty loams, deep volcanic ash soils.
- (iv) Canopy: *Acacia*, *Metrosideros*, *Psychotria*, *Tetraplasandra*, *Zanthoxylum*.
- (v) Subcanopy: *Cheirodendron*, *Coprosma*, *Kadua*, *Ilex*, *Myoporum*, *Myrsine*.
- (vi) Understory: *Bidens*, *Dryopteris*, *Leptecophylla*, *Poa*, *Scaevola*, *Sophora*.

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FAMILY MYRSINACEAE: *Myrsine mezii* (KOLEA)

Kauai 10–*Myrsine mezii*–a, Kauai 11–*Myrsine mezii*–b, Kauai 11–*Myrsine mezii*–c, Kauai 21–*Myrsine mezii*–d, Kauai 22–*Myrsine mezii*–e, Kauai 23–*Myrsine mezii*–f, Kauai 24–*Myrsine mezii*–g, and Kauai 25–*Myrsine mezii*–h, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Myrsine mezii* on Kauai.

(i) In units Kauai 11–*Myrsine mezii*–c, Kauai 21–*Myrsine mezii*–d, and Kauai 22–*Myrsine mezii*–e, the primary constituent elements of critical habitat are:

- (A) Elevation: 3,000 to 5,243 ft (914 to 1,598 m).
- (B) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).
- (C) Substrate: Weathered aa lava flows, rocky mucks, thin silty loams, deep volcanic ash soils.
- (D) Canopy: *Acacia*, *Metrosideros*, *Psychotria*, *Tetraplasandra*, *Zanthoxylum*.
- (E) Subcanopy: *Cheirodendron*, *Coprosma*, *Kadua*, *Ilex*, *Myoporum*, *Myrsine*.
- (F) Understory: *Bidens*, *Dryopteris*, *Leptecophylla*, *Poa*, *Scaevola*, *Sophora*.

(ii) In units Kauai 10–*Myrsine mezii*–a, Kauai 11–*Myrsine mezii*–b, Kauai 23–*Myrsine mezii*–f, Kauai 24–*Myrsine mezii*–g, and Kauai 25–*Myrsine mezii*–h, the primary constituent elements of critical habitat are:

(A) Elevation: 3,000 to 5,243 ft (914 to 1,598 m).

(B) Annual precipitation: Greater than 75 inches (190 centimeters).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia*, *Charpentiera*, *Cheirodendron*, *Metrosideros*.

(E) Subcanopy: *Broussaisia*, *Cibotium*, *Eurya*, *Ilex*, *Myrsine*.

(F) Understory: Ferns, *Carex*, *Coprosma*, *Leptecophylla*, *Oreobolus*, *Rhynchospora*, *Vaccinium*.

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FAMILY PITTOSPORACEAE:

Pittosporum napaliense (HOAWA)

Kauai 7–*Pittosporum napaliense*–a and Kauai 11–*Pittosporum napaliense*–b, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Pittosporum napaliense* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Elevation: Less than 3,000 ft (914 m).

(ii) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).

(iii) Substrate: Shallow soils, little to no herbaceous layer.

(iv) Canopy: *Acacia*, *Diospyros*, *Metrosideros*, *Myrsine*, *Pouteria*, *Santalum*.

(v) Subcanopy: *Dodonaea*, *Freycinetia*, *Leptecophylla*, *Melanthera*, *Osteomeles*, *Pleomele*, *Psydrax*.

(vi) Understory: *Carex*, *Dicranopteris*, *Diplazium*, *Elaphoglossum*, *Peperomia*.

* * * * *

FAMILY RUBIACEAE: *Psychotria grandiflora* (KOPIKO)

Kauai 10–*Psychotria grandiflora*–a, Kauai 11–*Psychotria grandiflora*–b, Kauai 11–*Psychotria grandiflora*–c, Kauai 21–*Psychotria grandiflora*–d, Kauai 22–*Psychotria grandiflora*–e, Kauai 23–*Psychotria grandiflora*–f, Kauai 24–*Psychotria grandiflora*–g, and Kauai 25–*Psychotria grandiflora*–h, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Psychotria grandiflora* on Kauai.

(i) In units Kauai 11–*Psychotria grandiflora*–c, Kauai 21–*Psychotria grandiflora*–d, and Kauai 22–*Psychotria grandiflora*–e, the primary constituent elements of critical habitat are:

(A) Elevation: 3,000 to 5,243 ft (914 to 1,598 m).

(B) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).

(C) Substrate: Weathered aa lava flows, rocky mucks, thin silty loams, deep volcanic ash soils.

(D) Canopy: *Acacia*, *Metrosideros*, *Psychotria*, *Tetraplasandra*, *Zanthoxylum*.

(E) Subcanopy: *Cheirodendron*, *Coprosma*, *Kadua*, *Ilex*, *Myoporum*, *Myrsine*.

(F) Understory: *Bidens*, *Dryopteris*, *Leptecophylla*, *Poa*, *Scaevola*, *Sophora*.

(ii) In units Kauai 10–*Psychotria grandiflora*–a, Kauai 11–*Psychotria grandiflora*–b, Kauai 23–*Psychotria grandiflora*–f, Kauai 24–*Psychotria grandiflora*–g, and Kauai 25–*Psychotria grandiflora*–h, the primary constituent elements of critical habitat are:

(A) Elevation: 3,000 to 5,243 ft (914 to 1,598 m).

(B) Annual precipitation: Greater than 75 inches (190 centimeters).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia*, *Charpentiera*, *Cheirodendron*, *Metrosideros*.

(E) Subcanopy: *Broussaisia*, *Cibotium*, *Eurya*, *Ilex*, *Myrsine*.

(F) Understory: Ferns, *Carex*, *Coprosma*, *Leptecophylla*, *Oreobolus*, *Rhynchospora*, *Vaccinium*.

FAMILY RUBIACEAE: *Psychotria hobbdi* (KOPIKO)

Kauai 7–*Psychotria hobbdi*–a and Kauai 11–*Psychotria hobbdi*–b, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Psychotria hobbdi* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Elevation: Less than 3,000 ft (914 m).

(ii) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).

(iii) Substrate: Shallow soils, little to no herbaceous layer.

(iv) Canopy: *Acacia*, *Diospyros*, *Metrosideros*, *Myrsine*, *Pouteria*, *Santalum*.

(v) Subcanopy: *Dodonaea*, *Freycinetia*, *Leptecophylla*, *Melanthera*, *Osteomeles*, *Pleomele*, *Psydrax*.

(vi) Understory: *Carex*, *Dicranopteris*, *Diplazium*, *Elaphoglossum*, *Peperomia*.

FAMILY RUBIACEAE: *Melicope degeneri* (ALANI)

Kauai 10–*Melicope degeneri*–a, Kauai 11–*Melicope degeneri*–b, Kauai 23–*Melicope degeneri*–c, Kauai 24–*Melicope degeneri*–d, and Kauai 25–*Melicope degeneri*–e, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Melicope degeneri* on Kauai. Within

these units, the primary constituent elements of critical habitat are:

(i) Elevation: 3,000 to 5,243 ft (914 to 1,598 m).

(ii) Annual precipitation: Greater than 75 inches (190 centimeters).

(iii) Substrate: Well-developed soils, montane bogs.

(iv) Canopy: *Acacia*, *Charpentiera*, *Cheirodendron*, *Metrosideros*.

(v) Subcanopy: *Broussaisia*, *Cibotium*, *Eurya*, *Ilex*, *Myrsine*.

(vi) Understory: Ferns, *Carex*, *Coprosma*, *Leptecophylla*, *Oreobolus*, *Rhynchospora*, *Vaccinium*.

* * * * *

FAMILY RUTACEAE: *Melicope paniculata* (ALANI)

Kauai 10–*Melicope paniculata*–a, Kauai 11–*Melicope paniculata*–b, and Kauai 20–*Melicope paniculata*–c, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Melicope paniculata* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Elevation: Less than 3,000 ft (914 m).

(ii) Annual precipitation: Greater than 75 inches (190 centimeters).

(iii) Substrate: Clays, ashbeds, deep well-drained soils, lowland bogs.

(iv) Canopy: *Antidesma*, *Metrosideros*, *Myrsine*, *Pisonia*, *Psychotria*.

(v) Subcanopy: *Cibotium*, *Claoxylon*, *Kadua*, *Melicope*.

(vi) Understory: *Alyxia*, *Cyrtandra*, *Dicranopteris*, *Diplazium*, *Machaerina*, *Microlepia*.

FAMILY RUTACEAE: *Melicope puberula* (ALANI)

Kauai 10–*Melicope puberula*–a, Kauai 10–*Melicope puberula*–b, Kauai 11–*Melicope puberula*–c, Kauai 11–*Melicope puberula*–d, Kauai 20–*Melicope puberula*–e, Kauai 23–*Melicope puberula*–f, Kauai 24–*Melicope puberula*–g, and Kauai 25–*Melicope puberula*–h, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Melicope puberula* on Kauai.

(i) In units Kauai 10–*Melicope puberula*–b, Kauai 11–*Melicope puberula*–d, and Kauai 20–*Melicope puberula*–e, the primary constituent elements of critical habitat are:

(A) Elevation: Less than 3,000 ft (914 m).

(B) Annual precipitation: Greater than 75 inches (190 centimeters).

(C) Substrate: Clays, ashbeds, deep well-drained soils, lowland bogs.

(D) Canopy: *Antidesma*, *Metrosideros*, *Myrsine*, *Pisonia*, *Psychotria*.

(E) Subcanopy: *Cibotium*, *Claoxylon*, *Kadua*, *Melicope*.

(F) Understory: *Alyxia*, *Cyrtandra*, *Dicranopteris*, *Diplazium*, *Machaerina*, *Microlepia*.

(ii) In units Kauai 10–*Melicope puberula*–a, Kauai 11–*Melicope puberula*–c, Kauai 23–*Melicope puberula*–f, Kauai 24–*Melicope puberula*–g, and Kauai 25–*Melicope puberula*–h, the primary constituent elements of critical habitat are:

(A) Elevation: 3,000 to 5,243 ft (914 to 1,598 m).

(B) Annual precipitation: Greater than 75 inches (190 centimeters).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia*, *Charpentiera*, *Cheirodendron*, *Metrosideros*.

(E) Subcanopy: *Broussaisia*, *Cibotium*, *Eurya*, *Ilex*, *Myrsine*.

(F) Understory: Ferns, *Carex*, *Coprosma*, *Leptecophylla*, *Oreobolus*, *Rhynchospora*, *Vaccinium*.

FAMILY RUTACEAE: *Platydesma rostrata* (PILO KEA LAU LII)

Kauai 4–*Platydesma rostrata*–a, Kauai 7–*Platydesma rostrata*–b, Kauai 10–*Platydesma rostrata*–c, Kauai 10–*Platydesma rostrata*–d, Kauai 10–*Platydesma rostrata*–e, Kauai 11–*Platydesma rostrata*–f, Kauai 11–*Platydesma rostrata*–g, Kauai 11–*Platydesma rostrata*–h, Kauai 11–*Platydesma rostrata*–i, Kauai 11–*Platydesma rostrata*–j, Kauai 18–*Platydesma rostrata*–k, Kauai 19–*Platydesma rostrata*–l, Kauai 20–*Platydesma rostrata*–m, Kauai 21–*Platydesma rostrata*–n, Kauai 22–*Platydesma rostrata*–o, Kauai 23–*Platydesma rostrata*–p, Kauai 24–*Platydesma rostrata*–q, and Kauai 25–*Platydesma rostrata*–r, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Platydesma rostrata* on Kauai.

(i) In units Kauai 7–*Platydesma rostrata*–b and Kauai 11–*Platydesma rostrata*–g, the primary constituent elements of critical habitat are:

(A) Elevation: Less than 3,000 ft (914 m).

(B) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia*, *Diospyros*, *Metrosideros*, *Myrsine*, *Pouteria*, *Santalum*.

(E) Subcanopy: *Dodonaea*, *Freyinetia*, *Leptecophylla*, *Melanthera*, *Osteomeles*, *Pleomele*, *Psydrax*.

(F) Understory: *Carex*, *Dicranopteris*, *Diplazium*, *Elaphoglossum*, *Peperomia*.

(ii) In units Kauai 10–*Platydesma rostrata*–d, Kauai 11–*Platydesma rostrata*–h, and Kauai 20–*Platydesma rostrata*–m, the primary constituent elements of critical habitat are:

(A) Elevation: Less than 3,000 ft (914 m).

(B) Annual precipitation: Greater than 75 inches (190 centimeters).

(C) Substrate: Clays, ashbeds, deep well-drained soils, lowland bogs.

(D) Canopy: *Antidesma*, *Metrosideros*, *Myrsine*, *Pisonia*, *Psychotria*.

(E) Subcanopy: *Cibotium*, *Claoxylon*, *Kadua*, *Melicope*.

(F) Understory: *Alyxia*, *Cyrtandra*, *Dicranopteris*, *Diplazium*, *Machaerina*, *Microlepia*.

(iii) In units Kauai 11–*Platydesma rostrata*–j, Kauai 21–*Platydesma rostrata*–n, and Kauai 22–*Platydesma rostrata*–o, the primary constituent elements of critical habitat are:

(A) Elevation: 3,000 to 5,243 ft (914 to 1,598 m).

(B) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).

(C) Substrate: Weathered aa lava flows, rocky mucks, thin silty loams, deep volcanic ash soils.

(D) Canopy: *Acacia*, *Metrosideros*, *Psychotria*, *Tetraplasandra*, *Zanthoxylum*.

(E) Subcanopy: *Cheirodendron*, *Coprosma*, *Kadua*, *Ilex*, *Myoporum*, *Myrsine*.

(F) Understory: *Bidens*, *Dryopteris*, *Leptecophylla*, *Poa*, *Scaevola*, *Sophora*.

(iv) In units Kauai 10–*Platydesma rostrata*–c, Kauai 11–*Platydesma rostrata*–f, Kauai 23–*Platydesma rostrata*–p, Kauai 24–*Platydesma rostrata*–a, Kauai 25–*Platydesma rostrata*–r, the primary constituent elements of critical habitat are:

(A) Elevation: 3,000 to 5,243 ft (914 to 1,598 m).

(B) Annual precipitation: Greater than 75 inches (190 centimeters).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia*, *Charpentiera*, *Cheirodendron*, *Metrosideros*.

(E) Subcanopy: *Broussaisia*, *Cibotium*, *Eurya*, *Ilex*, *Myrsine*.

(F) Understory: Ferns, *Carex*, *Coprosma*, *Leptecophylla*, *Oreobolus*, *Rhynchospora*, *Vaccinium*.

(v) In units Kauai 4–*Platydesma rostrata*–a, Kauai 10–*Platydesma rostrata*–e, Kauai 11–*Platydesma rostrata*–i, Kauai 18–*Platydesma rostrata*–k, and Kauai 19–*Platydesma rostrata*–l, the primary constituent elements of critical habitat are:

(A) Annual precipitation: Greater than 75 inches (190 centimeters).

(B) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(C) Subcanopy: *Broussaisia*, *Cheirodendron*, *Leptecophylla*, *Metrosideros*.

(D) Understory: Ferns, Bryophytes, *Coprosoma*, *Dubautia*, *Kadua*, *Peperomia*.

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(2) * * *

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FAMILY ASPLENIACEAE: *Diellia mannii* (NCN)

Kauai 11–*Diellia mannii*–a, Kauai 21–*Diellia mannii*–b, and Kauai 22–*Diellia mannii*–c, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Diellia mannii* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Elevation: 3,000 to 5,243 ft (914 to 1,598 m).

(ii) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).

(iii) Substrate: Weathered aa lava flows, rocky mucks, thin silty loams, deep volcanic ash soils.

(iv) Canopy: *Acacia*, *Metrosideros*, *Psychotria*, *Tetraplasandra*, *Zanthoxylum*.

(v) Subcanopy: *Cheirodendron*, *Coprosma*, *Kadua*, *Ilex*, *Myoporum*, *Myrsine*.

(vi) Understory: *Bidens*, *Dryopteris*, *Leptecophylla*, *Poa*, *Scaevola*, *Sophora*.

* * * * *

FAMILY DRYOPTERIDACEAE: *Dryopteris crinalis* var. *podosorus* (PALAPALAI AUMAKUA)

Kauai 10–*Dryopteris crinalis* var. *podosorus*–a, Kauai 11–*Dryopteris crinalis* var. *podosorus*–b, Kauai 23–*Dryopteris crinalis* var. *podosorus*–c, Kauai 24–*Dryopteris crinalis* var. *podosorus*–d, and Kauai 25–*Dryopteris crinalis* var. *podosorus*–e, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Dryopteris crinalis* var. *podosorus* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Elevation: 3,000 to 5,243 ft (914 to 1,598 m).

(ii) Annual precipitation: Greater than 75 inches (190 centimeters).

(iii) Substrate: Well-developed soils, montane bogs.

(iv) Canopy: *Acacia*, *Charpentiera*, *Cheirodendron*, *Metrosideros*.

(v) Subcanopy: *Broussaisia*, *Cibotium*, *Eurya*, *Ilex*, *Myrsine*.

(vi) Understory: Ferns, *Carex*, *Coprosma*, *Leptecophylla*, *Oreobolus*, *Rhynchospora*, *Vaccinium*.

* * * * *

FAMILY PTERIDACEAE: *Dryopteris angelica* (NCN)

Kauai 7–*Dryopteris angelica*–a and Kauai 11–*Dryopteris angelica*–b,

identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Doryopteris angelica* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Elevation: Less than 3,000 ft (914 m).

(ii) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).

(iii) Substrate: Shallow soils, little to no herbaceous layer.

(iv) Canopy: *Acacia*, *Diospyros*, *Metrosideros*, *Myrsine*, *Pouteria*, *Santalum*.

(v) Subcanopy: *Dodonaea*, *Freycinetia*, *Leptecophylla*, *Melanthera*, *Osteomeles*, *Pleomele*, *Psydrax*.

(vi) Understory: *Carex*, *Dicranopteris*, *Diplazium*, *Elaphoglossum*, *Peperomia*.

* * * * *

Dated: January 21, 2010

Thomas L. Strickland

Assistant Secretary for Fish and Wildlife and Parks

[FR Doc. 2010-1904 Filed 4-12-10; 8:45 am]

BILLING CODE 4310-55-S



Federal Register

**Tuesday,
April 13, 2010**

Part III

Department of Defense General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1

**Federal Acquisition Regulations; Federal
Acquisition Circular 2005–41;
Introduction; FAR Case 2009–005, Use of
Project Labor Agreements for Federal
Construction Projects; Federal Acquisition
Circular 2005–41; Small Entity
Compliance Guide; Final Rules**

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Chapter 1****[Docket FAR 2010–0076, Sequence 3]****Federal Acquisition Regulation;
Federal Acquisition Circular 2005–41;
Introduction****AGENCIES:** Department of Defense (DoD),
General Services Administration (GSA),and National Aeronautics and Space
Administration (NASA).**ACTION:** Summary presentation of final
rule.**SUMMARY:** This document summarizes
the Federal Acquisition Regulation
(FAR) rule agreed to by GSA, DoD, and
NASA in this Federal Acquisition
Circular (FAC) 2005–41. A companion
document, the *Small Entity Compliance
Guide* (SECG), follows this FAC. The
FAC, including the SECG, is available
via the Internet at [http://
www.regulations.gov](http://www.regulations.gov).**DATES:** For effective date, see separate
document, which follows.**FOR FURTHER INFORMATION CONTACT:** The
analyst whose name appears in the table
below. Please cite FAC 2005–41 and the
specific FAR case number. For
information pertaining to status or
publication schedules, contact the FAR
Secretariat at (202) 501–4755.**RULE LISTED IN FAC 2005–41**

Subject	FAR case	Analyst
Use of Project Labor Agreements for Federal Construction Projects	2009–005	Woodson.

SUPPLEMENTARY INFORMATION: A
summary for the FAR rule follows. For
the actual revisions and/or amendments
made by this FAR case, refer to FAR
Case 2009–005.FAC 2005–41 amends the FAR as
specified below:**Use of Project Labor Agreements for
Federal Construction Projects (FAR
Case 2009–005)**

This final rule amends the FAR to implement Executive Order (E.O.) 13502, Use of Project Labor Agreements for Federal Construction Projects. The E.O. encourages the use of project labor agreements for Federal construction projects where the total cost to the Government is \$25 million or more in order to promote economy and efficiency in Federal procurement. The rule provides that an agency may, if appropriate, require that every contractor and subcontractor engaged in construction on a construction project agree, for that project, to negotiate or become a party to a project labor agreement with one or more labor organizations. The rule identifies factors that agencies may consider to help them decide, on a case-by-case basis, whether the use of a project labor agreement is likely to promote economy and efficiency in the performance of a specific construction project, and multiple strategies for timing the Federal Government's receipt of project labor agreements.

Dated: April 2, 2010.

Al Matera,
*Director, Acquisition Policy Division.***Federal Acquisition Circular**Federal Acquisition Circular (FAC)
2005–41 is issued under the authority of
the Secretary of Defense, the
Administrator of General Services, and
the Administrator for the National
Aeronautics and Space Administration.Unless otherwise specified, all
Federal Acquisition Regulation (FAR)
and other directive material contained
in FAC 2005–41 is effective May 13,
2010.

Dated: April 1, 2010.

Shay D. Assad,
*Director, Defense Procurement and
Acquisition Policy.*

Dated: April 2, 2010.

Rodney P. Lantier,
*Acting Senior Procurement Executive, Office
of Acquisition Policy, U.S. General Services
Administration.*

Dated: April 1, 2010.

William P. McNally,
*Assistant Administrator for Procurement,
National Aeronautics and Space
Administration.*

[FR Doc. 2010–8117 Filed 4–12–10; 8:45 am]

BILLING CODE 6820–EP–S**DEPARTMENT OF DEFENSE****GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 2, 7, 17, 22, and 52****[FAC 2005–41; FAR Case 2009–005; Item
I; Docket 2009–0024, Sequence 1]****RIN 9000–AL31****Federal Acquisition Regulation; FAR
Case 2009–005, Use of Project Labor
Agreements for Federal Construction
Projects****AGENCIES:** Department of Defense (DoD),
General Services Administration (GSA),
and National Aeronautics and Space
Administration (NASA).**ACTION:** Final rule.**SUMMARY:** GSA, DOD, and NASA are
issuing a final rule amending the
Federal Acquisition Regulation (FAR) to
implement Executive Order (E.O.)
13502, Use of Project Labor Agreements
for Federal Construction Projects. The
E.O. encourages the use of project labor
agreements for large-scale Federal
construction projects in order to
promote economy and efficiency in
Federal procurement.**DATES:** *Effective Date:* May 13, 2010.**FOR FURTHER INFORMATION CONTACT:** For
clarification of content, contact Mr.
Ernest Woodson, Procurement Analyst,
at (202) 501–3775. For information
pertaining to status or publication
schedules, contact the Regulatory

Secretariat at (202) 501-4755. Please cite FAC 2005-41, FAR case 2009-005.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the Federal Acquisition Regulation to implement Executive Order (E.O.) 13502, signed by President Obama on February 6, 2009, and published in the **Federal Register** at 74 FR 6985, February 11, 2009. The E.O. encourages Federal agencies to consider the use of a project labor agreement, as they may decide appropriate, on large-scale construction projects, where the total cost to the Government is \$25 million or more, in order to promote economy and efficiency in Federal procurement. A project labor agreement is a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project.

The E.O. establishes requirements and standards that must be met by Federal agencies when using project labor agreements. Specifically, such agreements must—

- a) Bind all contractors and subcontractors on the construction project through the inclusion of appropriate specifications in all relevant solicitation provisions and contract documents;
- b) Allow all contractors and subcontractors to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements;
- c) Contain guarantees against strikes, lockouts, and similar job disruptions;
- d) Set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the project labor agreement;
- e) Provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health; and
- f) Fully conform to all statutes, regulations, and Executive orders.

E.O. 13502 is an exercise of the President's authority under the Federal Property and Administrative Services Act to prescribe policies and directives governing procurement policy "that the President considers necessary to carry out" that Act and that are "consistent" with the Act's purpose of "provid[ing] the Federal Government with an economical and efficient" procurement system. 40 U.S.C. 101, 121. Section 3(a) of the E.O. states that executive agencies may, on a project-by-project basis, require the use of a project labor agreement by a contractor where use of such an agreement will "(i) advance the

Federal Government's interest in achieving economy and efficiency in Federal procurement, producing labor-management stability, and ensuring compliance with laws and regulations governing safety and health, equal employment opportunity, labor and employment standards, and other matters, and (ii) be consistent with law."

Section 1 of the E.O. explains the rationale underlying the policy for encouraging the use of project labor agreements on large-scale Federal construction projects:

a) Large-scale construction projects pose special challenges to efficient and timely procurement by the Federal Government. Construction employers typically do not have a permanent workforce, which makes it difficult for them to predict labor costs when bidding on contracts and to ensure a steady supply of labor on contracts being performed. Challenges also arise due to the fact that construction projects typically involve multiple employers at a single location. A labor dispute involving one employer can delay the entire project. A lack of coordination among various employers, or uncertainty about the terms and conditions of employment of various groups of workers, can create frictions and disputes in the absence of an agreed-upon resolution mechanism. These problems threaten the efficient and timely completion of construction projects undertaken by Federal contractors. On larger projects, which are generally more complex and of longer duration, these problems tend to be more pronounced.

b) The use of a project labor agreement may prevent these problems from developing by providing structure and stability to large-scale construction projects, thereby promoting the efficient and expeditious completion of Federal construction contracts. . . .

While the E.O.'s explicit policy focuses on large-scale construction contracts, section 5 states that the E.O. does not preclude use of a project labor agreement in circumstances not covered by the order, including leasehold arrangements and projects receiving Federal financial assistance.

The Supreme Court has recognized that project labor agreements are valid pre-hire agreements under sections 8(e) and (f) of the National Labor Relations Act, which authorizes the use of these agreements in the construction industry. See *Building and Construction Trades Council v. Associated Builders*, 507 U.S. 218 (1993) ("*Boston Harbor*"). The Supreme Court has rejected arguments that project labor agreements are inappropriate for use by a public entity:

There is no reason to expect these defining features of the construction industry to depend upon the public or private nature of the entity purchasing contracting services. To the extent that a private purchaser may choose a contractor based upon that contractor's willingness to enter into a prehire agreement, a public entity *as purchaser* should be permitted to do the same. Confronted with such a purchaser, those contractors who do not normally enter such agreements are faced with a choice. They may alter their usual mode of operation to secure the business opportunity at hand, or seek business from purchasers whose perceived needs do not include a project labor agreement.

Boston Harbor, 507 U.S. at 231 (emphasis in original).

Use of project labor agreements by public entities has been sanctioned repeatedly where agencies ensure that their actions are tailored to reflect their proprietary interests and do not prescribe how Government contractors and subcontractors handle their labor relations beyond performance of the specific Government construction project involved. See *id.*; *Associated General Contractors of America v. Metropolitan Water Dist. of So. Cal.*, 159 F.3d 1178, 1182-84 (9th Cir. 1998); *Sheet Metal Workers Intern. Ass'n Local Union No. 27, AFL-CIO v. E.P. Donnelly*, ___ F.Supp.2d ___, 2009 WL 4667101 (D.N.J. 2009). The use of project labor agreements on Federal and other publicly funded projects, such as dams, defense installations, and atomic energy facilities, can be traced back many decades. The Government Accountability Office (GAO), in a 1998 study, described use of project labor agreements in connection with the construction of the Grand Coulee Dam in Washington State in 1938, the Shasta Dam in California in 1940, atomic energy and defense construction projects during and after the Second World War, and construction at Cape Canaveral by NASA during the 1960s. *U.S. Gen. Accounting Office Project Labor Agreements: The Extent of Their Use and Related Information* (GAO Report), GAO/GGD-98-82 (May 1998), at page 4. At the time GAO reviewed Federal use of project labor agreements in 1998, four agencies—the Department of Energy (DoE), DoD, the Tennessee Valley Authority (TVA), and NASA—had a total of 26 projects covered by project labor agreements. GAO Report at 2.

DoE has invoked the authority of Pub. L. 85-804 to require the use of project labor agreements by contractors and subcontractors at certain of the Department's facilities. Project labor agreements have been, and continue to be, used at a majority of DoE's key sites,

including the Hanford Site in Washington State, the Savannah River Site in South Carolina, the Oak Ridge Reservation in Tennessee, the Nevada Test Site (NTS), and the Idaho National Laboratory. The project labor agreement at the NTS dates back to 1964.

As of the summer of 2009, 21 of 25 DoE construction projects were, or were slated to be, covered by project labor agreements. Challenges to the use of project labor agreements at DOE sites have been successfully defended. *See, e.g., Phoenix Engineering, Inc. v. MK-Ferguson of Oak Ridge Co.*, 966 F.2d 1513, 1518–22 (6th Cir. 1992).

Current and past DoE representatives have stated that project labor agreements have contributed to economy and efficiency of DoE construction projects, including completion of projects on time and within budget, by, among other things—

- Providing a mechanism for coordinating wages, hours, work rules, and other terms of employment across the project;
- Creating structure and stability through the use of broad provisions for grievance and arbitration of any disputes that may arise on site, including procedures for resolving disputes among the construction crafts;
- Prohibiting work stoppages, slowdowns, or strikes for the duration of a project and obligating senior union management to use their best efforts to prevent any threats of disruptions of work that might arise; and
- Ensuring expeditious access to a well trained, assured supply of skilled labor, even in remote areas where skilled labor would have otherwise been extremely difficult to find in a timely fashion.

TVA has used project labor agreements on its construction projects for nearly 19 years. In the nearly 200 million man hours of work on TVA construction projects using project labor agreements, there have been no formal strikes or any organized work stoppages. The rate of injury on TVA projects has also been significantly reduced, especially over the last approximately 5 years.

Federal use of project labor agreements has been curtailed twice since 1992, including most of the past decade. E.O. 12818 of October 23, 1992 prohibited agencies from requiring the use of project labor agreements by any parties to Federal construction projects, although this bar was removed in 1993, by E.O. 12836, and a Presidential Memorandum was issued in 1997 to encourage the use of project labor agreements (see “Use of Project Labor Agreements for Federal Construction

Projects,” June 5, 1997). E.O. 13202 of February 17, 2001 and E.O. 13208 of April 6, 2001 again prevented agencies from requiring the use of project labor agreements. This restriction remained in effect from early 2001 until early 2009 when section 8 of E.O. 13502 revoked E.O. 13202 and E.O. 13208.

Use of project labor agreements has not been limited to Federal construction projects. Project labor agreements have been used at the State and municipal levels as well. Project labor agreements have been used in all 50 States and the District of Columbia. Use of project labor agreements at the State and local level has been connected to an array of construction projects covering an expanding range and size of projects—from schools, hospitals, roads, bridges, and police buildings, to convention centers, courthouses, manufacturing facilities, airports, power plants, transit systems, stadiums, and a prison. Project labor agreements have been used in connection not only with new construction, but also with demolition, restoration, and reconstruction.

Project labor agreements have also been used by the private sector for a variety of construction projects that are similar in nature to those undertaken in the public sector, including for manufacturing plants, power plants, parking structures, and stadiums. For example, project labor agreements have been used in connection with building such high profile facilities as the trans-Alaska pipeline and Disney World. GAO Report at 4. According to one study on private sector experiences in California, companies wanted “project labor agreements in order to meet their speed-to-market demands, and ensure against delays that can be caused by worker shortages, work stoppages or collective bargaining negotiations.” See Kimberly Johnston-Dodds, CA State Library, *Constructing California: A Review of Project Labor Agreements* 59 (2001).

B. FAR Rulemaking

Section 7 of E.O. 13502 directed GSA, DoD, and NASA to amend the FAR to implement the provisions of the E.O. Accordingly, GSA, DoD, and NASA issued a final rule in the **Federal Register** at 74 FR 34206, on July 14, 2009, rescinding FAR 36.202(d), a FAR provision that had prohibited agencies from requiring project labor agreements. This prohibition had implemented E.O. 13202 and E.O. 13208—E.O.s that were revoked by section 8 of E.O. 13502.

On the same date, GSA, DoD, and NASA also published for public comment a proposed rule in the **Federal Register** at 74 FR 33953, to provide a new FAR subpart 22.5, Use of Project

Labor Agreements for Federal Construction Projects, to implement the provisions of E.O. 13502. The proposed rule—

- Stated that agencies are encouraged to consider requiring the use of project labor agreements in connection with large-scale construction projects;
- Described the general requirements for use of project labor agreements, including the standards that must be met by project labor agreements, as specified in section 4 of the E.O., which includes allowing any contractors and subcontracts to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements; and
- Created new solicitation provisions and contract clauses that (i) would be used in large-scale construction projects where the agency makes a determination that a project labor agreement will be required, and (ii) would give agencies the flexibility to require that project labor agreements be executed either prior to award from the apparent successful offeror or after award from the awardee.

Based on the comments received on the proposed rule (which are discussed in greater detail below) and additional deliberations, GSA, DoD, and NASA have adopted a final rule that—

- 1) Encourages agency planners to consider use of project labor agreements early in the acquisition process—*i.e.*, during acquisition planning (FAR 7.103);
- 2) Clarifies the policy for using project labor agreements to more closely track the terms of the E.O. (FAR 22.503(b));
- 3) Identifies a number of factors that agencies may consider to help them decide, on a case-by-case basis, whether the use of a project labor agreement is likely to promote economy and efficiency in the performance of a specific construction project, such as whether the project will require multiple construction contractors and/or subcontractors employing workers in multiple crafts or trades or whether there is a shortage of skilled labor in the region in which the construction project will be sited (FAR 22.503(c));
- 4) Makes clear that a solicitation may include project labor agreement requirements that are in addition to those specified in section 4 of the E.O., as the agency deems necessary to satisfy its needs (FAR 22.504(b)(6));
- 5) States that an agency may specify in the solicitation, as appropriate to advance economy and efficiency in a given procurement, the terms and conditions of the project labor agreement and require the successful offeror to become a party to a project

labor agreement containing these terms and conditions as a condition of receiving a contract award (FAR 22.504(c)); and

6) Modifies the proposed solicitation provisions and contract clauses to give agency contracting officers the additional option of requiring offerors to submit a copy of the project labor agreement with their offers (FAR 52.222-33 and 52.222-34).

The final rule is structured to maximize an agency's ability to identify and successfully use project labor agreements when doing so promotes economy and efficiency.

- The rule encourages agency managers and members of the acquisition team to work together in evaluating whether to use a project labor agreement and to start the evaluation early in the planning process, so that all relevant circumstances and the needs of stakeholders can be fully considered in deciding what is best for the agency in meeting its mission.

- Consistent with the express terms of the E.O., the final rule preserves the flexibility agencies need to evaluate whether a project labor agreement is appropriate for a given construction project. This discretion helps to ensure that agencies will have the opportunity to bring their relevant experiences to bear on circumstances particular to a project, such as whether similar projects previously undertaken by the agency have experienced substantial delays or inefficiencies due to labor disputes or labor shortages in a particular locale or job classification.

- The rule helps agencies to analyze whether a project labor agreement may be beneficial. The factors set forth in the rule reflect the experience of Federal agencies, such as DOE and TVA, and other governmental and private sector entities, to analyze planned construction projects for the purpose of identifying if a project labor agreement is likely to promote smooth, successful, and timely performance of a construction project.

- The rule includes various approaches regarding when to submit an executed project labor agreement on a particular project (e.g., submission with the initial offer, after offers are submitted but before award, or after award), and options for specifying the specific terms and conditions of the project labor agreement in the solicitation—a practice that has been used successfully by entities experienced with project labor agreements. These alternatives will allow agencies to choose the approach that makes the most sense for their project and best fits with their mission.

C. Response to Comments Received on the Notice of Proposed Rulemaking

GSA, DoD, and NASA received comments from more than 700 respondents on the proposed rule, which was published in the **Federal Register** at 74 FR 33953 on July 14, 2009 for a comment period that originally closed on August 13, 2009. At the request of a respondent, the comment period was re-opened and extended through September 23, 2009 (74 FR 42639, August 24, 2009). Copies of the comments received by GSA, DoD, and NASA are available for review at www.regulations.gov. Approximately 650 of the comments were submitted in the format of one of several form letters, or short email that expressed opposition to the use of project labor agreements but did not directly address the proposed rule. Approximately 50 responses that were not form letters or short emails included roughly equal numbers supporting and opposing the use of project labor agreements. (In addition, about eight responses were neutral in their overall tone toward the use of project labor agreements.) Comments largely focused on (1) the exercise of agency discretion in deciding whether to require a project labor agreement, (2) the content of project labor agreements generally and the role of Federal agencies in developing the terms of the project labor agreements, and (3) the timing of entering the project labor agreement. As discussed above, GSA, DoD, and NASA made a number of changes to the rule based on public comments and additional deliberations. A summary description of the comments and GSA, DoD, and NASA responses and changes adopted in the final rule are set forth below.

1. The Use of Discretion

Summary of comments: Many of the respondents, including Federal agencies, Government contractors, labor organizations, trade associations, and individuals, commented on the level of discretion an agency should be afforded in deciding whether to require a project labor agreement on a particular construction project and the manner in which such discretion is exercised. Comments on this subject generally fell into one of three groups. One group of comments focused on the need to retain agency discretion. These comments, which were offered principally by Federal agencies, sought to ensure that Government organizations are able to bring their relevant experiences to bear on the circumstances particular to a project.

A second group of comments focused on reducing discretion in favor of a more defined procedure that would drive agencies to particular outcomes. In particular, some respondents in this group wanted the rule to identify factors that, if met, would create a presumption in favor of a project labor agreement. For example, some of these respondents suggested that the use of a project labor agreement should be presumed appropriate if the project: (i) was over a certain dollar amount, such as \$25 million, (ii) would involve two or more contractors at a single site, (iii) would be performed over an extended timeframe, or (iv) was for a certain type of requirement, such as a public work. Some of these respondents were particularly troubled by a statement in the proposed rule that the agency has "complete discretion" to require or not require a project labor agreement. Other respondents wanted the rule to more expressly place the burden on the agency to justify the use of project labor agreements. These respondents requested that the rule identify factors that, unless met, would prohibit use of a project labor agreement. For example, a project labor agreement would not be permitted unless the agency demonstrates that there have been labor-related disruptions causing delays or cost overruns on similar Federal projects undertaken by the agency in the geographic area of the project.

A third group of comments focused on identifying factors or standards that agencies could use to aid in their project-by-project consideration of whether to require a project labor agreement. Many of these comments were offered in response to an invitation by GSA, DoD, and NASA in the **Federal Register** notice for input on the types of factors that might assist agencies in giving meaningful consideration to the use of project labor agreements. Some comments expressed the concern that without meaningful factors, agency decision-making could become arbitrary. Many of the suggested factors focus on helping agencies identify circumstances where project labor agreements may be beneficial. Some examples include—

- Whether the project will require the services of two or more construction contractors or subcontractors that together employ workers in two or more crafts or trades;

- Whether labor disputes threaten timely completion of the project;

- Whether completion of the project will require an extended period of time (e.g., extending beyond one construction season or beyond the expiration date of one or more collective bargaining

agreements covering trades likely to be involved in the project); and

- Whether there is a need for a substantial number of experienced, skilled building trades and craft workers and the ability to obtain specialized skills through the use of hiring halls.

Several respondents emphasized that agencies should initiate their consideration of project labor agreements early in the acquisition process, and with the input of all affected agency stakeholders, as this would improve the agency's ability to evaluate whether it is appropriate to require the use of a project labor agreement.

Other respondents wanted to ensure that agencies document the decision to use, or not to use, a project labor agreement.

Some factors offered by respondents sought to ensure that proper consideration would be given to the potential impact, such as impact on small businesses, of using a project labor agreement before the agency requires its use in a given construction project. At least one respondent recommended that agencies evaluate the legal impact of using a project labor agreement, including compliance with the National Labor Relations Act, the Employee Retirement Income Security Act, the Small Business Act, and the Competition in Contracting Act.

Response: GSA, DoD, and NASA strongly support affording agencies discretion in the use of project labor agreements. As explained in the FAR Rulemaking section above, discussing the development of the regulation, GSA, DoD, and NASA believe this discretion is central to agencies' ability to improve the economy and efficiency of a Federal construction project. However, GSA, DoD, and NASA agree with the concern that the "complete discretion" language in the proposed rule is not appropriately tailored to the policies of E.O. 13502 and, for this reason, have deleted this language from the final rule in favor of language that more closely tracks the wording and structure of E.O. 13502 in its discussion of general policy.

GSA, DoD, and NASA disagree with the recommendations to reduce discretion and create inflexible presumptions favoring or disfavoring the use of project labor agreements. Such presumptions would be inconsistent with the E.O.'s emphasis, as stated in section 3(a), on allowing agencies to evaluate each construction effort independently and to decide "on a project-by-project basis" where use of a project labor agreement will "advance the Federal Government's interest in

achieving economy and efficiency in Federal procurement."

GSA, DoD, and NASA agree with the general recommendation to provide additional factors in the final rule that can help agencies evaluate whether use of a project labor agreement would be beneficial for a particular construction project. GSA, DoD, and NASA believe that flexible factors would support the E.O.'s policy of encouraging the consideration of project labor agreements. GSA, DoD, and NASA carefully reviewed the many suggestions respondents made for specific factors, looking for those factors, in particular, that agencies might reasonably apply to the facts of a given project to help determine whether using a project labor agreement would promote economy and efficiency. GSA, DoD, and NASA agreed to the following non-exhaustive list of factors that agencies may consider, in their discretion, in deciding whether a project labor agreement is appropriate for use in a given construction project:

- (1) The project will require multiple construction contractors and/or subcontractors employing workers in multiple crafts or trades.

- (2) There is a shortage of skilled labor in the region in which the construction project will be sited.

- (3) Completion of the project will require an extended period of time.

- (4) Project labor agreements have been used on comparable projects undertaken by Federal, State, municipal, or private entities in the geographic area of the project.

- (5) A project labor agreement will promote the agency's long term program interests, facilitating the training of a skilled workforce to meet the agency's future construction needs.

- (6) Any other factors that the agency decides are appropriate.

In order to preserve agency discretion, GSA, DoD, and NASA believe that the rule should not mandate consideration of these factors. For this reason, the final rule leaves an agency free to decide whether it will adopt some or all of the factors (or any other factor that the agency considers to be appropriate) as part of its own procedures. Similarly, how an organization structures its review team, draws upon agency or external resources, documents any decisions relating to the use of a project labor agreement, and addresses similar management matters is left to the discretion of each agency.

In addition, GSA, DoD, and NASA agree with respondents who recommended that consideration of project labor agreements should begin early in the acquisition process. Early consideration will help ensure that

relevant circumstances and the needs of stakeholders can be fully considered in identifying actions that would assist the agency in performing its mission effectively and efficiently. Accordingly, the final rule has been amended to encourage agency planners to consider the use of a project labor agreement during acquisition planning.

The recommended additions regarding impact were not necessary, because the agencies are permitted to consider any factor that the agency considers appropriate. With respect to small business contracting, in particular, the policies in this rule should be read in conjunction with those in FAR part 19 speaking to small business participation.

Finally, both proposed and final rules make clear that project labor agreements established pursuant to the rule "must fully conform to all statutes, regulations, and Executive orders." Agencies requiring project labor agreements must therefore undertake appropriate legal review in implementing the rule. GSA, DoD, and NASA do not, however, agree with the commenter who claimed a need for an additional legal review process to implement the rule, apart from the process otherwise utilized by agencies in the course of making procurement determinations.

2. Content of project labor agreement

A number of respondents addressed the contents of project labor agreements. Some offered views about the requirements and issues addressed in a project labor agreement. Others commented on the Government's role in specifying the terms of a project labor agreement.

- *a. Comments related to issues covered in project labor agreements.* Some respondents requested that guidance clarify how project labor agreement requirements and terms handle contractors who are not otherwise parties to a collective bargaining agreement with respect to their use of existing employees, at least their core workers, and the extent to which such employees must contribute to union benefits trust funds. A number of these comments were raised in connection with fears that use of project labor agreements could unduly restrict the participation of open shop contractors in competition for Federal construction projects. One respondent suggested that the content of project labor agreements be limited to (i) a prohibition against union strikes, and (ii) a dispute resolution procedure for union contractors. Another recommended that project labor agreements include a targeted hiring provision. Yet another commenter

recommended that the proposed language requiring project labor agreements to “fully conform to all statutes, regulations, and Executive orders” be changed to say that project labor agreements shall ensure that items such as existing targeting policies, contract compliance requirements, outreach policies, logistical requirements for contractors, and other project administration elements would be addressed. Finally, one commenter suggested seeking amendments to the American Recovery and Reinvestment Act of 2009 (ARRA) and changing the existing FAR clause 52.222–9, Apprentices and Trainees, to provide a model project labor agreement for ARRA-funded projects.

Response: With respect to the general concern raised regarding the participation of nonunion contractors, GSA, DoD, and NASA note that E.O. 13502 expressly states that all project labor agreements must allow all contractors and subcontractors to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements and this requirement is repeated in the final rule. Any contractor may compete for—and win—a Federal contract requiring a project labor agreement, whether or not the contractor’s employees are represented by a labor union. The same principle of open competition would protect subcontractors as well. GSA, DoD, and NASA will work with the Office of Management and Budget (OMB), the Middle Class Task Force, the Small Business Administration (as many of these concerns were posed by small businesses), and others to assist with the development of appropriate training on these issues. With respect to the impact of a project labor agreement on particular contractors and subcontractors, GSA, DoD, and NASA have amended the final rule to permit agencies to fashion requirements as appropriate to meet their procurement needs. As explained in greater detail in the response to the next set of comments on the Government’s role, GSA, DoD, and NASA have also clarified that an agency may specify the terms and conditions of the project labor agreement, as appropriate to advance economy and efficiency in procurement.

As for the other recommendations described above, GSA, DoD, and NASA do not agree that the rule should be modified to address them. Section 4 of the E.O. specifies the minimum requirements for project labor agreements. The final rule reflects these considerations. Additional references, such as to ARRA, are not required.

Further, specific elements such as targeted hiring and outreach policies are not addressed in the E.O. These matters, as appropriate, may be addressed in the project labor agreement, in the context of a particular project. As noted, language has been added to the final rule that allows agencies to include any additional requirements as the agency deems necessary to satisfy its needs.

b. Comments regarding the Government’s role in establishing the terms of a project labor agreement. Several respondents stated that the final rule should allow an agency to negotiate a project labor agreement, either directly or through an agent, before the solicitation is issued. Other respondents expressed the opposite view—*i.e.*, that the Government should not participate in the negotiations of a project labor agreement—since the terms of the project labor agreement essentially address the relationship between the contractor and the unions.

Response: Experiences of entities that have successfully used project labor agreements suggest that, in some cases, an agency may be able to more effectively achieve economy and efficiency in procurement by specifying some or all of the terms and conditions of the project labor agreement in the solicitation. Their experiences also suggest that, if the agency specifies some or all of the terms and conditions of the project labor agreement in the solicitation, contractors not familiar with project labor agreements may be better able to compete. For this reason, GSA, DoD, and NASA have amended the final rule to clarify that, as appropriate to advance the economy and efficiency in procurement, an agency may specify the terms and conditions of the project labor agreement in the solicitation and require the successful offeror to become a party to a project labor agreement containing these terms and conditions as a condition of receiving a contract award.

Consistent with the FAR and applicable law, an agency may seek the views of, confer with, and exchange information with prospective bidders and union representatives as part of the agency’s effort to identify appropriate terms and conditions of a project labor agreement for a particular construction project and facilitate agreement on those terms and conditions. However, agency actions must not prescribe how Government contractors and subcontractors handle their labor relations beyond performance of the specific Government contract project involved.

3. Timing for submission of project labor agreement

Summary of comments. Many respondents submitted comments regarding the timing of a project labor agreement’s execution. (In the notice of the proposed rulemaking, GSA, DoD, and NASA expressly sought input from the public on this issue.) The comments focused on three options: (i) require submission of project labor agreement with offer, (ii) require submission of project labor agreement from apparent awardee, or (iii) require project labor agreement before construction begins. Proponents of requiring submission of an executed project labor agreement (or at least a binding letter of understanding) with bids stated that this timing best ensures compliance with the requirement for project labor agreements (*i.e.*, the contracting officer has documented proof before he or she begins evaluating offers) as well as better planning and more accurate pricing in offers, because the offerors will be able to accurately predict their labor costs. They noted that early negotiation and execution of the project labor agreement can best ensure that labor issues will not become a distraction or lead to unanticipated problems at the beginning of the project. Opponents raised concerns that requiring every offeror to negotiate a project labor agreement would impose a significant burden on offerors and could cause significant delay in contract awards.

The pros and cons offered for requiring submission of the project labor agreement from only the apparent awardee were essentially the opposite from those offered for requiring submission with offers. Those who favored post-award submission felt this timing posed the smallest likelihood of pre-award delay and gave the contractor the greatest amount of time to negotiate the best project labor agreement possible. Critics cautioned that post-award execution of project labor agreements potentially undercuts key purposes of the agreement, such as addressing potential labor differences before they occur and receiving offers with more accurate pricing. Several respondents were particularly concerned that the language of the proposed rule, which would require the offeror to “negotiate in good faith,” does not assure that a project labor agreement will be reached, despite the Government having concluded that it should be utilized.

Response: GSA, DoD, and NASA believe that the Government’s procurement interests are best served by allowing agencies broad discretion in formulating the process and timing for the submission of a project labor

agreement. Accordingly, under the final rule, agencies may choose from among three options. Submission may be required: (1) when offers are due; (2) prior to award (by the apparent successful offeror); or (3) after award.

Providing these three options allows agencies with project labor agreement experience to continue with the model they have found most effective; it also allows other agencies to craft an approach unique to each project, and, as experience is gained, follow best demonstrated practices. If an agency decides that permitting execution of the project labor agreement after award is the best approach, the contractor will be required to submit an executed copy of the agreement to the contracting officer. This is a change from the proposed rule, which only required the contractor to "bargain in good faith." In the view of GSA, DoD, and NASA, the language of the proposed rule could result in a situation where the Government concluded that execution of a project labor agreement was in its best interest, but has no recourse should the project labor agreement never be executed as long as the contractor bargained in good faith.

4. Other issues

a. *Comments regarding retroactive imposition of project labor agreements on contracts already awarded.* One commenter recommended that the rule be clarified to prohibit agencies from pursuing a project labor agreement after a contract has been awarded. The commenter's concern relates to a scenario where the contracting agency has not previously informed parties that a project labor agreement was being considered.

Response: GSA, DoD, and NASA agree with this concern. Any such action, without any prior indication that a project labor agreement was contemplated, could disrupt the project's schedule and impact contract price. FAR 1.108(d) requires that any application of a new procedure to existing contracts must be bilaterally negotiated and involve adequate consideration. Consistent with section 11 of the E.O., the final rule will apply to solicitations for large-scale construction projects issued on or after the effective date of this rule.

b. *Comments addressing the applicability of project labor agreements to certain contractors.* Some respondents questioned the application of a project labor agreement to particular activities related to, or occupations involved with, construction projects. One commenter stated that the proposed rule was "overly comprehensive" by not distinguishing between contractors

engaged in the construction and subcontractors who are not part of the construction project. Another commenter stated that the proposed rule failed to exclude designers, site engineers, surveyors and other engineering related personnel from its requirements. The commenter stated that the quality assurance/quality control functions performed by such personnel would give rise to certain conflicts of interest if they were subject to a project labor agreement.

Two respondents stated that any determination relating to the use of a project labor agreement under Federal contracts for projects on Indian reservations should take cognizance of tribal sovereignty and self-determination as contemplated by Pub. L. 93-638 and various Executive orders. Both respondents stated that the determination whether to use a project labor agreement should be vested in the affected tribe rather than the Federal agency. One commenter stated that a tribal-specific project labor agreement has been developed and that it is generally referred to as a "Tribal Labor Agreement." This commenter recommended that the final rule reflect the unique aspects of Federal projects located on Indian reservations.

Response: GSA, DoD, and NASA have clarified in the final rule that project labor agreements cover subcontractors engaged in construction. This change makes clear that employers who do not perform construction work need not sign the project labor agreement.

With respect to the handling of engineering-related personnel, GSA, DoD, and NASA note that no other trades or crafts are referenced in either the E.O. or the proposed rule and believe these concerns are best addressed by the agency or the parties on a project-by-project basis.

Regarding issues related to tribal self-determination, GSA, DoD, and NASA concluded that no change is required to the FAR rule. Each of the affected funding agencies may develop internal guidance, as necessary, to accommodate its unique authorities.

c. *Guidance to employers that have no relationship to labor organizations.* One commenter stated that the proposed rule failed to provide guidance to employers that have no relationship with any labor organization. The commenter stated that the terms and conditions of employment common in union-represented workforces differ from the terms and conditions of employment common for individuals not represented by unions.

Response: This issue is outside the scope of this FAR case. Such general guidance may be provided by individual

agencies as they believe appropriate. However, the rule reiterates that, as provided in E.O. 13502, contractors and subcontractors must be permitted to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements.

d. *Comments regarding the use of project labor agreements for initiatives other than large-scale Federal construction projects.* A number of respondents recommended that the E.O.'s policy for encouraging the use of project labor agreements be broadened. Some respondents recommended that the threshold for applicable projects be lower than \$25 million. They stated that it is common for project labor agreements to be used on construction projects under \$25 million and that the total cost of a project is less significant than the factors referenced in the E.O. in determining whether a project labor agreement serves the Government's interest. Some suggested this be accomplished by lowering the threshold to \$5 million. Others recommended that the definitions of "large-scale construction project" and "Project labor agreement," be revised to include a construction program comprised of multiple projects when calculating the \$25 million threshold. A few recommended no threshold and suggested that the rule be revised to require that agencies analyze all construction projects, regardless of value or form, to determine whether the use of a project labor agreement results in a more efficient procurement. Finally, a number of respondents addressed use of project labor agreements in connection with Federally-assisted projects. Most who discussed the issue favored the use of project labor agreements for construction contracts funded by Federal grants. A few respondents opposed the use of project labor agreements on such projects, and two questioned the legality of such use.

Response: Modifying the coverage of the final rule to address expanded consideration of project labor agreements is outside the scope of this rulemaking. This rulemaking is intended to support the implementation of the policy set forth in section 1(b) of E.O. 13502, which is expressly directed at Federal acquisitions involving large-scale construction projects. Under section 5 of the E.O., agencies are not precluded from using project labor agreements on projects not covered by the order. GSA, DoD, and NASA note that this final rule does not limit agencies' exercise of their authorities to require project labor agreements in appropriate circumstances and to the

extent permitted by law. Finally, with respect to recommendations addressing construction projects funded by Federal grants, GSA, DoD, and NASA note that such transactions are outside their policy jurisdiction and the purview of the FAR.

D. Significant rule.

This is a significant regulatory action and, therefore, was subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

GSA, DoD, and NASA received a number of comments that made arguments in favor of declaring this rule as major. A summary of these comments and GSA, DoD, and NASA's response is below.

Comment: One respondent stated that the proposed rule improperly declares that this rule is not a major rule under 5 U.S.C. 804, and thereby violates the Congressional Review Act codified therein.

5 U.S.C. 804 defines a major rule as including any rule likely to result in—

(A) An annual effect on the economy of \$100,000,000 or more;

(B) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(C) A significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic export markets. Respondents made the following arguments:

- Project labor agreements will have significant adverse effect on competition.

- Project labor agreements will create major increases in construction costs for Federal agencies.

- Project labor agreements may have an annual impact on the economy of \$100,000,000 or more.

- Without the benefit of a cost/benefit analysis, it is difficult to determine if the NPRM would satisfy the criteria of a major rule under paragraph A or calculate if increases are major under paragraph B.

Response: OMB determines whether a rule is a major rule. OMB has not determined this rule to be a major rule.

The purpose of the E.O. is to further economy and efficiency in Federal procurement—in particular large-scale construction contracts. Specifically, agencies are encouraged to consider requiring the use of a project labor agreement in large-scale construction projects, if use of such an agreement

will advance the interest of the Federal Government in achieving economy and efficiency. Consistent with the express terms of the E.O., including section 5, which states that the order “does not require an executive agency to use a project labor agreement on any construction project,” the final rule preserves the flexibility agencies need to evaluate whether a project labor agreement is appropriate for a given construction project. Simply put, the use of project labor agreements by Federal agencies is voluntary. As explained in the preamble to the notice of proposed rulemaking, GSA, DoD, and NASA estimate about 30 project labor agreements will be formed per year (**Federal Register** at 74 FR 33955, July 14, 2009). Based on this estimate, GSA, DoD, and NASA expect that any increased construction costs associated with the use of project labor agreements under the rule will be less than the \$100 million threshold for a major rule.

Furthermore, this is not rulemaking (such as is promulgated, for example, by the Environmental Protection Agency) that will impose mandatory standards that may result in higher costs on entities, without any reimbursement. These are acquisition regulations. Applying for a Government contract is a voluntary act. In addition, as further explained in the Regulatory Flexibility Analysis section below, bids on a project for which a project labor agreement is required may include anticipated costs associated with a contractor's compliance with project labor agreement requirements. These costs would be included in the price of the contract awarded to the successful bidder.

E. Regulatory Flexibility Analysis.

Many respondents commented on the Regulatory Flexibility Act and the perceived impact on small businesses.

1. Violation of the Regulatory Flexibility Act.

Comments: Many respondents stated that the failure to perform an Initial Regulatory Flexibility Analysis violated the Regulatory Flexibility Act. One respondent further objected that the findings lack the level of quality that would permit their dissemination and use as the basis of the policy that GSA, DoD, and NASA are proposing to set through this rulemaking, as required by section 515 of the Data Quality Act (Pub. L. 106–554). One respondent criticized GSA, DoD, and NASA for failing to certify that the rule would not have a substantial adverse economic impact on a significant number of small entities.

Some respondents took issue with the statement in the **Federal Register** preamble to the proposed rule that this rule is not expected to have a significant impact on a substantial number of small entities. These respondents pointed out that many small entities perform work as subcontractors on projects whose total cost exceeds \$25 million. One respondent cited comments of individual prime contractors that have performed contracts in the \$25 million plus range as to the percentage of awards to small business subcontractors, the majority of whom are non-union. This respondent cited a particular example in which a prime contractor subcontracted to small businesses more than 50 percent of the dollar value of prime construction contracts that exceed \$25 million. The respondent stated that these numbers are typical of many other association members.

Many respondents stated that the rule will have a substantial harmful economic impact. Specifically, they stated that:

- The impact on all subcontracts on such projects, no matter how small, will be harmful due primarily to discrimination against non-union subcontractors and increased costs.

- The project labor agreement will increase the costs of the small non-union subcontractor by at least 25 percent or more.

- The project labor agreement requirement will impact “even small employers who will likely have no labor relations staff who can navigate a project labor agreement.”

- Small businesses will be put out of business because they will not be able to afford the costs associated with this rule.

- Use of project labor agreements will make it more difficult for small non-union businesses to compete.

Response: Consistent with the requirements of the Regulatory Flexibility Act, GSA, DoD, and NASA are committed to performing analyses and identifying alternatives, whenever feasible, to mitigate the impact of acquisition rules on small businesses and regularly work with the Small Business Administration to this end. As explained below, GSA, DoD, and NASA believe that amendments made to the final rule allow agencies to fashion requirements as appropriate to meet their procurement needs and ameliorate concerns about the impact of a project labor agreement on particular contractors and subcontractors, including small businesses.

GSA, DoD, and NASA do not certify that a rule will not have a significant

economic impact on a substantial number of small entities until after receipt and analysis of public comments on a rule.

GSA, DoD, and NASA did not perform an Initial Regulatory Flexibility Analysis on this rule, because GSA, DoD, and NASA did not expect that the rule would have a significant economic impact on a substantial number of small entities for the reasons stated in the **Federal Register** preamble to the proposed rule, namely that the rule is discretionary in nature and its application is tied to large scale construction projects over \$25 million that are likely to be performed by large businesses. It is only the prime contractor that negotiates the project labor agreement and submits the project labor agreement to the Government.

The Data Quality Act is more commonly applied to significant information disseminated by Government agencies such as statistical information (e.g., National Weather Service or Bureau of Labor Statistics); information about health, safety, and environmental risks that they collect from regulated entities; or findings of scientific research or technical information that Government agencies create or obtain in the course of developing regulations, often involving scientific, engineering, and economic analysis (for example, an analysis of the risk to health to support a change to clean air or water standards). Although neither the law nor the OMB Guidance are limited to "important" information, the OMB guidance states that the more important the information, the higher the quality standards to which it should be held. The OMB Guidance also states that agencies should apply the guidelines in a "common-sense and workable" manner. In this case, the information provided was not the basis for the proposed rule (which is based on the E.O.), but was only used in the decision of whether to prepare and submit an Initial Regulatory Flexibility Analysis.

As stated in the preamble to the proposed rule, according to the Federal Procurement Data System, in FY 2008 300 large-scale construction contracts, totaling \$31,685,574,596 were awarded. Of these, 17 were made to small businesses, totaling \$591,269,508 (average of \$34,780,558 per contract). The small business size standard for general building and heavy construction contractors is \$33.5 million. Most prime contractors for such projects are large businesses, but the majority of the subcontractors under these large-scale contracts will be small businesses. Since the publication of the proposed rule,

GSA, DoD, and NASA have updated averages, to include FY 2009 information: The 2 year average is a total of 246 contracts per year, with 14 of the prime contractors being small businesses. However, GSA, DoD, and NASA continue to maintain the estimate made in the proposed rule of about 30 project labor agreements per year (that would now be 12.2 percent of all large-scale construction contracts).

The impact on non-union small businesses is not likely to be as much as feared by many of the respondents. GSA, DoD, and NASA reviewed a major project by the Massachusetts Water Resource Authority, which used a project labor agreement. Of the 257 subcontractors, 102 were reportedly open shop subcontractors (nearly 40 percent).

The rule clearly states that all contractors and subcontractors must be allowed to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements. It is not up to the small business subcontractor to negotiate a project labor agreement; it only needs to sign on to the project labor agreement negotiated by the prime contractors. When a prime contractor makes an offer to perform work on a fixed-price construction contract, the contractor includes amounts to cover the costs it expects to incur, including anticipated costs of complying with project labor agreement requirements, plus profit in its offered price. Subcontractors also include their anticipated costs in their offered price. The anticipated costs, therefore, would be included in the payment by the Government of the prime contract fixed price.

GSA, DoD, and NASA cannot determine in the abstract what the effects of a particular project labor agreement will be on all the affected parties. However, GSA, DoD, and NASA have amended the final rule to permit agencies to include requirements as the agency deems necessary to satisfy its procurement needs. GSA, DoD, and NASA have also clarified that an agency may specify the terms and conditions of the project labor agreement, as appropriate to advance economy and efficiency. These flexibilities, which are consistent with the discretion anticipated in the E.O. ensure that agencies will have the opportunity to bring their relevant experiences to bear on circumstances particular to a project and take appropriate steps to ameliorate impact on contractors and subcontractors, including small businesses.

2. Suggested remedies.

Comment: One respondent recommended that the final rule establish a threshold below which any qualified bidder can participate, regardless of the bidder's agreement, or lack of agreement, to a project labor agreement. Many respondents requested that the proposed rule should be rescinded so that a regulatory flexibility analysis can be performed.

Response: The project labor agreement requires all construction subcontractors to follow the same rules; it would defeat the purpose of the project labor agreement to exempt subcontractors below a given threshold.

It is not necessary to rescind the proposed rule, because GSA, DoD, and NASA do not believe this final rule will have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act based on the responses provided above.

3. Request for separate submission from small entities.

Comments: One respondent was under the impression that the **Federal Register** preamble to the proposed rule required filing of separate comments with regard to Regulatory Flexibility Analysis. The respondent stated that there is no basis for the requirement to file such comments separately and objected to this process.

Another respondent raised the same issues as the other respondent, and also stated that GSA, DoD, and NASA are obliged to consider comments from all entities, not just small entities; and assumed that the reference to section 5 U.S.C. 610 must be in error.

Response: The statement that GSA, DoD, and NASA will consider comments from small entities on affected subparts in accordance with 5 U.S.C. 610 was not intended to affect the response by entities with regard to the impact of this particular rule on small entities. 5 U.S.C. 610 addresses the periodic review of existing rules. The intent of the **Federal Register** statement was to gather separate information from small entities with regard to the impact on small businesses of any existing regulations in parts 2, 17, 22, 36, and 52—i.e., not the current proposed rule. This request was supposed to be separate from, and in addition to, the request for comments on the regulatory flexibility impact of the proposed rule.

F. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant

economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The rule clearly states that all contractors and subcontractors must be allowed to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements. It is not up to the small business subcontractor to negotiate a project labor agreement; it only needs to sign on to the project labor agreement negotiated by the prime contractor. Also, as explained in the Regulatory Flexibility Analysis section, above, when a prime contractor makes an offer to perform work on a fixed-price construction contract, the contractor includes amounts to cover the costs it expects to incur, including anticipated costs of complying with project labor agreement requirements, plus profit in its offered price. Subcontractors also include their anticipated costs in their offered price. The anticipated costs, therefore, would be included in the payment by the Government of the prime contract fixed price.

GSA, DoD, and NASA cannot determine in the abstract what the effects of a particular project labor agreement will be on all the affected parties, but have sought to structure the rule to maximize an agency's ability to use its discretion to identify when using project labor agreements promotes economy and efficiency. Such circumstances should typically benefit both the Government and contractors, such as by providing mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health, and setting forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the project labor agreement.

G. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104-13) applies because the final rule contains information collection requirements. Accordingly, the Regulatory Secretariat received the preapproval for a new information collection, OMB Control No. 9000-0175, concerning use of project labor agreements for Federal construction projects, to the Office of Management and Budget under 44 U.S.C. Chapter 35, *et seq.* Public comments concerning this request were invited through a subsequent **Federal Register** notice that was published in the **Federal Register** at 75 FR 13765, March 23, 2010.

Comments on the proposed information collection requirement:

One respondent stated that the data is largely arbitrary and capricious and should not be relied upon for any presumed target for expected use of project labor agreements. The respondent expressed the following concerns:

1. The estimate may be used by the Government or outside organizations to establish benchmarks or unsupportable goals for the use of project labor agreements.

2. The estimate appears to be unrealistically low, not based on valid assumptions and methodology.

However, the respondent acknowledges that the collection of the project labor agreements is necessary to determine whether the contractor has achieved the required project labor agreement as stated in the draft solicitation provisions.

Another respondent questioned the estimate that only 10 percent of contracts that meet or exceed the \$25M threshold will be determined to be appropriate for a project labor agreement. According to the respondent, every contract exceeding \$25M might in fact be covered.

Response: The initial estimates for a new information collection requirement are of necessity just that—estimates. They are based on the best information available, but must rely on the recommendations of Government experts. These numbers are never used to establish benchmarks or goals.

More specifically, with regard to the number of hours per response, not every burden is an information collection requirement. The time associated with negotiating a project labor agreement is a direct result of the E.O., but it is not an information collection requirement. The only information collection requirement imposed by this rule is the requirement to provide a copy of the project labor agreement to the contracting officer. The **Federal Register** preamble to the proposed rule specifically stated that the estimated response time of one hour covered only the time that it would take to submit the information to the Government.

With regard to the number of respondents, we expect that better information will become available through the information that OMB is collecting from the agencies on the use of project labor agreements.

Therefore, GSA, DoD, and NASA have changed the estimated burden hours associated with this information collection requirement, to account for the addition of the new option allowing agencies to require submission of the

project labor agreement by all bidders with the offer.

List of Subjects in 48 CFR Parts 2, 7, 17, 22, and 52

Government procurement.

Dated: April 2, 2010.

Al Matera,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 7, 17, 22, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 7, 17, 22, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2.101 [Amended]

■ 2. Amend section 2.101 in paragraph (b)(2) in the third sentence of the definition "Construction" by removing the words "personal property" and adding "personal property (except that for use in subpart 22.5, see the definition at 22.502)" in its place.

PART 7—ACQUISITION PLANNING

■ 3. Amend section 7.103 by redesignating paragraph (v) as paragraph (w), and adding a new paragraph (v) to read as follows:

7.103 Agency-head responsibilities.

* * * * *

(v) Encouraging agency planners to consider the use of a project labor agreement (see subpart 22.5).

* * * * *

PART 17—SPECIAL CONTRACTING METHODS

■ 4. Amend section 17.603 by adding paragraph (c) to read as follows:

17.603 Limitations.

* * * * *

(c) For use of project labor agreements, see subpart 22.5.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

■ 5. Amend section 22.101-1 by revising paragraph (b) to read as follows:

22.101-1 General.

* * * * *

(b)(1) Agencies shall remain impartial concerning any dispute between labor and contractor management and not undertake the conciliation, mediation, or arbitration of a labor dispute. To the extent practicable, agencies should

ensure that the parties to the dispute use all available methods for resolving the dispute, including the services of the National Labor Relations Board, Federal Mediation and Conciliation Service, the National Mediation Board and other appropriate Federal, State, local, or private agencies.

(2) For use of project labor agreements, see subpart 22.5.

* * * * *

■ 6. Add subpart 22.5, consisting of sections 22.501 through 22.505, to read as follows:

Subpart 22.5—Use of Project Labor Agreements for Federal Construction Projects

Sec.

22.501 Scope of subpart.

22.502 Definitions.

22.503 Policy.

22.504 General requirements for project labor agreements.

22.505 Solicitation provision and contract clause.

Subpart 22.5—Use of Project Labor Agreements for Federal Construction Projects

22.501 Scope of subpart.

This subpart prescribes policies and procedures to implement Executive Order 13502, February 6, 2009.

22.502 Definitions.

As used in this subpart—

Construction means construction, rehabilitation, alteration, conversion, extension, repair, or improvement of buildings, highways, or other real property.

Labor organization means a labor organization as defined in 29 U.S.C. 152(5).

Large-scale construction project means a construction project where the total cost to the Federal Government is \$25 million or more.

Project labor agreement means a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. 158(f).

22.503 Policy.

(a) Project labor agreements are a tool that agencies may use to promote economy and efficiency in Federal procurement. Pursuant to Executive Order 13502, agencies are encouraged to consider requiring the use of project labor agreements in connection with large-scale construction projects.

(b) An agency may, if appropriate, require that every contractor and subcontractor engaged in construction

on the project agree, for that project, to negotiate or become a party to a project labor agreement with one or more labor organizations if the agency decides that the use of project labor agreements will—

(1) Advance the Federal Government's interest in achieving economy and efficiency in Federal procurement, producing labor-management stability, and ensuring compliance with laws and regulations governing safety and health, equal employment opportunity, labor and employment standards, and other matters; and

(2) Be consistent with law.

(c) Agencies may also consider the following factors in deciding whether the use of a project labor agreement is appropriate for the construction project:

(1) The project will require multiple construction contractors and/or subcontractors employing workers in multiple crafts or trades.

(2) There is a shortage of skilled labor in the region in which the construction project will be sited.

(3) Completion of the project will require an extended period of time.

(4) Project labor agreements have been used on comparable projects undertaken by Federal, State, municipal, or private entities in the geographic area of the project.

(5) A project labor agreement will promote the agency's long term program interests, such as facilitating the training of a skilled workforce to meet the agency's future construction needs.

(6) Any other factors that the agency decides are appropriate.

22.504 General requirements for project labor agreements.

(a) *General.* Project labor agreements established under this subpart shall fully conform to all statutes, regulations, and Executive orders.

(b) *Requirements.* The project labor agreement shall—

(1) Bind all contractors and subcontractors engaged in construction on the construction project to comply with the project labor agreement;

(2) Allow all contractors and subcontractors to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements;

(3) Contain guarantees against strikes, lockouts, and similar job disruptions;

(4) Set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the term of the project labor agreement;

(5) Provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health; and

(6) Include any additional requirements as the agency deems necessary to satisfy its needs.

(c) *Terms and conditions.* As appropriate to advance economy and efficiency in the procurement, an agency may specify the terms and conditions of the project labor agreement in the solicitation and require the successful offeror to become a party to a project labor agreement containing these terms and conditions as a condition of receiving a contract award. An agency may seek the views of, confer with, and exchange information with prospective bidders and union representatives as part of the agency's effort to identify appropriate terms and conditions of a project labor agreement for a particular construction project and facilitate agreement on those terms and conditions.

22.505 Solicitation provision and contract clause.

For acquisition of large-scale construction projects, if the agency decides pursuant to this subpart that a project labor agreement will be required, the contracting officer shall—

(a) Insert the provision at 52.222–33, Notice of Requirement for Project Labor Agreement, in all solicitations associated with the construction project.

(1) Use the provision with its Alternate I if the agency decides to require the submission of a project labor agreement from only the apparent successful offeror, prior to contract award.

(2) Use the provision with its Alternate II if an agency allows submission of a project labor agreement after contract award.

(b)(1) Insert the clause at 52.222–34, Project Labor Agreement, in all solicitations and contracts associated with the construction project.

(2) Use the clause with its Alternate I if an agency allows submission of the project labor agreement after contract award.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 7. Add sections 52.222–33 and 52.222–34 to read as follows:

52.222–33 Notice of Requirement for Project Labor Agreement.

As prescribed in 22.505(a)(1), insert the following provision:

NOTICE OF REQUIREMENT FOR PROJECT LABOR AGREEMENT (May 2010)

(a) *Definitions.* “Labor organization” and “project labor agreement,” as used in this provision, are defined in the

clause of this solicitation entitled Project Labor Agreement.

(b) Consistent with applicable law, the offeror shall negotiate a project labor agreement with one or more labor organizations for the term of the resulting construction contract.

(c) Consistent with applicable law, the project labor agreement reached pursuant to this provision shall—

- 1) Bind the offeror and all subcontractors engaged in construction on the construction project to comply with the project labor agreement;
- (2) Allow the offeror and all subcontractors to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements;
- (3) Contain guarantees against strikes, lockouts, and similar job disruptions;
- (4) Set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the term of the project labor agreement;
- (5) Provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health; and
- (6) Fully conform to all statutes, regulations, Executive orders, and agency requirements.

(d) Any project labor agreement reached pursuant to this provision does not change the terms of this contract or provide for any price adjustment by the Government.

(e) The offeror shall submit to the Contracting Officer a copy of the project labor agreement with its offer.

(End of Provision)

Alternate I (May 2010). As prescribed in 22.505(a)(1), substitute the following paragraphs (b) and (e) for paragraphs (b) and (e) of the basic clause.

(b) The apparent successful offeror shall negotiate a project labor agreement with one or more labor organizations for the term of the resulting construction contract.

(e) The apparent successful offeror shall submit to the Contracting Officer a copy of the project labor agreement prior to contract award.

Alternate II (May 2010). As prescribed in 22.505(a)(2), substitute the following paragraph (b) in lieu of paragraphs (b) through (e) of the basic clause:

(b) Consistent with applicable law, if awarded the contract, the offeror shall negotiate a project labor agreement with one or more labor organizations for the term of the resulting construction contract.

52.222–34 Project Labor Agreement.

As prescribed in 22.505(b)(1), insert the following clause:

PROJECT LABOR AGREEMENT (May 2010)

(a) *Definitions.* As used in this clause—

Labor organization means a labor organization as defined in 29 U.S.C. 152(5).

Project labor agreement means a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. 158(f).

(b) The Contractor shall maintain in a current status throughout the life of the contract the project labor agreement entered into prior to the award of this contract in accordance with solicitation provision 52.222–33, Notice of Requirement for Project Labor Agreement.

(c) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts with subcontractors engaged in construction on the construction project.

(End of Clause)

Alternate I (May 2010). As prescribed in 22.505(b)(2), substitute the following paragraphs (b) through (f) for paragraphs (b) and (c) of the basic clause:

(b) Consistent with applicable law, the Contractor shall negotiate a project labor agreement with one or more labor organizations for the term of this construction contract. The Contractor shall submit an executed copy of the project labor agreement to the Contracting Officer.

(c) Consistent with applicable law, the project labor agreement reached pursuant to this clause shall—

- 1) Bind the Contractor and all subcontractors engaged in construction on the construction project to comply with the project labor agreement;
- (2) Allow the Contractor and all subcontractors to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements;
- (3) Contain guarantees against strikes, lockouts, and similar job disruptions;
- (4) Set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the project labor agreement;
- (5) Provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health; and
- (6) Fully conform to all statutes, regulations, Executive orders, and agency requirements.

(d) Any project labor agreement reached pursuant to this provision does

not change the terms of this contract or provide for any price adjustment by the Government.

(e) The Contractor shall maintain in a current status throughout the life of the contract the project labor agreement entered into pursuant to this clause.

(f) *Subcontracts.* The Contractor shall require subcontractors engaged in construction on the construction project to agree to any project labor agreement negotiated by the prime contractor pursuant to this clause, and shall include the substance of paragraphs (d) through (f) of this clause in all subcontracts with subcontractors engaged in construction on the construction project.

[FR Doc. 2010–8118 Filed 4–12–10; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2010–0077, Sequence 3]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–41; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator of the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of the summary of the rule appearing in Federal Acquisition Circular (FAC) 2005–41 which amends the Federal Acquisition Regulation (FAR). Interested parties may obtain further information regarding this rule by referring to FAC 2005–41 which precedes this document. These documents are also available via the Internet at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below. Please cite FAC 2005–41 and the specific FAR case number. For information pertaining to status or

publication schedules, contact the FAR Secretariat at (202) 501-4755.

RULE LISTED IN FAC 2005-41

Subject	FAR case	Analyst
Use of Project Labor Agreements for Federal Construction Projects	2009-005	Woodson.

SUPPLEMENTARY INFORMATION: A summary for the FAR rule follows. For the actual revisions and/or amendments made by this FAR case, refer to FAR Case 2009-005.

FAC 2005-41 amends the FAR as specified below:

Use of Project Labor Agreements for Federal Construction Projects (FAR Case 2009-005)

This final rule amends the FAR to implement Executive Order (E.O.) 13502, Use of Project Labor Agreements for Federal Construction Projects. The

E.O. encourages the use of project labor agreements for Federal construction projects where the total cost to the Government is \$25 million or more in order to promote economy and efficiency in Federal procurement. The rule provides that an agency may, if appropriate, require that every contractor and subcontractor engaged in construction on a construction project agree, for that project, to negotiate or become a party to a project labor agreement with one or more labor organizations. The rule identifies factors that agencies may consider to help them

decide, on a case-by-case basis, whether the use of a project labor agreement is likely to promote economy and efficiency in the performance of a specific construction project, and multiple strategies for timing the Federal Government's receipt of project labor agreements.

Dated: April 2, 2010.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 2010-8119 Filed 4-12-10; 8:45 am]

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